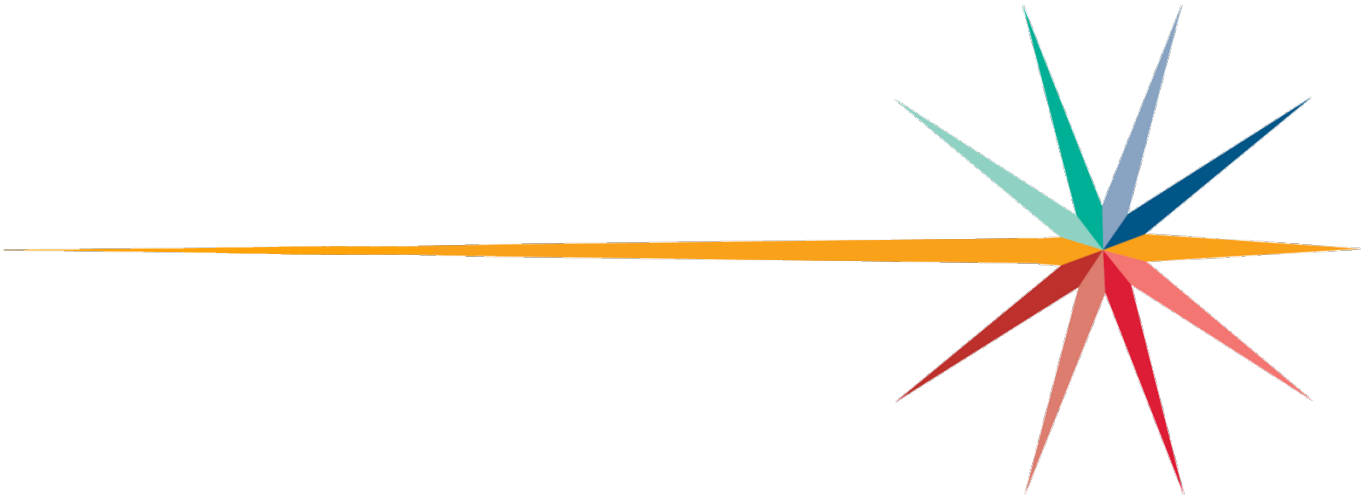
KANSAS SPECIAL EDUCATION PROCESS HANDBOOK



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KANSAS
STATE DEPARTMENT OF
EDUCATION

Kansas leads the world in the success of each student.

INTRODUCTION

ACKNOWLEDGEMENTS

Special Education Services wishes to thank all those that provided input for the 2018 Kansas Special Education Process Handbook, including representatives from Families Together, Inc., the Kansas' Technical Assistance System Network (TASN) and KSDE.

If viewing this in PDF format, press CTRL-F (PC) or Command (⌘)-F (Macintosh) to search within the document.

The Kansas Special Education Process Handbook was developed as a guidance document by the Kansas State Department of Education. It is not an official statement of policy or procedure. If any portion of this document conflicts with law or regulation, the law or regulation takes precedence. The opinions expressed herein do not necessarily reflect the position of the United States Department of Education, and no endorsement by the United States Department of Education should be inferred.

The current version of this handbook may be downloaded at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/process-handbook. This handbook will be updated as needed; for this reason we recommend that you not print a paper copy of this handbook.

The links or copies of selected statutes and regulations in this handbook are for the convenience of the public and are meant to be used only as reference. While the Kansas State Department of Education has made every effort to accurately reproduce these statutes and regulations, they are not the official statutes and regulations of the State or Federal Government. The Kansas Statutes Annotated (K.S.A.), published by the Kansas Office of Revisor of Statutes, and the Kansas Administrative Regulations (K.A.R.), published by the Office of the Kansas Secretary of State should be consulted for the text of the official statutes and regulations of the State. The U.S. Government Publishing Office should be consulted for the text of the official federal statutes and regulations, the United States Code (U.S.C.) and the Code of Federal Regulations (C.F.R.).

- Kansas Special Education Regulations: https://www.ksde.gov/policy-and-funding/special-education/special-education-law/statutes-and-regulations
- Kansas Special Education Statutes http://www.kslegislature.org/li/b2021_22/statute/072_000_0000_chapter/072_034_0000_article/
- Federal Regulations Implementing the IDEA https://sites.ed.gov/idea/statuteregulations/#regulations (2004)

Please contact our team if you have questions about information in this handbook:

Phone: 800-203-9462, or 785-296-5608
Homepage: https://www.ksde.gov/policy-and-funding/special-education
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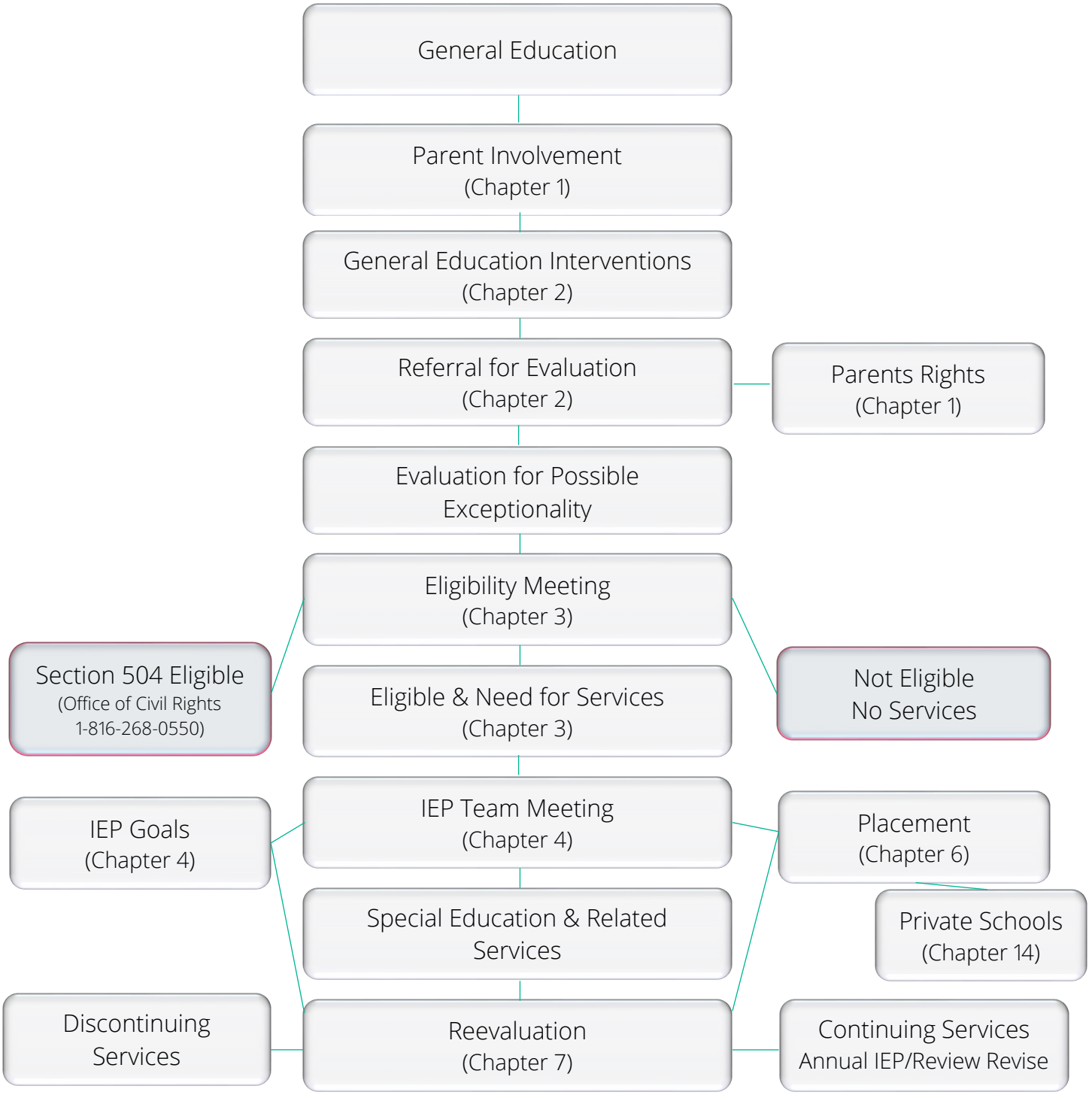
6/8/2026 *All links to KSDE website changed. Updated throughout and document reformatted to match current branding.*
7/31/2026 *New Questiona and Answer added to Chapter 11*

STATE IMPOSED RULES, REGULATIONS, AND POLICIES IN KANSAS NOT REQUIRED BY IDEA 2004 OR FEDERAL REGULATIONS

- ✓ The categories of exceptionalities include the category of "gifted." K.S.A. 72-3404(g)
- ✓ Exceptional children attending private schools are entitled to a Free Appropriate Public Education through an IEP, upon request. K.S.A. 72-3462 and K.A.R. 91-40-45(c).
- ✓ A school district must obtain written parental consent before making a change of 25% or more of a special education service or before making a change to a more restrictive or less restrictive educational environment for more than 25% of the school day. K.S.A. 72-3430(b)(6).
- ✓ Each IEP must include, beginning at age 14, appropriate measurable postsecondary goals and a statement of the transition services needed to assist the student in reaching the postsecondary goals. K.S.A. 72-3429(c)(8).
- ✓ The state complaint procedures include the right of a parent to appeal the written decision of the state complaint investigator. K.A.R. 91-40-51(f)(1).
- ✓ A due process hearing officer must be a licensed attorney. K.A.R. 91-40-29(b)(1)(a)
- ✓ General education interventions must be implemented prior to referring a child for a special education evaluation, unless school personnel can demonstrate such interventions are inadequate to address the areas of concern for the child or a parent has consented to an evaluation and the school district agrees that an evaluation is appropriate. K.A.R. 91-40-7(c)(1), (2) and (3).
- ✓ A written evaluation report is required after completion of an evaluation with regard to all categories of exceptionality (not just required for learning disabilities). K.A.R. 91-40-10(a).
- ✓ Facilities for exceptional children must be comparable to facilities for general education children and such facilities must provide an age appropriate environment for the exceptional children. K.A.R. 91-40-52(d).

SPECIAL EDUCATION PROCESS FLOW CHART



Special Considerations:

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Due Process	Chapter 11	*Code of Student Conduct and weapons, drugs, or dangerous behavior*	

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CHAPTER 1: PARENT RIGHTS IN SPECIAL EDUCATION (PROCEDURAL SAFEGUARDS)

INTRODUCTION

The most recent reauthorization of the Individuals with Disabilities Education Act (IDEA), in 2004, includes important procedures which schools must use when evaluating eligibility for special education services, when developing or changing a child's Individualized Education Program (IEP) or when attempting to resolve serious disputes regarding special education issues. These procedures are sometimes referred to as "procedural safeguards" or "parent rights." This chapter will focus on the procedural safeguards related to evaluations and to the development and revision of the IEP. Later chapters will address procedures regarding dispute resolution processes, such as due process hearings, mediation and formal complaints to the state department of education.

The procedural safeguards specified in the IDEA were primarily designed to help schools and parents work together to develop effective educational programs for children with disabilities. In Board of Education of the Hendrick Hudson Central School District v. Rowley, 102 S.Ct. 3034 (1982), the United States Supreme Court said:

> *"...we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Commissioner for approval, demonstrate the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP."*

This chapter provides information to assist schools in ensuring that parents and students receive their rights as established in IDEA. The following topics will be discussed:

A. Parent Participation
B. Definition of Parent
C. Parent Rights In Special Education Notice
D. Prior Written Notice
E. Parent Consent
F. Parent Consent Requested but Not Provided
G. Notice of IEP Meeting
H. Rights for Parents of Gifted Students
I. Education Advocates
J. Student Rights at Age 18

A. PARENT PARTICIPATION

To address the requirement to strengthen the role of parents in the special education process, Congress mandated that schools afford parents the opportunity to be members of any decision making team for their child, including eligibility, initial evaluation and reevaluation, and development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE). Schools are to ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child. Although logistically this increased involvement of parents may present challenges in arranging convenient meeting times, it should result in decisions that are individualized to meet the unique needs of students and in the development of a closer, more collaborative relationship with parents. Additionally, parents have a responsibility to participate and provide their input into their child's education. School teams recognize the contributions that parents can make to the process and how they can help ensure their child's educational progress (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b),(c)).

Every child with an exceptionality is entitled to receive a free appropriate public education (FAPE). Parent rights are intended to ensure that children receive FAPE. FAPE is defined as "special education and related services that meet the following criteria:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the state board;
3. include an appropriate preschool, elementary, or secondary school education; and
4. are provided in conformity with an individualized education program. (K.A.R. 91-40-1(z))

Parents are to be provided notice of meetings related to eligibility, evaluation, reevaluation, IEP development, provision of a free appropriate public education (FAPE) for their child and educational placement decisions, to ensure that they have the opportunity to participate in the meetings (See Section G of this chapter.). (K.A.R. 91-40-17(a),(b)(1); K.A.R. 91-40-21(c),(d); K.A.R. 91-40-24(e); 34 C.F.R. 300.501(b)(2); 34 C.F.R. 300.322 (b)(c)).

The school must make reasonable efforts to ensure that the parents understand, and have the opportunity to participate in these meetings, including arranging for an interpreter for parents with deafness, or for parents whose native language is other than English. (34 C.F.R. 300.322(e)). The parent and the school may agree to use alternative means of meeting participation, such as video conferences or conference calls (K.A.R. 91-40-17(c); K.A.R. 91-40-25(d); 34 C.F.R. 300.322(c)). These meeting requirements do not apply to informal or unscheduled conversation of school personnel on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting (K.A.R. 91-40-25(e); 34 C.F.R. 300.501(b)(3)).

In addition to involving parents in making decisions about their children, schools should involve parents of children with exceptionalities in their school improvement planning process. Parents should be involved in designing, evaluating, and where appropriate, implementing school improvement plans. In Kansas, school improvement plans are implemented under Kansas Education Systems Accreditation (KESA), which is built upon the Kansas State Board of Education's definition of a successful high school graduate. Each school should include parents of students with exceptionalities on each Building and District Site Council.

The Kansas special education statutes (K.S.A. 72-3403 to-3439), known as the Special Education for Exceptional Children Act, revised in 2006, (referred to here as the "state statute") also sets forth parental responsibilities. This law requires parents to see that their child with a disability (not giftedness) attends school so that their child can receive the special education and related services on the child's IEP, or to provide such services privately. This means that for a child with a disability who has an IEP (or IFSP ages 3-5) compulsory attendance may begin as early as age 3 (K.S.A. 72-3421).

K.S.A. 72-3421. Compulsory attendance of exceptional children at school for receipt of services; provision of services privately; nonapplicability to gifted children.

(a) Except as otherwise provided in this section, it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately.

(b) The provisions of subsection (a) do not apply to gifted children or to parents of gifted children.

K.A.R. 91-40-17. IEP team meetings and participants.

(a) Each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP meeting or are afforded the opportunity to participate. These steps shall include the following:

(1) Scheduling each meeting at a mutually agreed-upon time and place and informing the parents of the information specified in subsection (b) of this regulation;

(2) except as otherwise provided in K.A.R. 91-40-37, providing written notice, in conformance with subsection (b) of this regulation, to the parents of any IEP team meeting at least 10 days in advance of the meeting.

(b) The notice required in subsection (a) of this regulation shall meet the following requirements:

(1) The notice shall indicate the purpose, time, and location of the IEP team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services.

(2) If the meeting is for a child who has been receiving special education services under the infant and toddler provisions of the federal law but is now transitioning to the provisions for older children, the notice shall inform the parents that they may require that a representative of the infant and toddler program be invited to attend the initial IEP team meeting to assist with the smooth transition of services.

(3) The notice shall indicate the following information, if a purpose is to consider postsecondary goals and transition services for the child:

(A) The agency will invite the parents' child to attend.

(B) One of the purposes of the meeting will be to consider the postsecondary goals and needed transition services for the student.

(4) The parents have the right to invite to the IEP team meeting individuals whom the parents believe to have knowledge or special expertise about their child.

(c) If neither parent of an exceptional child can be physically present for an IEP team meeting for the child, the agency shall attempt other measures to ensure parental participation, including individual or conference telephone calls.

K.A.R. 91-40-21 Educational placement.

(c)(2) In determining the educational placement of a gifted child, each agency shall ensure that the placement decision is made by a group of persons, including the child's parent and other persons who are knowledgeable about the child, the meaning of the evaluation data and appropriate placement options for gifted children.

K.A.R. 91-40-25. Opportunity to examine records and participate in meetings.

(a) Each agency shall allow the parents of an exceptional child an opportunity to inspect and review all education records and participate in any meeting concerning their child with respect to the following:

(1) The identification, evaluation, or education placement of the child; and

(2) the provision of FAPE to the child.

B. DEFINITION OF PARENT

School personnel must determine the appropriate person(s) to make educational decisions on behalf of the child. Those individuals have a right to receive notice, give or revoke consent, file formal complaints, request mediation, file for a due process hearing, give or deny permission for release of records, etc. (See KSDE Memo: "Kansas clarification of the term "parent" after IDEA 2004" at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/statutes-and-regulations.) In Kansas "parent" is defined as:

- A natural (biological) parent;
- An adoptive parent;
- A person acting as a parent;
- A legal guardian;
- An officially appointed education advocate; or

- A foster parent, if the foster parent has been appointed the education advocate of an exceptional child. (K.S.A. 72-3404(m))

"Person acting as a parent" means a person such as a grandparent, stepparent or other relative with whom a child lives, or a person other than a parent who is legally responsible for the welfare of a child.

If there is more than one party qualified to act as a parent, and the biological or adoptive parents attempt to act as the parent, the biological or adoptive parents must be presumed to be the parents and legal decision makers, unless they do not have legal authority to make educational decisions for the child. A judge may decree or order a person acting as a parent or a legal guardian or other persons to act as the "parent" to make educational decisions for the child. The school must recognize this person(s) as the legal decision maker for the child (K.A.R. 91-40-27(c); 34 C.F.R. 300.30(b)(1),(2)).

If parents are divorced, regardless of which parent has primary custody, the school must provide Prior Written Notice of any special education action to both parents, even if only one parent has the right to consent, unless a court order precludes this from happening. This applies to all special education notice requirements including notice of an IEP meeting. If the school is only aware of one parent's address, the school must make reasonable efforts to locate the other parent in order to provide notice. However, consent from one parent is sufficient. In the event that the school receives consent forms from both parents, with one parent providing consent for the action and the other denying consent, the school is deemed to have received consent and must fulfill its obligation to provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

The following checklist is provided as a guide to school personnel to help determine the legal educational decision maker:

WHO CAN GIVE CONSENT FOR EDUCATIONAL DECISIONS?

1. Parents are available
   A. Natural (biological) parent(s): If parents are divorced, notify both parents unless a court order precludes this from happening. Consent from one parent is sufficient even if the other parent refuses to consent.
   B. Adoptive parent(s): If adoption is not final, an education advocate is needed; documentation is the 'Decree of Adoption'.
   C. Guardian: Guardianship has been completed and is documented with "Letters of Guardianship" issued by a court.
2. Parent is unknown or unavailable (Person acting as a parent)
   A. Person Acting as a Parent: (1) A person, such as a grandparent, stepparent or other relative with whom a child lives, or (2) a person other than a parent who is legally responsible for the welfare of a child ((2) should be documented with a court order).
   B. Education Advocate: Appointment as an education advocate has been completed and is documented with a Letter of Appointment from Families Together.
   C. Foster parent: Only if appointment as an education advocate has been completed and is documented with a Letter of Appointment from Families Together.
3. The student at age 18: At age 18 the student becomes the student's own educational decision-maker unless determined by a court to be incompetent.

K.S.A. 72-3404. Definitions.

(m) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as parent; (4) a legal guardian; (5) an education advocate; or (6) a foster parent, if the foster parent has been appointed the education advocate of an exceptional child.

(n) "Person acting as parent" means a person such as a grandparent, stepparent or other relative with whom a child lives or a person other than a parent who is legally responsible for the welfare of a child.

(o) "Education advocate" means a person appointed by the state board in accordance with the provisions of section 13, and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child.

K.A.R. 91-40-27 Parent Consent

(c) Unless a judicial order specifies to the contrary, an agency shall recognize the biological or adoptive parent of an exceptional child who is a minor as the educational decision maker for the child if the parent exerts his or her rights on behalf of the child, even if other persons meet the definition of parent for the particular child.

C. PARENT RIGHTS IN SPECIAL EDUCATION NOTICE

To ensure that parents have knowledge about their rights under the special education law, schools are required to provide a copy of the Parent Rights in Special Education Notice to the parents:

- At least one time in a school year; and
- Upon a referral or parent request for initial evaluation (from any source, including Part C);
- First formal complaint or due process complaint filed in a school year;
- Upon a disciplinary removal from school that constitutes a change in placement; and
- Upon parent request.

These are the only times when the Parent Rights Notice is required to be provided. The revision of IDEA in 2004 eliminated the requirement to provide the Parent Rights Notice with the notification of each IEP meeting.

The notice is to be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the language or mode of communication is not a written language, the school must translate the notice orally or use another mode of communication so that the parent understands the content of the notice. (34 C.F.R. 300.504(d)). Parents may elect to receive the Parent Rights Notice by electronic mail communication, if the school makes that option available (34 C.F.R. 300.505). If the Parent Rights Notice is provided electronically the school should have a copy of the email sent to the parent and documentation that the notice was received. The school may place a current copy of the Parent Rights Notice on its Internet Web site if one exists (34 C.F.R. 300.504(b)). However, simply putting the notice on the school's website does not fulfill a schools obligation to provide notice to the parents.

The Parent Rights in Special Education Notice is referred to in this document as Parent Rights Notice and is referred to as Notice of Procedural Safeguards in federal law (34 C.F.R. 300.504). KSDE developed a model Parent Rights Notice that schools may use or substitute another version if it includes the required content. The model Parent Rights Notice (Procedural Safeguards) is available in English and other languages at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/parents-rights.

The Parent Rights Notice must include a full explanation of all of the procedural safeguards available as identified in K.S.A. 72-3430 and 34 C.F.R. 300.504(c):

K.S.A. 72-3430. Parental rights.

(a) The rights of parents of exceptional children shall include, but not be limited to, the rights specified in this section.

(b) The parents of exceptional children shall have the right to:

(1) Examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(2) written prior notice in accordance with K.S.A. 72-3432, and amendments thereto, whenever an agency: (A) Proposes to initiate or change; or (B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(3) receive the notice required by provision (2) in their native language, unless it clearly is not feasible to do so;

(4) present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child, subject to the requirements in section 8, and amendments thereto;

(5) request mediation in accordance with this act;

(6) consent, or refuse to consent, to the evaluation, reevaluation or the initial placement of their child and to any substantial change in placement of, or a material change in services for, their child, unless a change in placement of their child is ordered pursuant to the provisions of section 17, and amendments thereto, or the agency can demonstrate that it has taken reasonable measures to obtain parental consent to a change in placement or services, and the child's parent has failed to respond. If the parent fails to respond to the request for parental consent to a substantial change in placement or a material change in services, the agency must maintain detailed records of written and verbal contacts with the parent and the response, if any, received from the parent;

(7) be members of any group that makes decisions on the educational placement of their child;

(8) demand that their child remain in the child's current educational placement pending the outcome of a due process hearing, except as otherwise provided by federal law and this act;

(9) subject to the requirements of this act, request a due process hearing in regard to any complaint filed in accordance with provision (4) of this subsection, or as authorized in section 18, and amendments thereto;

(10) appeal to the state board any adverse decision rendered by a hearing officer in a local due process hearing;

(11) appeal to state or federal court any adverse decision rendered by a review officer in a state-level due process appeal; and

(12) recover attorney fees, as provided in the federal law, if they are the prevailing parties in a due process hearing or court action; however, only a court shall have the authority to award attorney fees, and such fees may be reduced or denied in accordance with federal law.

(c) The state board shall develop a model form to assist parents in filing a complaint and due process complaint notice.

(d) The state board shall develop, and thereafter amend as necessary, and distribute for use by agencies, a notice of the rights available to the parents of exceptional children under the federal law and this act. The notice shall include a full explanation of the rights and be made available in various languages and be written so as to be easily understandable by parents.

(e) A list of the rights available to the parents of exceptional children shall be given to the parents only one time each school year, except a copy also shall be given to the parents: (A) Upon initial referral or parental request for evaluation; (B) upon request of a parent; and (C) upon the initial filing of a complaint under subsection (b)(4). History. L. 1999, ch. 116, § 9; L. 2005, ch. 171, § 15; July 1.

34 C.F.R. 300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;

(3) In accordance with the discipline procedures in § 300.530(h); and

(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, § 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, § 300.520, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to—

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—

(i) The time period in which to file a complaint

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child's placement during the pendency of any due process complaint;

(8) Procedures for students who are subject to placement in an interim alternative educational setting;

(9) Requirements for unilateral placement by parents of children in private schools at public expense;

(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in the State);
(12) Civil actions, including the time period in which to file those actions; and
(13) Attorneys' fees.
(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c).
34 C.F.R. 300.505 Electronic mail. A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

D. PRIOR WRITTEN NOTICE

One of the procedural safeguards afforded to parents is the required Prior Written Notice of certain proposed special education actions. This notice must be provided to parents within a reasonable amount of time before the date the school proposes to initiate or change the

- identification,
- evaluation,
- educational placement of their child, or
- provision of special education and related services (FAPE) to their child.

Prior Written Notice is also provided when the school refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services (FAPE) to the child (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.503(a)(2)). When parents make a request for an evaluation (whether oral or written), KSDE has determined that, unless there is an unusual circumstance, 15 school days is a reasonable time for providing parents with a Prior Written Notice of the district's proposal to conduct the evaluation or the district's refusal to conduct the evaluation (See KSDE Memo, "Reasonable Time" to respond to parent request for evaluation, January 8, 2002, at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/statutes-and-regulations). KSDE also applies this same standard with regard to any parent request related to identification, evaluation, placement, or the provision of FAPE. Accordingly, unless there is an unusual circumstance, districts must provide parents with a Prior Written Notice within 15 school days in response to any parent request regarding identification, evaluation, placement or the provision of a FAPE.

Additionally, Prior Written Notice is provided to the parent when the school proposes to make a change in services or placement that is not substantial or material. However, parent consent is not required for either of these changes.

The Prior Written Notice provided to parents for each proposed special education action must contain specific information:

- a description of the action proposed or refused;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as basis for proposed or refused action;
- a description of the other options the agency or IEP team considered and reasons why they were rejected;
- a description of any other factors relevant to the proposal or refusal;
- a statement that the parents have parental rights under the law; and
- sources for parents to contact to assist in understanding their rights. (K.S.A. 72-3432)
- Additionally, if the notice is to propose to conduct an initial evaluation or a reevaluation, the notice must describe any evaluation procedures that the school proposes to conduct (K.S.A. 72-3428(b); 34 C.F.R. 300.304(a)(1)).

The notice is to be provided in language understandable to the general public, and in the native language of the parent unless it is clearly not feasible to do so. Additionally, if the native language or other mode of communication of the parent is not a written language, the school must take steps to ensure that (a) the notice is translated orally, or by other means, to the parent in his or her native language or other mode of communication (such as sign language); (b) the parent understands the content of the notice; and (c) there is written documentation that these requirements are met. (K.A.R. 91-40-26(b),(c); 34 C.F.R. 300.503 (c))

Samples of forms and notices may be accessed at the https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/parents-rights.

State statute and regulations (K.S.A. 72-3432; K.A.R. 91-40-26) reflect federal requirements for the content and provision of the Prior Written Notice (34 C.F.R. 300.503):

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice
(b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct.
K.S.A. 72-3430. Parental rights.
(b) The parents of exceptional children shall have the right to:
(2) written prior notice in accordance with K.S.A. 72-3432, and amendments thereto, whenever an agency:
(A) Proposes to initiate or change; or
(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;
(3) receive the notice required by provision (2) in their native language, unless it clearly is not feasible to do so;
K.S.A. 72-3432. Notice of parental rights; contents. The notice required by subsection (b)(2) of K.S.A. 72-3430, and amendments thereto, shall include:
(a) A description of the action proposed or refused by the agency;
(b) an explanation of why the agency proposes or refuses to take the action;
(c) a description of other options that the agency or IEP team considered and the reasons those options were rejected;
(d) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
(e) a description of any other factors that are relevant to the agency's proposal or refusal;
(f) a statement that the parents have protection under the procedural safeguards of this act and, if the notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
(g) sources for parents to contact to obtain assistance in understanding the provisions of the federal law and this act.
K.A.R. 91-40-26. Notice requirements.
(a) In providing any notice to the parents of an exceptional child in accordance with K.S.A. 72-3432 and amendments thereto, regarding action proposed or refused by an agency, the agency shall ensure that the notice includes the following descriptions:
(1) a description of other options the agency considered and the reasons why those options were rejected; and
(2) a description of other factors that are relevant to the agency's proposal or refusal.
(b) The notice shall be is written in a language understandable to the general public and is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
(c) If the native language or other mode of communication of a parent is not a written language, the agency shall take steps to ensure all of the following:
(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.
(2) The parent understands the content of the notice.
(3) There is written evidence that the requirements of paragraphs (1) and (2) of this subsection have been met.

SOURCES FOR PARENTS TO CONTACT TO OBTAIN ASSISTANCE IN UNDERSTANDING PARENT RIGHTS

In addition to school staff, there are other resources parents can contact for more information to understand their parent rights. IDEA provides funding for a Parent Training and Information (PTI) Center in each state. In Kansas, Families Together, Inc., is the PTI and provides training, information and resources for parents. Schools are encouraged to include any additional resources, including local resources that are knowledgeable and available to parents, including any of the following:

Kansas State Department of Education, 800-203-9462 (in-State only), or 785-296-7454
Families Together, 800-264-6343

Disability Rights Center of Kansas (DRC), 877-776-1541
Keys for Networking, info@keys.org

E. PARENT CONSENT

Federal and state statutes and regulations have specific requirements for requesting parent consent. Consent is always to be "informed consent." The Prior Written Notice must accompany the request for consent for each proposed special education action. The parent must agree in writing to the action for which his or her consent is sought (K.A.R. 91-40-27(a); 34 C.F.R. 300.300). In determining that informed consent is obtained, the following must be insured:

a. The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
d. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). (K.A.R. 91-40-1(l); 34 C.F.R. 300.9(c)(2))

PARENT CONSENT IS REQUIRED FOR THE FOLLOWING ACTIONS:

1. Consent to conduct an initial evaluation: If the child is enrolled in a public school or seeks to be enrolled in a public school and the parent does not provide consent (refuses) for initial evaluation, or the parent fails to respond to a request to provide consent, the school may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards available under special education statutes and regulations, including mediation. (K.A.R. 91-40-27(f)(1)). If the parent refuses or does not respond, the school does not violate its obligation for the provision of FAPE to the child if it declines to pursue the evaluation (K.A.R. 91-40-27(a), (f)(3); 34 C.F.R. 300.300(a)(3)(ii)).
2. Consent to conduct a reevaluation: If the parent refuses to consent to a reevaluation, the school may, but is not required to, pursue the reevaluation by using mediation or due process procedures. Additionally, informed parental consent is not required to conduct a reevaluation if the school can document that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond (K.A.R. 91-40-27, (f)(1), (4), (g); 34 C.F.R. 300.300(c)).
3. Consent for the initial provision of services on the IEP: If the parent fails to respond or refuses to consent to initial services the school cannot use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child. Under these circumstances, the school does not violate its obligation for the provision of FAPE to the child for failure to provide the child with the special education and related services for which the public agency requested consent. In addition, the school is not required to convene an IEP meeting or develop an IEP for the child (K.A.R. 91-40-27(a)(2), (f)(3)(4), (g); 34 C.F.R. 300.300(b)).
4. Consent to make a substantial change in placement (more than 25% of the child's school day): If the parent refuses to consent to a substantial change in placement, the school may, but is not required to, pursue the proposed substantial change in placement by using mediation or due

process procedures. Additionally, informed parental consent is not required to make a substantial change in placement if the school can document that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond; or (c) if the change is made under the discipline provisions in K.A.R. 91-40-33 to -38 (K.A.R. 91-40-27(a)(3), (f)(1),(g); K.A.R. 91-40-1(sss)).

5. Consent to make a material change in services (25% or more of the frequency or duration of any one service): If the parent refuses to consent to a material change in services, the school may, but is not required to, pursue the material change in services by using mediation or due process procedures. Additionally, informed parental consent is not required to make a material change in services if the school can document that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond; or (c) if the change is made under the discipline provisions in K.A.R. 91-40-33 to -38 (K.A.R. 91-40-27(a)(3),(f)(1),(g); K.A.R. 91-40-1(mm)). A change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services. For example, a change to a strategy within a behavior intervention plan is a change in the instructional methodology, not a material change in services.
6. Consent to add a new service, or to delete a service completely (100%): Adding or deleting a service is a material change in services because it is a 100% change of both the frequency and the duration of that service. If the parent refuses to consent to add or delete a service, the school may, but is not required to, pursue the action by using mediation or due process procedures. Additionally, informed parental consent is not required to add or delete a service to an existing IEP if the school can demonstrate that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond; or (c) if the change is made under the discipline provisions in K.A.R. 91-40-33 to 91-40-38. Consent is not required when ending services and placement due to graduation with a regular high school diploma or exceeding the age of eligibility for special education services. (K.A.R. 91-40-27(a)(3)). In Kansas, the age of eligibility ends at the end of the school year in which a student reaches age 21, or, for those students identified as having only a Developmental Delay (DD), eligibility ends on the student's tenth birthday.
7. Consent for evaluation or services in private school: If the parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent (refuses) for an initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the school may not use mediation or due process procedures to obtain consent. (K.A.R. 91-40-27(f)(2); 34 C.F.R. 300.300(d)(4)). When the school requests consent for an initial evaluation, a reevaluation or initial services and the parents of a private school or home-schooled child fails to respond or refuses to give consent, the school has met its obligation for child find.

The following requests for parent consent do not require that the parent be provided the Prior Written Notice as described in Section D above, however, parents must be fully informed about what they are being asked to provide consent.

8. Consent to excuse an IEP team member from IEP team meeting: A required member of the IEP Team, may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if, (a) the parent, in writing, and the school consent to the excusal; and (b) the IEP Team member submits, in writing to the parent and the IEP Team, input into the

development of the IEP prior to the meeting (K.S.A. 72-3429(b)(2),(3); 34 C.F.R. 300.321(e)). (See Excusal from Attendance form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms and see Chapter 4, Individualized Educational Program.)

9. Consent to invite outside agency: When the IEP team is considering a child's post-secondary goals and transition services needed to assist the child in reaching those goals, the school is required to invite a representative of any agency that is likely to provide or pay for transition services. The school must obtain parental consent to invite the representative from that agency because confidential information about the child would be shared at the meeting (K.A.R. 91-40-17(g)). (See Chapter 4, Individualized Educational Program and Consent to Invite Representative of Non-educational Agency to IEP Meeting at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms.)
10. Consent for use of Medicaid: When an IEP team has identified special education and related services for a child who is Medicaid eligible the school may be able to access those benefits if it has provided written notification and obtained written parent consent. After providing written notification consistent with 34 C.F.R. 300.154(d)(2)(v) (this is different than prior written notice in 300.503), the LEA must obtain written parent consent prior to accessing Medicaid benefits for the first time. Note that the request for consent must specify both 1) that the parent understands and agrees that the LEA may access Medicaid benefits and 2) the personally identifiable information that may be disclosed, purpose for disclosure, and agency to which disclosure may be made (public benefits agency or Medicaid) (see 34 C.F.R. 300.154(d)(2)(iv)(A) and (B)). This consent must be obtained only once-- prior to accessing Medicaid for the first time. Pursuant to an amendment to the federal regulations in 2013, consent is no longer required each time a LEA seeks to access Medicaid. However, the LEA must provide written notification both prior to accessing Medicaid for the first time and annually thereafter. Such written notification must comply with the content requirements of 34 C.F.R. 300.154(d)(2)(v).
11. Consent for use of private insurance: When an IEP team has identified special education and related services for a child who is covered by private insurance the school may be able to access those benefits if it has obtained written parent consent consistent with 34 C.F.R. 300.9. This consent must be obtained each time the school proposes to access the parents' private insurance proceeds and the school must inform the parents that refusal to permit access to their insurance does not relieve the school of its responsibility to provide all required services at no cost to the parent (see 34 C.F.R. 300.154(e)).

PARENTAL CONSENT IS NOT REQUIRED FOR THE FOLLOWING ACTIONS:

- Review existing data as part of an initial evaluation or a reevaluation,
- Administer a test or other evaluation that is administered to all children unless consent is required of parents of all children (K.A.R. 91-40-27(e); 34 C.F.R. 300.300(d)); or
- Any other proposed special education action where parental consent is not specifically required by special education statutes and regulations. In these situations, only Prior Written Notice to the parent of the action proposed or refused is required (e.g., less than a material change in service or substantial change in placement, or the school refuses to conduct an initial evaluation or reevaluation).

ELECTRONIC SIGNATURES:

Parents (and other education decision makers) may provide consent with an electronic signature under three conditions:

(1) The document **identifies** a particular person as the source of the electronic consent;
(2) The document **authenticates** a particular person as the source of the consent; and
(3) the document **indicates** such person has been fully informed and approves the information contained in the electronic consent.

To meet condition one, the document must include a statement **identifying** the person providing the signature. For example, the document could include a statement such as: "I (Name of parent or other decision maker) am the parent of (Name of student), and I consent to: _____.

To meet condition two, there must also be something to **authenticate** that the person sending the signature electronically is the person named in the document. That could be accomplished by requiring that a parent (or other education decision maker) respond to the request for consent using their own e-mail address (where the consent form was sent). Or, a district could send the request for consent to the education decision maker electronically, and protect it with a password known only to the sender and the education decision maker. The fact that the education decision maker is able to open the request for consent and send a response is reliable evidence that it is the named education decision maker who is responding.

To meet the third condition, the document must describe the action for which consent is being requested and include a statement that the education decision maker's signature **indicates** (means) the education decision maker is consenting to that action.

This interpretation is based on an amendment to federal regulations, at 34 C.F.R. 99.30(d), and OSEP guidance in: Questions and Answers on Implementing IDEA Part B Procedural Safeguards During COVID-19, 76 IDELR 301 (OSEP June 30, 2020).

REQUIREMENTS FOR PARENTAL NOTICE AND CONSENT (K.S.A. 72-3430; 34 C.F.R. 300.503)

Proposed Action by the School	Prior Written Notice (PWN) (300.503) or Notification	Requires Parental Consent	Due Process If Parent Refuses to Give Consent
Initiate evaluation	PWN	Yes	May/not required
Refuse to initiate initial evaluation or reevaluation	PWN	No	N/A
Identification and Eligibility Determinations	PWN	No	N/A
Initial provision of IEP services (placement)	PWN	Yes	No
Reevaluation of a student	PWN	Yes	May/not required
Substantial change in placement (more than 25% of student's day)	PWN	Yes	May/not required
Change in placement that is 25% or less of the student's day	PWN	No	N/A
Material change in services (25% or more of any one service), includes accommodations listed on the IEP	PWN	Yes	May/not required
Change in instructional methodology specified in IEP	PWN	No	N/A
Change in service that is less than 25% of the service being changed	PWN	No	N/A
Add a new service or delete one completely	PWN	Yes	May/not required
Evaluation reevaluation or initiate services for children parentally placed in private schools	PWN	Yes	No
Notification of the IEP meeting	Notification	No	N/A
Invite an outside agency to the IEP for secondary transition	Notification	Yes	N/A
Use of Medicaid	Notification (annually)	Yes (once)	N/A
Use of private insurance	Inform (each time)	Yes (each time)	N/A
Discontinuation of special education services	See chart in Chapter 8, Section G		

K.S.A. 72-3430. Parental rights.

(b) The parents of exceptional children shall have the right to:

(6) consent, or refuse to consent, to the evaluation, reevaluation or the initial placement of their child and to any substantial change in placement of, or a material change in services for, their child, unless a change in placement of their child is ordered pursuant to the provisions of section 17, and amendments thereto, or the agency can demonstrate that it has taken reasonable measures to obtain parental consent to a change in placement or services, and the child's parent has failed to respond. If the parent fails to respond to the request for parental consent to a substantial change in placement or a material change in services, the agency must maintain detailed records of written and verbal contacts with the parent and the response, if any, received from the parent;

K.A.R. 91-40-1. Definitions.

(l) "Consent" means that all of the following conditions are met:

(1) A parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.

(2) A parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom.

(3) A parent understands the following:

(A) The granting of consent is voluntary on the part of the parent and may be revoked at any time.

(B) If the parent revokes consent, the revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked

(C) The parent may revoke consent in writing for the continued provision of a particular service or placement only if the child's IEP team certifies in writing that the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

K.A.R. 91-40-27. Parental consent.

(a) Except as otherwise provided in this regulation, each agency shall obtain parental consent before taking any of the following actions:

(1) Conducting an initial evaluation or any reevaluation of an exceptional child;

(2) initially providing special education and related services to an exceptional child; or

(3) making a material change in services to, or a substantial change in the placement of, an exceptional child, unless the change is made under the provisions of K.A.R. 91-40-33 through 91-40-38 or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.

(b) When screening or other methods used by an agency indicate that a child may have a disability and need special education services, the agency shall make reasonable and prompt efforts to obtain informed consent from the child's parent to conduct an initial evaluation of the child and, if appropriate, to make the initial provision of services to the child.

(c) Unless a judicial order specifies to the contrary, each agency shall recognize the biological or adoptive parent of an exceptional child who is a minor as the educational decision maker for the child if the parent exerts the parent's rights on behalf of the child, even if one or more other persons meet the definition of parent for the particular child.

(d) An agency shall not construe parental consent for initial evaluation as consent for the initial provision of special education and related services to an exceptional child.

(e) An agency shall not be required to obtain parental consent before taking either of the following actions:

(1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or

(2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.

(f) (1) If a parent of an exceptional child who is enrolled or is seeking to enroll in a public school does not provide consent for an initial evaluation or any reevaluation, or for a proposed material change in services or a substantial change in the placement of the parent's child, an agency may, but shall not be required to, pursue the evaluation or proposed change by initiating due process or mediation procedures.

(2) If a parent of an exceptional child who is being homeschooled or has been placed in a private school by the parent does not provide consent for an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, an agency shall not pursue the evaluation or reevaluation by initiating mediation or due process procedures.

(3) An agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action.

(4) Each agency shall document its attempts to obtain parental consent for action proposed under this regulation.

(g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parent or parents have failed to respond.

(h) An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities or services offered by the agency.

(i) If, at any time after the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of all special education, related services, and supplementary aids and services, the following shall apply:

(1) The agency shall not continue to provide special education, related services, and supplementary aids and services to the child but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of those services.

(2) The agency shall not use the procedures in K.S.A. 72-3415 or K.S.A. 72-3438, and amendments thereto, or K.A.R. 91-40-28, including the mediation procedures and the due process procedures, in order to obtain an agreement or a ruling that the services may be provided to the child.

(3) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids and services.

(4) The agency shall not be required to convene an IEP team meeting or develop an IEP under K.S.A. 72-3429, and amendments thereto, or K.A.R. 91-40-16 through K.A.R. 91-40-19 for the child for further provision of special education, related services, and supplementary aids and services.

(j) If a parent revokes consent in writing for the child's receipt of all special education and related services after the child is initially provided special education and related services, the agency shall not be required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(k) If a parent revokes consent for the continued provision of particular special education, related services, supplementary aids and services, or placements, or any combination of these, and the IEP team certifies in writing that the child does not need the service or placement for which consent is being revoked in order to receive a free appropriate public education, the following shall apply:

(1) The agency shall not continue to provide the particular special education, related services, supplementary aids and services, and placements for which consent was revoked but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of the particular special education, related services, supplementary aids and services, and placements.

(2) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the particular special education, related services, supplementary aids and services, or placements, or any combination, for which parental consent was revoked.

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

34 C.F.R. §300.154 Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that—

(A) Meets the requirements of §99.30 of this title and §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with §300.503(c), to the child's parents, that includes—

(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;

(B) A statement of the "no cost" provisions in paragraphs (d)(2)(i) through (iii) of this section;

(C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with §300.9.

(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must—

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

F. PARENTAL CONSENT REQUESTED BUT NOT PROVIDED

1. Parents Do Not Respond

The school must make reasonable attempts to obtain consent from the parents for each special education action as required. Reasonable attempts are defined as at least two contacts by two different methods and documentation of such attempts should be kept including detailed records of telephone calls made or attempted and the results, copies of written correspondence sent to the parents and their response, if any, and visits made to the parents' home or place of employment, and the response, if any, from the parents. (K.A.R. 91-40-27(g); K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)).

As indicated previously, parent consent is required to conduct a reevaluation, or to make a material change in services or a substantial change in placement. However, parent consent is not required for these actions if, after a reasonable time, the parent does not respond to the schools requests for consent and the school can document its attempts to obtain parental consent as outlined above (K.S.A. 72-3430(b)(6)). Additionally, under the disciplinary protections, the school would not be deemed to have knowledge of the child's disability if the parent has not allowed an evaluation or refused services; or the child has been evaluated and determined not to have a disability (K.S.A. 72-3436(c)).

2. Parents Revoke Consent

Parent consent is voluntary, and may be revoked by the parents at any time. Revocation of consent must be in writing (K.A.R. 91-40-27(i); 91-40-1(l)(3)(C)). When parents revoke their consent for a specific special education action the revocation is not retroactive but becomes effective either on the date that it was revoked or, if a future effective date is specified in the written revocation document, on that date (K.A.R. 91-40-1(l)(3); 34 C.F.R. 300.9). Therefore, the revoking of consent does not negate any action that has occurred after the previous consent was given and before the previous consent was revoked.

If a parent revokes consent for all existing special education and related services, the LEA may meet with the parent to attempt to resolve the difficulty. If the parent cannot be convinced to continue the services, the LEA must honor the parent's revocation; however, the LEA must provide prior written notice a reasonable time before ceasing provision of the services. Moreover, the LEA may not attempt to override the parent's revocation of consent through mediation or due process. The LEA will not be considered in violation of FAPE for the failure to further provide special education and related services to the student and is not required to convene an IEP team meeting or develop an IEP for the child (K.A.R. 91-40-27(i); 34 C.F.R. 300.300(b)(4)). Further, the LEA is not required to amend the child's education records to remove any reference to the child's receipt of special education and related services because of the revocation of consent (K.A.R. 91-40-27(j)). If a parent who revoked consent for all special education and related services later wishes his or her child to be reenrolled in special education, the agency must first conduct an initial evaluation to determine whether the child qualifies for special education (K.A.R. 91-40-27(l)).

A parent's right to revoke consent to a particular service or placement is conditioned upon written certification by the IEP team that the particular service or placement is not needed to provide a free appropriate public education (K.A.R. 91-40-1(l)(3)). If the IEP team so certifies, the LEA must provide prior written notice a reasonable time prior to ceasing provision of that service or placement for which parent consent was revoked and the LEA will not be considered in violation of FAPE for the failure to further provide the special education services or placement for which parental consent was revoked (K.A.R. 91-40-27(j)). If the IEP team refuses to certify that discontinuation of the particular service or

placement will not deny the child a free appropriate public education, the parents may pursue due process or mediation to attempt to end the services or placement at issue.

If the parent refuses to give consent, or revokes consent, for one service or activity the school cannot deny the parent or child any other service, benefit or activity on the child's IEP (K.A.R. 91-40-27(h)).

K.S.A. 72-3404. Definitions.

(aa) "Substantial change in placement" means the movement of an exceptional child, for more than 25% of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

(bb) "Material change in services" means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service or a supplementary aid or a service specified on the IEP of an exceptional child.

K.A.R. 91-40-27. Parental consent.

(i) If, at any time after the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of all special education, related services, and supplementary aids and services, the following shall apply:

(1) The agency shall not continue to provide special education, related services, and supplementary aids and services to the child bus shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of those services.

(2) The agency shall not use the procedures in K.S.A. 72-3415 or K.S.A. 72-3438, and amendments thereto, or K.A.R. 91-40-28, including the mediation procedures and the due process procedures, in order to obtain an agreement or a ruling that the services may be provided to the child;

(3) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids and services.

(4) The agency shall not be required to convene an IEP team meeting or develop an IEP under K.S.A. 72-3429, and amendments thereto, or K.A.R. 91-40-16 through K.A.R. 91-40-19 for the child for further provision of special education, related services. and supplementary aids and services.

(j) If a parent revokes consent in writing for the child's receipt of all special education and related services after the child is initially provided special education and related services, the agency shall not be required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(k) If a parent revokes consent for the continued provision of particular special education, related services, supplementary aids and services, or placements, or any combination of these, and the IEP team certifies in writing that the child does not need the service or placement for which consent is being revoked in order to receive a free appropriate public education, the following shall apply;

(1) The agency shall not continue to provide the particular special education, related services, supplementary aids and services, and placements for which consent was revoked, but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of the particular special education, related services, supplementary aids and services and placements.

(2) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the particular special education, related services, supplementary aids and services, or placements, or any combination, for which parental consent was revoked.

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services, under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

G. NOTICE OF IEP TEAM MEETING

The school must take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The meeting is to be scheduled at a mutually agreed upon time and place. The school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings. The notice must be provided in writing at least 10 days prior to the meeting (K.A.R. 91-40-17(a)(2)) and inform the parents that their child is invited to attend the meeting. The written notice must indicate:

1. the purpose;
2. date;
3. time;
4. location of the meeting;
5. the titles or positions of the persons who will attend on behalf of the school (The school is to notify the parents about who will be in attendance at an IEP team meeting, but individuals may

be indicated by position only. The school may elect to identify participants by name, but they have no obligation to do so.); and

6. the parents have a right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child;
7. that if their child was previously served in Part C, parents may request that the local Part C coordinator or other representative be invited to participate in the initial IEP meeting to ensure a smooth transition of services.

In addition, beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team the notice must:

8. indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services;
9. indicate that the school will invite the student; and
10. identify any other agency that will be invited, with parent consent (or student consent if age 18), to send a representative. (K.A.R. 91-40-17(b); 34 C.F.R. 300.322(b))

See sample Notice of Meeting form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice. Also see Chapter 4, Individualized Education Program.

K.A.R. 91-40-17. IEP team meetings and participants.

(a) Each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP meeting or are afforded the opportunity to participate. These steps shall include the following:
(1) Scheduling each meeting at a mutually agreed-upon time and place and informing the parents of the information specified in subsection (b) of this regulation;
(2) except as otherwise provided in K.A.R. 91-40-37, providing written notice, in conformance with subsection (b) of this regulation, to the parents of any IEP team meeting at least 10 days in advance of the meeting.

(b) The notice required in subsection (a) of this regulation shall meet the following requirements:
(1) The notice shall indicate the purpose, time, and location of the IEP team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services.
(2) If the meeting is for a child who has been receiving special education services under the infant and toddler provisions of the federal law but is now transitioning to the provisions for older children, the notice shall inform the parents that they may require that a representative of the infant and toddler program be invited to attend the initial IEP team meeting to assist with the smooth transition of services.
(3) The notice shall indicate the following information, if a purpose is to consider postsecondary goals and transition services for the child:
(A) The agency will invite the parents' child to attend.
(B) One of the purposes of the meeting will be to consider the postsecondary goals and needed transition services for the student.
(4) The parents have the right to invite to the IEP team meeting individuals whom the parents believe to have knowledge or special expertise about their child.

(e) (1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.
(2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parent to provide notice of the meeting and to secure the parent's participation. The record shall include at least two of the following:
(A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;
(B) detailed records of visits made to the parent's home or homes, including the date, time, and person making the visit and the results of the visit;
(C) copies of correspondence sent to the parent and any responses received; and
(D) detailed records of any other method attempted to contact the parent and the results of that attempt.

H. RIGHTS FOR PARENTS OF GIFTED STUDENTS

The State statute also includes the category of giftedness. In the State statute and regulations, the term "exceptional children" includes children who are gifted and children with disabilities. Special education services are not compulsory for children who are gifted. Therefore, parents of gifted children may

choose to accept whatever special education services are proposed by the IEP team. Schools are required to provide the services specified in an IEP once the parent gives consent. Accordingly, parents of, and children with giftedness (who do not also have a disability) have the same rights as parents of, and children with disabilities, with the following exceptions:

- The disciplinary protections for children in Special Education do not apply to students who are gifted. (K.A.R. 91-40-34(c));
- Preschool children under the age of 5 are not eligible for gifted services (K.A.R. 91-40-1(ddd));
- Students who are gifted do not have the same considerations for least restrictive environment (LRE) as students with disabilities (K.A.R. 91-4-1(ll)), but the IEP Team must make placement decisions based on their individual needs (K.A.R. 91-40-21(c)(2));
- Students who are gifted are not eligible for all of the related services (See Management Information System Data Dictionary at https://www.ksde.gov/data-and-reporting/mis-and-student-data);Extended school year services are not provided to students who are gifted (K.A.R. 91-40-1(x));
- Students in JJA or DOC facilities do not receive gifted services (K.A.R. 91-40-5); and
- Requirements for secondary transition (K.A.R. 91-40-1(uuu)); and summary of performance (K.S.A. 72-3428(m)) are not applicable to students who are gifted.

I. EDUCATION ADVOCATES

An education advocate (referred to as "surrogate parents" in Federal law) is appointed to act on behalf of the child when parents are unknown, unavailable, or parental rights have been severed. The state special education statutes and regulations give the Kansas State Board of Education (KSBE) the authority to appoint education advocates to act on behalf of the child, if parents are unknown, unavailable, or parental rights have been severed or relinquished.

The state statute defines education advocate as “a person appointed by the state board [of education] in accordance with the provisions of K.S.A. 2006 Supp. 38-2218, and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child.” (K.S.A. 72-3404(o)).

In Kansas, a foster parent may make educational decisions for an exceptional child only if the foster parent receives the required training and is appointed by KSBE as an education advocate. In other circumstances when a judge orders someone to serve as the child's legal education decision maker the district must follow the judge's orders. Documentation from the court should be retained in the student's file.

K.S.A. 38-2218. Educational decisions; educational advocates for exceptional children.

(a) When the court has granted legal custody of a child in a hearing under the code to an agency, association or individual, the custodian or an agent designated by the custodian shall have authority to make educational decisions for the child if the parents of the child are unknown or unavailable. When the custodian of the child is the secretary, and the parents of the child are unknown or unavailable, and the child appears to be an exceptional child who requires special education, the secretary shall immediately notify the state board of education, or a designee of the state board, and the school district in which the child is residing that the child is in need of an education advocate.
(1) Repeated attempts have been made to contact the parent to provide notice of an IEP meeting and secure the parent's participation and such attempts have been unsuccessful;
(2) having been provided actual notice of an IEP meeting, the parent has failed or refused to attend and participate in the meeting; or
(3) the parent's whereabouts are unknown so that notice of an IEP meeting cannot be given to the parent. As soon as possible after notification, the state board of education, or its designee, shall appoint an education advocate for the child.

K.S.A. 72-3404

(o) "Education advocate" means a person appointed by the state board in accordance with the provisions of K.S.A. 2006 Supp. 38-2218, and amendments thereto. A person appointed as an education advocate for a child shall not be:
(1) An employee of the agency which is required by law to provide special education or related services for the child;
(2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or
(3) any person having a professional or personal interest which would conflict with the interests of the child.

1. Assigning Education Advocates

KSDE and the Kansas Department for Children and Families (DCF) have developed a system for assigning education advocates when necessary. Details of the education advocate system are given in K.A.R. 91-40-24. KSDE contracts with Families Together (the State's Parent Training and Information Center) to:

- provide training for potential education advocates,
- receive referrals for students who need an education advocate,
- match an education advocate to the student,
- notify KSDE to appoint the education advocate, and
- provide support for education advocates.

The appointment of an education advocate is to be made within 3 business days of receiving a request for an appointment. The school or agency making the request will be notified by KSDE of the name, address, and the telephone number of the person appointed to serve as the child's educational advocate. KSDE sends the formal letter of appointment to the education advocate, with a copy to the special education director, the building principal at the student's school, and the student's primary DCF or Department of Corrections (DOC) caseworker. KSDE and Families Together retain copies of the appointment letter.

Education advocates are appointed for students ages 3 to 18 who are homeless youth, in the custody of DCF or DOC, and who are receiving special education services or need an evaluation to determine eligibility for services; and: (a) whose parents are unknown or unavailable; (b) whose parent rights have been severed or relinquished; or (c) whose parents have a court order of "no contact" against them and where the order states the parent is not allowed to know the whereabouts of the child. An education advocate is also appointed for an unaccompanied homeless youth, with a disability, when there is no available person who meets the definition of the term "parent" under state law (see section B of this chapter). Like all other students with exceptionalities students in DCF or DOC custody, at age 18, become their own educational decision makers, unless a judge has determined that they are not capable of doing so and has appointed a guardian. For a 2-year-old who is transitioning from Infant-Toddler Services, if parents are unknown or unavailable, an education advocate may be appointed to provide consent to conduct a Part B evaluation, attend an IEP meeting, and be involved in other special education actions required.

For more information about obtaining an education advocate, contact Families Together, 800-264-6343 or 785-233-4777, or the Kansas State Department of Education, 800-203-9462.

2. Local Education Agency Responsibilities

Local education agencies (LEAs) have a responsibility to identify and locate a child's parents before taking special education action and to have methods in place to determine when an education advocate is needed. If the parent is determined to be unknown or unavailable, the LEA must request that proceedings be initiated to determine whether the child is a child in need of care and notify

Families Together within three business days to request an education advocate be appointed for the child. Sometimes it is difficult to determine the situation with parents. There is a difference between “unavailable” and “unwilling.” An uncooperative parent is not unavailable. A parent who can be located by mail, personal visits, or phone is not unavailable, even though the parent does not respond to the school’s attempts to involve him or her in the student’s education. If a parent has not responded to a request for consent to conduct a reevaluation, or to make a substantial or material change in the IEP; under Federal and State regulations, the LEA may conduct the reevaluation or make the change in placement or services without parent consent as long as the district has documentation of required attempts made and the parent did not respond. (See Chapter 7, Reevaluation.)

If a parent is in jail, the parent is technically not "unknown or unavailable". The parent’s participation may be obtained by telephone or virtually and consent may be obtained through contact by mail or in person, unless not feasible to do so. If, as a result of a court order, the parent cannot have any contact with the child, the school should request an education advocate.

3. Department for Children and Families Responsibilities

The Kansas statutes at K.S.A. 38-2218, states that when DCF staff determine that a child in DCF custody appears to be a student with an exceptionality who may require special education services and the parents are unknown, unavailable, or have their rights terminated, DCF must:

Document in the case record that the parents are unknown, unavailable, or their rights have been terminated or relinquished; and contact Families Together (800-264-6343 or 785-233-4777) within three business days to request that an education advocate be appointed.

“Unavailable” means the child’s DCF-contracted case manager has documented that (1) Repeated attempts have been made to contact the parent to provide notice of an IEP meeting and secure the parent's participation and such attempts have been unsuccessful; (2) having been provided actual notice of an IEP meeting, the parent has failed or refused to attend and participate in the meeting; or (3) the parent's whereabouts are unknown so that notice of an IEP meeting cannot be given to the parent. As soon as possible after notification, KSBE, or its designee, shall appoint an education advocate for the child.

NOTE: An education advocate will not be appointed merely because a parent has failed or refused to attend a meeting because federal law does not condition any rights of a parent upon attendance at meetings.

4. Department of Corrections Responsibilities

If a student is in a juvenile correctional facility or an adult correctional facility, the Department of Corrections (DOC) is obligated to follow the same procedures for appointment of an education advocate as DCF, as stated above.

A student age 18 or over, who is incarcerated in an adult correctional institution or facility and was not identified as a child with a disability and did not have an IEP in their educational placement prior to incarceration, is not entitled to FAPE (K.A.R. 91-40-5(c)(3)). A student previously identified as gifted only is not entitled to receive special education services for giftedness while incarcerated.

K.A.R. 91-40-24. Educational advocates.

(a) (1) Before taking any special education action in regard to any child, an agency shall attempt to identify the parents of the child and the parents' current whereabouts.

(2) If the parental rights of the parents of an exceptional child have been severed, the secretary of social and rehabilitation services or the secretary's designee shall notify the state board or its designee of this fact and request the appointment of an educational advocate for the child.

(3) If the identity of the parent or the parent's current whereabouts cannot be determined, the agency shall take the following action:

(A) Request that proceedings be initiated, pursuant to the Kansas code for the care of children, to determine whether the child is a child in need of care; and

(B) notify the state board or its designee, within three business days, of the agency's determination and request the appointment of an educational advocate for the child.

(b) Within three business days of receiving a request for the appointment of an educational advocate, the agency making the request shall be notified by the state board or its designee of the name, address, and telephone number of the person appointed to serve as the child's educational advocate.

(c) Each person appointed as an educational advocate shall meet the following requirements:

(1) Be at least 18 years of age;

(2) have completed a training program offered or approved by the state board concerning the powers, duties, and functions of an educational advocate;

(3) not be an employee of the state board or any agency that is involved in the education or care of the child; and

(4) have no interest that conflicts with the interest of any child whom the person represents.

(d) (1) A person who is an employee of a nonpublic agency that provides only noneducational care for the child and who meets the requirements of subsection (c) of this regulation may be appointed as an educational advocate.

(2) A person who otherwise qualifies to be an educational advocate shall not be considered an employee of an agency solely because that person is paid by the agency to serve as an educational advocate.

(e) Any person appointed as an educational advocate shall perform the following duties:

(1) Assert the child's rights in the education and decision-making process, including the identification, evaluation, and placement of the child;

(2) comply with applicable confidentiality requirements imposed by state and federal law;

(3) participate in the development of the child's individualized education program; and

(4) exercise all the rights given to parents under the special education for exceptional children act.

K.A.R. 91-40-5(c)(3)

(c) State adult correctional facilities.

(3) Provision of FAPE to any person incarcerated in a state correctional institution or facility shall not be required by the secretary of corrections if the person meets both of the following criteria:

(A) The incarcerated person is at least 18 years of age.

(B) The incarcerated person, in the person's last educational placement before incarceration, was not identified as a child with a disability.

J. STUDENT RIGHTS AT AGE 18

On or before the student's 17th birthday, the IEP of the student must contain a statement that the student has been informed that at age 18, students have attained the age of majority in Kansas and all parent rights transfer to the student (K.S.A. 72-3429(c)(9)). Thus, at age 18, students become their own educational decision makers. (This Handbook will refer to the student who is age 18 or over as an adult student.)

When a student reaches the age of majority, school personnel must provide all required special education notices to both the student and to the parents and obtain informed consent for specified special education actions from the student (same requirements for consent as existed for parents prior to the student turning 18). Parents are not entitled to attend the IEP meeting; however, either the school or the student may, but are not required to, invite the parents to attend IEP meetings as persons who are knowledgeable about the student. When a court has judged a student to be unable to fulfill these responsibilities, schools must provide Prior Written Notice and obtain informed consent from the person whom the court has appointed as the legal guardian. Schools may provide parents information about other options and resources about this topic.

Federal regulations and Kansas law (K.S.A. 72-3431; 34 C.F.R. 300.520 and 34 C.F.R. 300.625) provide specific requirements for school personnel regarding this issue.

K.S.A. 72-3429. Individualized education program or family service plan; contents; development; duties of IEP team.

(c) The IEP for each exceptional child shall include:

(9) beginning at least one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights, if any, that will transfer to the child on reaching the age of majority as provided in K.S.A. 72-3431, and amendments thereto.

K.S.A. 72-3431. Rights of child with disability upon reaching 18 years of age.

When a person who has been determined to be a child with a disability reaches the age of 18, except for such a person who has been determined to be incompetent under state law:

(a) An agency shall provide to both the person and to the person's parents any notice required by this act;

(b) all other rights accorded to parents under this act transfer to the person;

(c) the agency shall notify the person and the parents of the transfer of rights; and

(d) all rights accorded to parents under this act transfer to the person if incarcerated in an adult or juvenile federal, state or local correctional institution.

QUESTIONS AND ANSWERS ABOUT PARENT RIGHTS

1. Who can give consent for a student's educational program?

Parents and/or legal educational decision makers must be given Prior Written Notice whenever a school proposes to initiate or change (or refuses to initiate or change) the identification, evaluation, placement or educational services of a child with an exceptionality. The school must also request parent consent if it is proposing to: (a) conduct an evaluation or reevaluation; (b) begin to provide a child with special education services for the first time (initial services); (c) change the frequency or duration of a service by 25% or more (material change of service); or (d) change a placement for more than 25% of the school day (substantial change in placement). Parents may then provide or withhold consent for decisions regarding these matters. Consent from one parent is sufficient, even if the other parent refuses to consent. If an education advocate is officially appointed, that is the person who will work with the school in planning and monitoring the student's school program, and who may grant or withhold consent just as parents may. See the checklist "Who Can Give Consent for Educational Decisions?" within this chapter for further information about determining who may grant consent for educational decisions.

Unless a judicial order specifies to the contrary, a school shall recognize the biological or adoptive parent of an exceptional child who is a minor as the educational decision maker for the child whenever the biological or adoptive parent attempts to act as the parent, even if other persons also meet the definition of a parent for the child.

2. What if there is disagreement about an action that requires consent?

Parents and other legal educational decision makers should clarify the issues about which there is no disagreement. Those actions, or portions of the IEP, should be implemented without delay.

For the area of disagreement requiring consent, there are two primary options: (1) Mediation as an impartial proceeding whereby a mediator works with the parents and the school representative to reach consensus and develop a written agreement, and (2) a due process hearing in which a hearing officer makes the decision. In mediation, both parties must first agree that they want to mediate. There is no cost to the parents or to the school for mediation. In due process, either the parents or the school may request a hearing. Also see Chapter 10, Mediation and Chapter 12, Due Process Hearings.

3. What are the school's responsibilities for notice and consent with divorced parents?

If parents are divorced, regardless of which parent has primary custody, the school must provide notice to both parents, even if only one parent has the right to consent, unless a court order precludes this from happening. This applies to all special education notice requirements including

notice of an IEP meeting. If the school is only aware of one parent's address, the school must make reasonable efforts to locate the other parent in order to provide notice.

Consent from one parent is sufficient. In the event that the school receives responses from both parents, with one providing consent and the other denying consent, the school is deemed to have received consent and must fulfill its obligation to provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

4. What are the qualifications of an education advocate?

   Requirements for education advocates are established in K.A.R. 91-40-24(c). Education advocates must:

   - be 18 years or older,
   - attend the Families Together training for education advocates so they have knowledge and skills to be sure the student is adequately represented, and
   - provide three references for appointment as an education advocate.

   Education advocates cannot be:

   - employees of the agency required by law to provide special education services,
   - employees of KSDE or any agency directly involved in providing care or educational services for the student, or
   - people with a professional or personal interest that would conflict with the student's best interests.

   Professionals not providing care or educational services to the student, retired professionals such as teachers, school administrators, school psychologists, counselors, and social workers, and local community volunteers may be education advocates, if they are qualified and receive the training from Families Together.

5. May an education advocate be assigned to represent a student over the age of 18?

   No. In Kansas, students from age 18 through 21 years have attained the age of majority, and so they become their own educational decision makers. If a student has been judged to be unable to represent himself/herself, a guardian may be appointed by the court who could also make educational decisions for the student, but this would not be an education advocate as set forth in K.A.R. 91-40-24.

6. Is an education advocate appointed for a student who is gifted?

   Yes. In Kansas, services for students who are gifted are provided through the special education system in public schools. An education advocate would be appointed in the same way for students ages 5 to 18 who are gifted.

7. May parents revoke consent to a special education service, but not the goals for that service; or in reverse, consent to goals, but not the service necessary to implement the goals?

   Parents provide consent only for placement and services, including supplemental aids and services, in the IEP. They do not have the option of consenting to the individual annual goals in the IEP. Parents should consider which individual services to which they wish to consent. The annual goals are the method for measuring the progress made by the provision of the service, and may be changed or removed without parent consent. Under the circumstances addressed in section F of this chapter (when the IEP team certifies in writing that the services are not needed to provide FAPE), parents may revoke consent for some services and not others pursuant to K.A.R. 91-40-1(l),

but need to realize that when they revoke consent for a service, they have also eliminated the goal(s) that would have measured progress for that service.

8. What is the difference between "Prior Written Notice" and "10-Day IEP Notice?"

   "Prior Written Notice" is provided to the parents before the school proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of special education and related services (FAPE) to the child. Each Prior Written Notice must contain the information required in 34 C.F.R. 300.503(b). This Notice is to ensure that parents are fully informed about any action that the school is proposing and is provided with each request for consent for a special education action. If a change in identification, educational placement, educational services, or the need for more evaluation information is determined to be needed by the IEP team, then the Prior Written Notice and, if required, request for consent for the specific action(s) would be given to parents before that action could take place.

   "The 10-Day IEP Notice" is a notice of a scheduled IEP meeting, and is given to parents at least 10 calendar days before the IEP meeting to develop, review and/or revise the IEP. The 10-day IEP notice is to ensure that the parent has an opportunity to participate in the IEP meeting as well as any meeting with respect to the identification, evaluation, placement and special education and related services for the child. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance; and inform the parents that may invite others who have knowledge or special expertise about the child.

9. If a student who is identified as gifted, and does not also have a disability, is incarcerated in a juvenile or adult correctional facility, will they be eligible to receive special education services?

   No. Students who are incarcerated in a juvenile or adult correctional facility are not eligible to receive gifted services even if they were identified prior to incarceration.

10. What if the biological parent and another individual meet the definition of parent? Must the school seek consent from the biological parent or can they accept consent from the other qualified individual?

    If there is more than one party qualified to act as a parent, and the biological or adoptive parents attempt to act as the parent, the biological or adoptive parents must be presumed to be the parents and legal decision makers, unless they do not have legal authority to make educational decisions for the child.

11. What obligation does a school have to allow parents or other non-school personnel to observe or video tape a child in the educational setting?

    Neither federal or state laws nor regulations give parents the right to observe their children in class. However, a district may give a parent permission to observe a child in class if doing so would not disrupt school activities and would help the district and the parent work together to develop an appropriate IEP. Many districts have policies that define the conditions under which parents and others may observe children in school and for videotaping children in the classroom.

12. If a parent calls the school and verbally revokes their consent for special education and related services and tells the school they want services stopped immediately, what should the school do?

    The parent must revoke consent for special education and related services in writing. The school should inform the parent that it must continue providing services until they receive written notice that consent is being revoked. This could be in the form of a letter or a signature on the document where the parent provided informed consent for the child's current services. Before ending

services as a result of revocation of consent, the parents must be given a Prior Written Notice informing the parent when services will be ended and why those services will be ended.

CHAPTER 2: SCREENING AND GENERAL EDUCATION INTERVENTION (CHILD FIND)

INTRODUCTION

Schools must have policies and procedures in effect to ensure that all children with exceptionalities (those who have disabilities and those who are gifted) and who are in need of special education and related services are identified, located, and evaluated. This includes children who attend public or private schools, who are home schooled; are highly mobile including migrant and homeless, or are wards of the State. The child find requirement for schools applies to children ages birth through 21. Child find in Kansas involves a screening process for children from birth to age 5, and a general education intervention process for children from kindergarten through age 21. Schools in conjunction with parents use these processes to locate, evaluate, and identify children who may need special education and related services. Children in need of special education services should be identified as young as possible, and also as soon as possible after the concern is noted. This includes children who are suspected of having a disability even though they are advancing from grade to grade (K.A.R. 91-40-7(a); 34 C.F.R. 300.111(a), (c)). The earliest possible identification of educational or behavioral concerns will diminish the impact of the concerns on the child's education.

As an agency, the Kansas State Department of Education (KSDE) encourages the use of a multi-tiered system of supports for all children, encompassing school-wide support for both academic and behavioral competency. This is further emphasized in Kansas special education regulations which, in most cases, require the use of general education interventions (GEI), prior to referring any child in kindergarten through grade 12 for an initial evaluation. GEI requires schools to have data-based documentation of the interventions and strategies implemented for each child.

Some schools conduct GEI through a school-wide approach of providing multi-tiered levels of intervention to support children to achieve more successfully. In recent years, this kind of a systemic approach has been referred to as a multi-tiered system of supports (MTSS). The practices utilized in MTSS are based on providing high-quality instruction and intervention matched to child need; monitoring progress frequently to make decisions about change in instruction or goals; and applying child response data to important educational decisions (Response to Intervention: Policy Considerations and implementation. National Association of State Directors of Special Education, 2005). In Kansas, this set of principles and practices are encompassed within Kansas Multi-tiered System of Supports (Kansas MTSS).

Other schools accomplish conducting GEI through an individual child problem solving approach, often referred to as student improvement teams (SIT, SAT, TAT, Care Team, etc.) or problem solving teams. The individual problem solving approach to GEI is consistent with past guidance provided by the State.

Either approach (school-wide or individual problem-solving) may be used as schools seek to provide early intervention for children in need of additional supports to be successful.

This chapter includes information on the following topics:

A. Public Notice for Child Find
B. Screening for Children from Birth to Age 5
C. General Education Intervention for Children from Kindergarten through Age 21
D. Data Collection and Documentation for General Education Intervention

E. Referral for Initial Evaluation
F. Early Intervening Services

A. PUBLIC NOTICE FOR CHILD FIND

The first step in the child find process is to provide information to the public concerning the availability of special education services for exceptional children, including procedures for accessing these services. This public notice is usually provided at the beginning of the school year and must be repeated annually. Copies of the information from child find activities must be kept on file as documentation for implementing policies and procedures. (K.A.R. 91-40-7(d)).

The public notice may be provided through a variety of methods. Informational materials could be distributed to all schools in the area, including private schools, other agencies and to professionals who would likely encounter children with a possible need for special education. Schools may publish yearly notices in local newspapers, provide pamphlets, furnish information on the Internet, broadcast announcements on radio or television and provide information at parent-teacher conferences. Suggested methods to accomplish public notice include:

- Newspaper articles or ads,
- Radio, TV, or cable announcements,
- Community newspaper notices
- School handbook and calendar
- Letters to all patrons in the district
- Post in child care programs
- Post in health departments or doctors' offices
- Post in grocery stores, department stores, and other public places

Additional information about public notice as it relates to confidentiality requirements is included in Chapter 9. A sample public notice about child find may be found at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms.

B. SCREENING FOR CHILDREN FROM BIRTH TO AGE 5

Kansas regulations (K.A.R. 91-40-7(b)) require each school district to implement screening procedures that meet the following requirements:

- For children younger than five years of age, observations, instruments, measures, and techniques that disclose any potential disabilities or developmental delays that indicate a need for evaluation, including hearing and vision screening
- Implement procedures ensuring the early identification and assessment of disabilities in children.

Screening for children from birth to age 5 are developmental screenings and must include observations, instruments, measures, and techniques that address potential developmental delays or disabilities in the areas of communication, cognitive development, social-emotional development, self-help/adaptive behavior, and/or physical development. This requirement also extends to hearing and vision screenings, which must be available on an equal basis to all children in public and all private schools within the district's boundaries (K.S.A. 72-6228 and 72-6251 through -6268). If the results of the screening indicate a potential developmental delay or disability, the screening team makes the referral for initial evaluation.

Mass screening of all children is not required, but screening is to be available for any child for whom there is a concern about an area of development including communication, cognitive development, social-emotional development, self-help/adaptive behavior, and/or physical development; and hearing and vision. It is recommended that a child should not have to wait more than 30 calendar days for a screening. Young children's needs must be identified as soon as possible, so that early intervention may be provided. Screening is considered to be a short test of the developmental areas to assist in determining if a child is learning basic skills when they should and whether the child should be referred for an initial evaluation. There are screening procedures that require minimal staff and time to complete. Screening should be equally available to all children in public and private schools within the school district's boundaries. For preschool age children, the district of residence of each preschool child is responsible for child find (locate, evaluate and identify) even though the child may be attending a preschool or other childcare program outside the district of residence.

Part B's child find requirements begin at birth, therefore they overlap with Part C's child find requirements. Schools should work with their local Part C Infant-Toddler Network for child find activities for children from birth through 2 years to ensure that all children have access to screening in a timely manner. Each local Infant-Toddler Network is to have a local interagency coordinating council and this is a way for the local school district and the local Infant-Toddler Network to develop collaborative efforts for child find in their community.

Children who are transitioning from the Part C Infant and Toddler program are not required to participate in a Part B screening process at age 3. For children receiving Part C services who may need an initial evaluation to determine eligibility for Part B special education services, the Part C Infant-Toddler Program may make a referral to the school district. The referral is to be made at least 90 calendar days prior to the child's third birthday and according to the school's policy for making a referral for an initial evaluation. For additional information about the Part C to Part B referral timeline see, https://ectacenter.org/~pdfs/topics/transition/timeline_flowchart_APR_indicators_09-12_OSEP_approved.pdf; and the Kansas Early Childhood Transition (SPP Indicators C8/B12), Part C to B Frequently Asked Questions at https://www.ksde.gov/policy-and-funding/kias/kias-authenticated-application-page.

Schools must maintain documentation on results of screening and must ensure that the collection and use of data under the child find requirements are subject to confidentiality requirements under the Family Educational Rights and Privacy Act (FERPA) (K.A.R. 91-40-7(e); K.A.R. 91-40-50).

K.A.R. 91-40-7. Child find.

(a) Each board shall adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including children with exceptionalities who meet any of the following criteria:
  (1) Attend private schools;
  (2) are highly mobile, including migrant and homeless children; or
  (3) are suspected of being children with disabilities even though they are advancing from grade to grade.

(b) Each board's policies and procedures under this regulation shall include age-appropriate screening procedures that meet the following requirements:
  (1) For children younger than five years of age, observations, instruments, measures, and techniques that disclose any potential disabilities or developmental delays that indicate a need for evaluation, including hearing and vision screening;
  (2) for children from ages five through 21, observations, instruments, measures, and techniques that disclose any potential exceptionality and indicate a need for evaluation, including hearing and vision screening as required by state law; and
  (3) implementation of procedures ensuring the early identification and assessment of disabilities in children.

(d) Each board, at least annually, shall provide information to the public concerning the availability of special education services for exceptional children, including child find activities conducted by the board.

(e) Each agency shall ensure that the collection and use of data under this regulation are subject to the confidentiality requirements of K.A.R. 91-40-50 and amendments thereto.

C. GENERAL EDUCATION INTERVENTION (GEI) FOR CHILDREN FROM KINDERGARTEN THROUGH AGE 21

For children in kindergarten through age 21, Kansas screening laws require that schools utilize observations, instruments, measures, and techniques that disclose any potential exceptionality and indicate a need for evaluation, including hearing and vision screening, and age-appropriate assessments for school-aged children designed to identify possible physical, intellectual, social or emotional, language, or perceptual differences. Screening must be available for children in public schools, private schools, or for children who are homeschooled. For children of school age attending a private elementary or secondary school, the district in which the private school is located is responsible for child find for children who are residents and non-residents of the district who may be attending the private school (K.S.A. 72-3410(a)(1); 34 C.F.R. 300.131(a)).

In Kansas, this screening is conducted, in part, through the required implementation of general education intervention (GEI). The purpose of GEI is to intervene early for any child who is presenting academic or behavioral concerns. This early intervention leads to a better understanding of the supports children need in order to be successful in the general education curriculum and school setting. Additionally, the data collected during GEI assists school personnel in determining which children may be children with potential exceptionalities who need to move into initial evaluation for special education. Collaboration between special education and general education staff is an important part of the general education intervention process. Both special education and general education personnel must be involved in this building-level, school-wide activity (K.A.R. 91-40-7(c), however, some services provided by special education staff may not be fully reimbursable. For complete information about reimbursable activities, review the current Special Education Reimbursement Guide at https://www.ksde.gov/policy-and-funding/special-education/categorial-aid-reimbursement.

K.A.R. 91-40-7(c)

(c) Any board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:

(1) School personnel have data-based documentation which indicates that general education interventions and strategies would be inadequate to address the areas of concern for the child.

(2). School personnel have data-based documentation that indicates that prior to, or as a part of the referral, the following were met;

A. The child was provided appropriate instruction in regular education settings that was delivered by qualified personnel;

B. The child's academic achievement was repeatedly assessed at reasonable intervals which reflected formal assessment of the child's progress during instruction;

C. The assessment results were provided to the child's parents; and

D. The assessment results indicate an evaluation is appropriate.

(3) The parent of the child requests and gives written consent for, an evaluation of the child, and the board agrees that an evaluation of the child is appropriate

1. Conducting GEI

The Every Student Succeeds Act (ESSA) and the Individuals with Disabilities Education Act (IDEA) place a strong emphasis on using evidence-based instruction and interventions, as appropriate, for children in general education. ESSA defines evidence-based as "an activity, strategy, or intervention that—

(i) demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(I) strong evidence from at least 1 well-designed and well-implemented experimental study;

(II) moderate evidence from at least 1 well-designed and well-implemented quasi-experimental study; or

(III) promising evidence from at least 1 well-designed and well-implemented correlational study with statistical controls for selection bias; or

(ii)(I) demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(II) includes ongoing efforts to examine the effects of such activity, strategy, or intervention. " (20 U.S.C. 7801(21)).

These practices and programs apply to all schools and all children in general education. Kansas' requirement to implement GEI supports this emphasis on providing the intensity of instructional support in proportion to the presenting needs of children through methods of analyzing child data, implementing scientifically research-based interventions, and monitoring child progress.

The GEI process should continue until a successful intervention is determined. However, when it is evident that the child's needs requires resources beyond those available in general education, and the team suspects the child is a child with an exceptionality (disability or giftedness) the child must be referred for an initial special education evaluation. At any time during GEI, the team responsible for planning and implementing the interventions may make three decisions:

a) Continue the intervention and monitor child progress
b) Change or modify the intervention and monitor child progress
c) Refer the child for an initial special education evaluation.

It should be made clear here that the process of continually designing and re-designing supports for children is one that does not end until the child is successful. Even when the decision has been made to move from GEI into an initial evaluation, the intervention process should not stop. Rather, it becomes part of the evaluation process.

Kansas regulations provide additional information, which describes when a school may refer a child for an initial evaluation:

a) School personnel have data-based documentation which indicates that general education interventions and strategies would be inadequate to address the areas of concern for the child.
b) School personnel have data-based documentation that indicates that prior to, or as a part of the referral, the following were met:
    i. the child was provided appropriate instruction in regular education settings that was delivered by qualified personnel;
    ii. the child's academic achievement was repeatedly assessed at reasonable intervals which reflected formal assessment of the child's progress during instruction;
    iii. the assessment results were provided to the child's parents; and
    iv. the assessment results indicate an evaluation is appropriate. (K.A.R. 91-40-7(c))
c) The parent of the child requests and gives consent for an evaluation and the school agrees that an evaluation would be appropriate.

As indicated previously, GEI may be carried out through a school-wide approach of providing a multi-tiered system of scientifically, evidence-based interventions for all children (e.g. MTSS) or through an individual child problem solving approach. Regardless of the approach used, the focus should be on designing supports for children who need additional assistance in order to be successful in the general education curriculum and environment.

The following provides a brief comparison of the two approaches (i.e. school-wide multi-tiered system of supports or individual child problem-solving) that may be used to conduct GEI, and ultimately, yield

the data that may be used to make the decisions as to whether or not a child should be moved on to an initial evaluation.

General Education Interventions (GEI)

Component	Characteristics
Child Find: Procedures ensuring the early identification of students enrolled in public school including screening and intervention for students ages five through 21.	• Intervene early for each student who is presenting academic or behavioral concerns. • Utilizes observations, instruments, measures and techniques that may disclose any potential exceptionality.
General Education Interventions: Except in rare cases, interventions and strategies are implemented to support each student's presenting academic or behavioral concerns, and only when the student's progress indicates a potential exceptionality should the student be moved into initial evaluation for special education.	• School personnel have data-based documentation which indicate an evaluation is appropriate, or • School personnel have data-based documentation that general education interventions and strategies would be inadequate to address the areas of concern for the child.
Data-based Documentation of General Education Interventions: Includes specific data as evidence the student's needs are beyond what general education can provide and an evaluation is appropriate.	Specific Documentation: • that appropriate instruction was provided to the student, • what educational interventions and strategies have been implemented, • the results of repeated assessments of achievement which reflect the formal assessment of the student's progress during instruction, • that parents have been provided the results • the results indicate an evaluation is appropriate
Documentation when using school-wide Multi-Tier System of Supports (MTSS) approach to General Education Interventions: In Kansas, schools may use either a school-wide multi-tier system of supports or an individual student problem-solving approach to carry out GEI. Schools utilizing the school wide MTSS approach should consider publishing information about their system for the benefit of all stakeholders.	Documents that parents were notified about: • the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided, • the strategies for increasing the student's rate of learning, and • the parents' right to request an evaluation. Schools utilizing a school-wide multi-tier system of supports approach should consider publishing information about their system for the benefit of all stakeholders. Some ways to accomplish this might include providing information to parents through methods such as: • Brochures that describe the school's multi-tier system of supports • School or student handbooks • Annual child find notifications

2. School-Wide Multi-Tier System of Supports Approach to GEI

The law allows schools to use a process that assesses a child's response to scientific, evidence-based intervention to determine whether the child is making sufficient progress to meet age or State-approved grade-level standards. Kansas encourages schools to use a school-wide, multi-tiered model of support for all children including both academic and behavioral concerns. In Kansas, this is supported through Kansas Multi-Tier System of Supports (Kansas MTSS) which includes both academic and behavior supports. The following briefly explains the multi-tiered aspect of the school-wide approach.

Tier 1: All children receive a core instructional program that uses a scientifically validated curriculum that is provided for all students. Schools choose curricula that have evidence of producing adequate levels of achievement (i.e., evidence-based) and instruction is differentiated within the core to meet a broad range of student needs. Therefore, interventions are provided via the general curriculum. Universal screening of all children to monitor progress and to identify children who may need additional support is conducted. Approximately eighty percent of children in the school will be successful in the general curriculum.

Tier 2: Those children who do not respond to the core instructional procedures will receive targeted group interventions in addition to core instruction. More frequent measures of progress monitoring are used to collect child progress data. Approximately fifteen percent of children in the school will need targeted (supplemental) support.

Tier 3: A few children receive intensive, individualized interventions. These are in addition to the supports provided in Tier 1. Interventions will be more intensive and delivered in more substantial blocks of time. Approximately five percent of children in the school will need this kind of intensive support.

The graphic below depicts MTSS.

Within a MTSS depicted above, children will receive GEI as a part of the system in place for all students. Data collected at each tier should guide school personnel as to the next steps to take based on the child's response to interventions tried. At least by the time a child is ready to access the more intensive supports of Tier 3, the school should employ the use of individualized problem solving to design the intensive individualized support the child will receive as well as a plan to monitor the child's progress and document the child's response to the scientifically research-based interventions. The approach of

individual child problem solving is therefore a component of the larger school-wide system, or it may stand alone as a method to conduct GEI as outlined below.

3. Individual Problem Solving Approach to GEI

This process is typically carried out through building level problem-solving teams. These teams function with the intent to provide support to any child who may be experiencing difficulty (academic or behavior) and to work to improve the overall achievement of all children in the school. Typically, these teams facilitate the problem-solving process which results in the development of an intervention plan which documents the child's area of concern, the interventions implemented, the data reflecting the child's response to the intervention, and the recommendations as a result of the child's response to the intervention.

The problem solving conducted by these teams may vary, however, there should be at least four basic steps common to the process used by schools. All steps should include parent involvement – not just informing parents, but also including them in decision-making whenever possible. Additionally, parents must be provided with copies of the child data collected as interventions are tried and monitored for children.

The following outlines the four basic steps of problem solving and briefly indicates what happens at each step.

STEP 1. Problem Identification

a. Precisely define the problem
b. Measure the skill or behavior in the natural setting to establish baseline performance.
c. Estimate the severity of the problem (use age norms or compare to peers)
d. Establish expectations for the child

STEP 2. Problem Analysis

a. Analyze antecedent, situational, and consequent conditions
b. Use ICEL components (instruction, curriculum, environment, learner) to analyze the problem
c. Collect additional data as needed to understand the cause of the problem.

STEP 3. Develop and Implement an Intervention Plan

a. Formulate a plan that uses scientific research based interventions designed to target the cause of the presenting problem.
b. Establish intervention goals
c. Develop a plan for monitoring progress, which specifies the child data to be collected, and the schedule for collecting it. Decide how the data will be displayed (e.g. chart/graph) to facilitate evaluation.
d. Implement the plan with treatment integrity and frequent monitoring of progress

STEP 4. Evaluate and Revise Plan

a. Review progress-monitoring data to determine if enough progress has been made by repeating Step 1.
b. If expectations have not been met, repeat Step 2 to further analyze the problem.
c. Revise current intervention or select a new intervention including components of Step 3

D. DATA COLLECTION AND DOCUMENTATION FOR GENERAL EDUCATION INTERVENTIONS

GEI has been a requirement in Kansas since 2000, however, with the most recent reauthorization of IDEA and the subsequent Kansas regulations, the requirements for GEI were strengthened. With the exception of a parent request for evaluation and school agreement that an evaluation is appropriate, before a child may be referred for a special education evaluation, school personnel are now required to have data-based documentation that:

(1) general education interventions and strategies would be inadequate to address the areas of concern for the child,

or

(2) the child was provided appropriate instruction in regular education settings that was delivered by qualified personnel;

and

(3) the child's academic achievement was repeatedly assessed at reasonable intervals which reflected formal assessment of the child's progress during instruction. (K.A.R. 91-40-7(c))

In either case, there must be data-based documentation that provides a basis for determining that a special education evaluation is warranted.

It should be rare that documentation would indicate that GEI and strategies would be inadequate to address the areas of concern for the child. This would most likely occur in an instance where a child with an obvious disability has for whatever reason not been identified previously. Another example might be for a child who has recently sustained a Traumatic Brain Injury. Of course, in situations such as these it would be inappropriate to delay further evaluation to determine the child's need for special education. In these cases, the data used for documentation that GEI would be inadequate to address the needs of the child might come from medical records, previous school records, observations, parent and teacher reports, etc. However, in cases such as this, even though it is appropriate to move directly to evaluation, it is recommended that GEI and strategies occur as part of the child's special education evaluation so that the team may collect data to determine what the best instructional approach for the child might be.

In most cases, school personnel will be documenting data from the GEI and strategies that have been tried. Schools must have data-based documentation that: (1) appropriate instruction was provided to the child, (2) the child was provided appropriate instruction delivered by qualified personnel in regular education settings; (3) the child's academic achievement was repeatedly assessed at reasonable intervals which reflected formal assessment of the child's progress during instruction; and (4) the instructional strategies used and the student-centered data collected. The data to document that appropriate instruction was provided to the child may include evidence that the school's curriculum has a solid research base and that it contains, for example in reading, the essential components of comprehensive literacy instruction as defined in the Every Student Succeeds Act.

Additionally, data could include the extent to which instruction has been delivered by qualified teachers. Other data may include evidence that the child has regularly attended school in order to access instruction. The data to document the educational interventions and strategies that have been implemented may include records such as intervention plans that indicate the interventions and strategies selected and implemented for a given child. The requirement to provide data-based

documentation of the repeated assessments of child progress during instruction (i.e. progress monitoring) is perhaps the most important of all. Progress monitoring data is used to evaluate the effectiveness of the intervention; to determine the intensity of interventions and resources needed to support child learning; and, provides a basis for school personnel to make decisions during intervention. Documentation of progress monitoring may include charts/graphs or records of other systematic data collection. This documentation must also include evidence parents were provided with the results of the assessment of child progress and that those results indicate that an evaluation is appropriate.

Additional documentation is required for schools that utilize a school-wide multi-tiered system of supports approach to providing GEI. In addition to the data described above, the school must document that the child's parents were notified about:

- The State's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided;
- Strategies for increasing the child's rate of learning; and
- The parents' right to request an evaluation (K.A.R. 91-40-10(f)(2); 34 C.F.R. 300.311(a)(7)(ii)).

Although this documentation is required only if the child goes on for an initial evaluation and the child is subsequently placed as having a learning disability, schools should be aware of this so that it may be attended to. It is recommended to any school utilizing a school-wide multi-tier system of supports approach to consider publishing information about their system for the benefit of all stakeholders. This not only provides a way for the school to discuss its multi-tiered system of supports for all children, but also insures that documentation requirements may be met should some children go on for evaluation and placement as having a learning disability. Some ways to accomplish this additional requirement might include providing information to parents through methods such as:

- School or student handbooks
- Annual child find notifications
- Brochures about the school's RtI system

In addition to the broad dissemination suggested for consideration by all schools using a school-wide multi-tier system of supports approach, schools may also choose to establish guidelines in their school system regarding how and when information will be shared more specifically with parents of children receiving additional support to core instruction (i.e., Tier 2, Tier 3, etc.). It is important that parents be invited to fully participate in the intervention process for their child. This practice of involving parents from the beginning when additional interventions are necessary provides a way for the school and the parent to establish a foundation upon which to face future decisions that may arise.

K.A.R. 91-40-10. Eligibility determination.

(f) if the child has participated in a process that assesses the child's response to scientific, research-based intervention, the evaluation report shall also address the following matters:

(1) The instructional strategies used and the student-centered data collected; and

(2) the documentation that the child's parents were notified about the following:

(A) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) strategies for increasing the child's rate of learning; and

(C) the parents' right to request an evaluation.

E. REFERRAL FOR INITIAL EVALUATION

Screening and GEI are child find activities, and either process may result in the determination that an initial evaluation for special education is needed. Most decisions to move forward into initial evaluation will come as a result of these processes. However, there are instances when requests for evaluation may be made by parents or by adult students. The following describes the procedures to be used when such requests occur:

1. Referral from Parents: Parents have requested an evaluation. The request may be oral or written. The school may set a policy as to how a referral is to be made. The school must respond to the request within a reasonable period of time, which has been interpreted by the Kansas State Department of Education (KSDE) as being no more than 15 school days, unless there are unusual circumstances. The building principal or person designated to respond to parent requests for evaluations, should explain to the parents the following:

(a) A GEI process that precedes an initial evaluation is available to assist in determining the specific concerns and needs of their child. This includes the right of the parents to participate in the GEI process. Parents may elect to withdraw their request for an evaluation and have their child participate in GEI. If a parent withdraws a request for an evaluation, it is important that the school has documentation of that withdrawal.

(b) The parents may request the initial evaluation be conducted without waiting for general education interventions to conclude; in that case, the general education intervention process may be conducted as part of the initial evaluation.

(c) The school may refuse to conduct the evaluation. Under that circumstance, a Prior Written Notice would explain why the school refuses to conduct the evaluation.

2. Self-referral from an adult student: A student 18 years of age or older has requested an evaluation. The school must respond to the request within a reasonable period of time which has been interpreted by KSDE as being no more than 15 school days, unless there are unusual circumstances. The building principal, or person designated to respond to student requests for evaluations, should explain the following to the student:

(a) A GEI process that precedes an initial evaluation is available to assist in determining the specific concerns and needs of the student. The student may elect to withdraw the student's request for an evaluation and participate in GEI. If the student withdraws a request for an evaluation, it is important that the school has documentation of that withdrawal.

(b) The student may request the initial evaluation be conducted without waiting for general education interventions to conclude; the general education intervention process may be conducted as part of the initial evaluation.

(c) The school may refuse to conduct the evaluation. Under that circumstance, a Prior Written Notice would explain why the school refuses to conduct the evaluation.

Regardless of how the decision to move forward with an initial evaluation is made, it is crucial that the school have a process which will insure that all data collected prior to the evaluation (i.e., data collected as part of screening, or GEI) is provided to the evaluation team. This insures the evaluation team has a basis for understanding what additional data may need to be collected as the initial evaluation process goes forward. Chapter 3 details all of the procedures and requirements that must be met at the time the child moves into the initial evaluation.

F. EARLY INTERVENING SERVICES

The U.S. Department of Education states that the use of some Part B funds for early intervening services has the potential to benefit special education, as well as the education of other children, by reducing academic and behavioral problems in the regular education environment and reducing the number of referrals to special education that could have been avoided by relatively simple regular education interventions (Federal Register, August 14, 2006, pp. 46626-27). These early intervening services are not the same as "early intervention" services under the Part C, Infant-Toddler program, or child find activities, and are not available for preschool children ages 3 and 4, or 5 year olds not in kindergarten.

The district may set aside up to 15% of its Part B funds to carry out a variety of activities including:

1. Professional development (which may be provided by entities other than the district) for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions, including scientifically-based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

2. Providing educational and behavioral evaluations, services and supports, including scientifically based literacy instruction.

For additional information on utilizing Part B funds for early intervening services in Kansas Statute 72-3409 and Appendix D to Federal Regulations, August 14, 2006.

K.S.A. 72-3409. State and federal funds; distribution and allocation

(c) (1) Each board may use up to 15% of the amount it receives each year under the federal law to develop and implement coordinated, early intervening services for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade 3, who have not been identified as needing special education or related services but who appear to need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated, early intervening services under this subsection, a board may carry out activities that include:

(A) Providing professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and

(B) providing educational and behavioral evaluations, services and supports, including scientifically based literacy instruction.

(3) Each board that develops and maintains coordinated, early intervening services under this subsection shall annually report to the department:

(A) The number of students served under this subsection; and

(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the 2-year period preceding each report.

QUESTIONS AND ANSWERS ABOUT SCREENING AND GENERAL EDUCATION INTERVENTION (CHILD FIND)

1. Who is responsible for child find?

The Kansas State Department of Education (KSDE) has policies and procedures in place to ensure that all children with exceptionalities residing in the state, including children with exceptionalities attending public or private schools, are home schooled; are highly mobile, including migrant and homeless; or are wards of the state, and who are in need of special education and related services are identified, located, and evaluated. Local school districts are required to conduct ongoing public notice, screening, general education interventions, and evaluation to ensure that Kansas children from birth to age 5 with disabilities, and children from kindergarten through age 21 with exceptionalities are identified appropriately. For children of school age attending a private elementary or secondary school, the district in which the private school is located is responsible for

child find for children who are residents and non-residents of the district who may be attending the private school. For preschoolers, the school district where the child resides is responsible for child find, even if the child attends preschool or child care in another district. This responsibility to conduct child find efforts for children from birth through age 2 is shared with the Part C Infant-Toddler program.

2. May special education staff participate in the general education intervention process, without jeopardizing their special education funding?

   Questions often arise about who can work with a student to provide what type of support at what point in the general education intervention (GEI) process and how that fits with funding restrictions. It is the responsibility of both general and special educators to carry out GEI. Further, because child find is required by special education law and GEI is Kansas' method of conducting child find for school age children, it is expected that special educators will, in part, support carrying out GEI. This may include special educators providing such things as assisting in collecting student data, participating in the analyses of data to determine next steps, and the provision of interventions; however, there are parameters with regard to funding. Those parameters are outlined in the Special Education Reimbursement Guide for State Categorical Aid at https://www.ksde.gov/policy-and-funding/special-education/categorial-aid-reimbursement.

3. How does an intervention plan developed during general education interventions differ from other plans?

   The general education intervention plan contains information that documents a student's area(s) of concern, the scientific, evidence-based intervention(s) to be tried, the data to be collected to monitor the effectiveness of the intervention(s), and the impact of the intervention(s). It should include data that demonstrate that the child was provided appropriate instruction in general education settings, delivered by qualified personnel; and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction. (See additional details about specific documentation in Section D of this chapter.) Additionally, it also provides documentation of the student's progress in the general education curriculum and documents the extent of the involvement of special education resources in developing, implementing, and monitoring the intervention(s). This information becomes part of the data used to determine eligibility for special education if the student is referred for an initial evaluation. The general education intervention plan is to be provided to the child's parents but parental consent is not required.

4. What is the timeline for the general education intervention process?

   There is no rule of thumb for a timeline. The area(s) of concern and the nature of the interventions attempted will be the determining factors. The team will develop a plan that includes a timeline appropriate for each student. If it appears that the child's needs require interventions that involve intense or sustained resources beyond those available in the general education environment, and if the team suspects the child may have an exceptionality, the team must make a referral for an initial evaluation.

5. Are there situations when the general education intervention process for children K-12 would not be used?

   Usually, the general education intervention (GEI) process occurs prior to a student being referred for an initial evaluation. However, under some circumstances, it would not be necessary to begin with the general education intervention process before referring the student for an initial

evaluation. This would most likely occur in an instance where a student with an obvious disability has not been identified previously. Another example might be for a student who has recently sustained a Traumatic Brain Injury. Of course, in situations such as these it would be inappropriate to delay further evaluation to determine the student's need for special education. In these kinds of cases, the data used for documentation that GEI would be inadequate to address the needs of the student might come from medical records, previous school records, observations, parent and teacher reports, etc. However, in cases such as this, even though it is appropriate to move directly to evaluation, it is recommended that GEI and strategies occur as part of the student's special education evaluation so that the team may collect data to determine what the best instructional approach for the student might be.

6. What happens to the information gathered about the child after the child find activities have been conducted?

   If either the screening or general education intervention process is used to make a referral for an initial evaluation, the information may become part of the data used to determine eligibility during the initial evaluation process. However, screening information may not be the only information used to determine eligibility. Thus, it becomes part of the student's record, regardless of whether the student is eligible or not. Likewise, even if the screening or general education intervention process did not result in a referral for an initial evaluation, the information would be retained for documentation in the event that future issues arise. For example, if a student is later suspended or expelled and the parents assert that the student should have been receiving special education services because the student has a disability, this information would be very helpful for the school to have. What decisions were made in the past, and upon what basis? These records might avert potential lawsuits.

   Because the screening information is maintained by the school district and contains personally identifiable information about the child, it is confidential and must be kept in a secure location, according to Family Educational Rights and Privacy Act (FERPA) requirements. See Chapter 9 for additional details.

7. At what point does the screening of a school age child through GEI become an evaluation for special education, which signals the protections of procedural safeguards and due process?

   Federal requirements indicate that the screening of a student to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services (34 C.F.R. 300.302). Further explanation in comments to the federal regulations indicates that screening refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. The comments go on to describe screening as typically being a relatively simple and quick process that is used to determine strategies to more effectively teach children. This would include examples of such things as universal screening and progress monitoring tools (e.g. DIBELS, etc.) that yield information teachers may use to more appropriately select interventions tailored to a student's area of academic need, observations of children in various environments from which analyses of behavior patterns may occur in order to direct staff to appropriate intervention selection, and diagnostic tools which assist school personnel in a deeper understanding of the student's presenting concern so that more effective interventions may be selected. It should be made very clear here that the latitude given by this regulation is NOT to be interpreted as a way to circumvent other regulations pertaining to evaluation. The difference between screening and evaluation is the intent of the activities. If the

intent of the activities is to determine instructional strategies, that constitutes screening. It is clear in the regulation and subsequent comments that the ONLY activities that may be considered screening are those activities which result directly in information to be used solely for the purpose of designing instructional strategies. At any point that the intent changes to seek to determine if the student is a child with an exceptionality or if the student is in need of special education, that is evaluation and all due process protections come into play. At that point, parents must be contacted to seek consent for initial evaluation.

CHAPTER 3: INITIAL EVALUATION AND ELIGIBILITY

INTRODUCTION

As discussed in Chapter 2, the Kansas child find process is intended to identify children who may be in need of special education services. Child find includes early childhood screening for young children from birth to age 5, and general education interventions (GEI) for children enrolled in kindergarten through 12th grade. Information obtained from screening and general education interventions will assist teams in making decisions about referrals for initial evaluation. An appraisal of the extent of the presenting concern, the effectiveness of interventions tried, and the degree to which the interventions require substantial resources are important to consider when deciding whether a child should be referred for possible special education services, and are essential in planning and conducting the initial evaluation after a referral has been made. When teams conducting general education interventions begin to question whether the child might be a child with a disability (birth to age 5) or a child with an exceptionality (Kindergarten through age 21), or when the team begins to question whether the child might need specially designed instruction beyond what can be provided through general education, then a referral for an initial evaluation needs to be considered. Also, regardless of the screening and general education intervention processes used in schools, a parent or adult student may request an evaluation at any time.

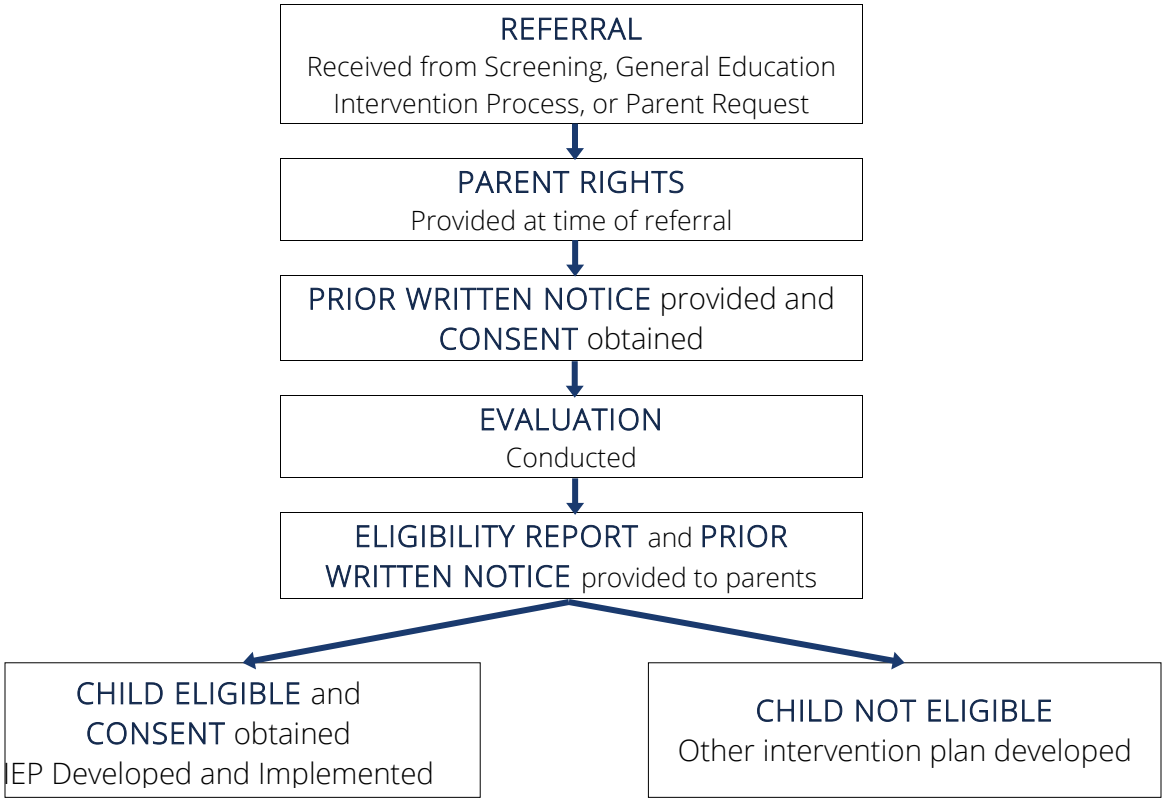
An initial evaluation involves the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to assist in determining if the child is eligible for special education. A two-pronged test for eligibility: (1) whether the child is a child with an exceptionality (disability or giftedness); and (2) by reason thereof, has a need for special education and related services, has driven eligibility decisions for many years. However, it is clear more than ever in the law that evaluations are incomplete if the evaluation does not result in the determination of the present levels of academic achievement and functional performance (related developmental needs) of the child (K.S.A. 72-3428(b)(1); K.A.R. 91-40-8(a)(c)(2); 34 C.F.R. 300.305(a)(2)(i)–(iii)). This shifts the focus of the initial evaluation from access to services to what the child needs to enable him or her to learn effectively and to participate and progress in the general education curriculum.

This chapter includes information on the required elements of the process to conduct an initial evaluation and determine eligibility, and suggests ways to synthesize the team process at the building level. The initial evaluation process begins when a referral for initial evaluation is made and applies to all children beginning at age 3.

The following topics related to initial evaluation are discussed within this chapter:

A. Referral for Initial Evaluation
B. Prior Written Notice and Request for Consent
C. The Evaluation Team
D. Timeline for Conducting the Initial Evaluation
E. Conducting the Evaluation
F. Eligibility Determination and Documentation
G. Prior Written Notice for Identification
H. Independent Educational Evaluation

INITIAL EVALUATION FLOWCHART



A. REFERRAL FOR INITIAL EVALUATION

Referrals for initial evaluation may come from a variety of sources. These include:

- Early Childhood Screening
- Part C Infant-Toddler Program
- General Education Intervention Team (if using an individual problem-solving team) or Grade/Content Area Collaborative Team (if using an MTSS process)
- Parents
- Self-referral by adult student

A referral for an initial evaluation is made whenever it is suspected that a child may be a child with an exceptionality. For a preschool child the referral may be a result of screening described in K.A.R. 91-40-7(b), or from a Part C Infant-Toddler program. A school age child would participate in general education interventions (GEI) prior to the referral. As a result of GEI, the school would have data-based documentation of repeated assessments of achievement at reasonable intervals, that indicate the instruction and educational interventions and strategies presented to the child in the general education setting were not adequate and indicated an evaluation for special education is appropriate (K.A.R. 91-40-7(b), (c); 34 C.F.R. 300.309(c)(1)). Additionally, a parent or adult student may request an evaluation at any time.

Upon referral for an initial evaluation, regardless of the source, the first action the school must take is to provide the parents, or the adult student, a copy of the Parent Rights Notice (procedural safeguards) available to them (K.S.A. 72-3430(e); 34 C.F.R. 300.503). (See Parent Rights Notice at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/parents-rights)

K.S.A. 72-3430. Parental rights.

(e) A list of the rights available to the parents of exceptional children shall be given to the parents only one time each school year, except a copy also shall be given to the parents: (A) Upon initial referral or parental request for evaluation; (B) upon request of a parent; and (C) upon the initial filing of a complaint under subsection (b)(4).

K.A.R. 91-40-7. Child find.

(b) Each board's policies and procedures under this regulation shall include age-appropriate screening procedures that meet the following requirements:

(1) For children younger than five years of age, observations, instruments, measures, and techniques that disclose any potential disabilities or developmental delays that indicate a need for evaluation, including hearing and vision screening;

(2) for children from ages five through 21, observations, instruments, measures, and techniques that disclose any potential exceptionality and indicate a need for evaluation, including hearing and vision screening as required by state law; and

(3) implementation of procedures ensuring the early identification and assessment of disabilities in children.

(c) Any board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:

(1) School personnel have data-based documentation indicating that general education interventions and strategies would be inadequate to address the areas of concern for the child.

(2) School personnel have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met:

(A) The child was provided with appropriate instruction in regular education settings that was delivered by qualified personnel.

(B) The child's academic achievement was repeatedly assessed at reasonable intervals that reflected formal assessment of the student's progress during instruction.

(C) The assessment results were provided to the child's parent.

(3) The parent of the child requests, and gives written consent for, an evaluation of the child, and the board agrees that an evaluation of the child is appropriate.

B. PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describe any evaluation procedures the school proposes to conduct (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)). In addition, there are standard components of content the notice must contain. The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct an initial evaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include:

1) A description of the action proposed by the agency;
2) An explanation of why the agency proposes the action;
3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action (K.S.A. 72-3428(b); K.A.R. 91-40-27(b); 34 C.F.R. 300.304(a)(1));
4) A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained;
5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards, and
6) A description of other options considered and the reasons why those options were rejected; and,
7) A description of other factors that is relevant to the agency's proposal. (K.S.A. 72-3432, 34 C.F.R. 300.503(b)).

(See Prior Written Notice for Evaluation or Reevaluation form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice)

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the Local Education Agency (LEA) must take steps to ensure that the notice is translated orally

or by other means to the parent in his or her native language or other mode of communication, that the parent understands the content of the notice. The school must have written evidence that this has been done (K.A.R. 91-40-26(b), (c); 34 C.F.R. 300.503(c)).

1. Preparing the Prior Written Notice

After the school receives the referral for an initial evaluation the school designates specific staff members to engage in preparatory activities to determine whether they will propose to conduct an evaluation and what procedures the evaluation will include (such as existing or new assessment tools and strategies). The school staff will consider information provided in the referral or in the parent request for an evaluation and in the child's file including information collected during general education interventions. The staff will then prepare the Prior Written Notice of proposed action to provide to the parent. Usually, this notice will inform parents that the school is proposing to conduct the evaluation. In some cases, however, the school staff may determine that there is not enough evidence to support conducting an initial evaluation and would, therefore, prepare Prior Written Notice of the refusal to conduct the initial evaluation.

The first activity the school staff should conduct is a review of existing data that is currently available including evaluations and information provided by the parents, current classroom-based, local, or state assessments, and classroom-based observations, and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented. The review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents (K.A.R. 91-40-8(c), (d); K.A.R. 91-40-27(e); 34 C.F.R. 300.305(b); 34 C.F.R. 300.300(d)(1)). Once the team determines that no additional data are needed, parent consent should be obtained to then conduct the evaluation based on that existing data. The Prior Written Notice would include: (1) a statement of this fact and the reasons for it; and (2) a statement of the right of the parents to request additional assessments to determine whether the child is a child with an exceptionality. Parent consent to conduct the initial evaluation is required, whether or not additional data is needed.

The purpose of reviewing existing data is to identify what additional data, if any, are needed to determine:

a. if the child is a child with an exceptionality;
b. whether the child needs special education and related services;
c. the educational needs of the child;
d. the present levels of academic achievement and functional performance (related developmental needs) of the child; and
e. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (K.S.A. 72-3428(i)(2); K.A.R. 91-40-8(c); 34 C.F.R. 300.305(a)(2))

When preparing the prior written notice of its proposal to conduct an initial evaluation, the school staff must plan which assessments and other evaluation measures may be needed to produce the data needed to meet the requirements of eligibility determination (K.A.R. 91-40-8(e)(1); 34 C.F.R. 300.305(c)). Every evaluation should be approached and designed individually based on the specific concerns of the child to be evaluated and existing data. Thoughtful planning is required to insure the use of appropriate tools to collect the data needed, while eliminating time spent collecting information that is either unnecessary or overly time-consuming for no clear purpose. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct an evaluation.

To ensure that the necessary and sufficient data will be collected as part of the evaluation, school staff are reminded of the importance of using a variety of assessment tools and strategies to collect relevant functional, developmental, and academic information about the child. There are also requirements that each child be observed in the child's learning environment which will also need to be included on the Prior Written Notice. The team must ensure that each evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. All appropriate domains should be considered via review of screening and/or GEI data. If potential educationally related deficits are suggested by screening, then the evaluation must provide in-depth assessment in the domain. If screening suggests adequate functioning, then in-depth assessment may be wasteful and irrelevant. In addition to these considerations, the proposed evaluation must yield information needed to rule out any exclusionary criteria when making eligibility decisions, and therefore should plan to collect any needed information related to the exclusionary criteria: lack of instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency (K.A.R. 91-40-10(c); 34 C.F.R. 300.306(b)).

In addition to the exclusionary factors discussed above, there are additional requirements to consider when evaluating a child suspected of having a specific learning disability. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group which conducts the evaluation must consider, as part of the evaluation:

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of child progress during instruction, which was provided to the child's parents. (K.A.R. 91-40-7(c)(3); 34 C.F.R. 300.309(b))

Appropriate instruction in reading includes the essential components of reading instruction as defined in the Elementary and Secondary Education Act as phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies. Often this information will have been collected before a child is referred for an initial evaluation; however, it is important to plan to collect it as part of the evaluation if it has not been collected prior to the evaluation.

After the review of existing data, there must be a determination of what, if any, data in addition to the existing data, will be collected during the evaluation to enable the team to complete all requirements of evaluation and eligibility including the evaluation report. The Prior Written Notice must be completed to reflect the data that will be collected as part of the evaluation. (See Prior Written Notice and Request for Consent for Evaluation at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice).

a. Requirements if No Additional Data are Needed

If the school staff determine that no additional data are needed to determine whether the child is a child with an exceptionality, and to determine the child's educational needs, the school must notify the parents

(1) of that determination and the reasons for it; and
(2) the right of the parents to request an assessment to determine whether the child is a child with an exceptionality, and to determine the educational needs of the child (K.A.R. 91-40-8(e)).

The school district is not required to conduct the assessment described in (2) above unless requested to do so by the child's parents. In addition, if the parents request an assessment of their child, the school district may refuse to do so, but it must provide the parents with Prior Written Notice of the refusal to conduct the assessment and the reasons for the refusal. The parents may request mediation or due process if they want the assessment conducted. (See Prior Written Notice and Consent for Initial Evaluation form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice).

b. Requirements if Additional Data are Needed

If the school staff determine that additional data are needed, the staff members should plan who will collect it and plan to ensure all data will be collected within the evaluation timeline. The procedures to be used to collect the data should be described on the Prior Written Notice for the initial evaluation and provided to the parents for their consent.

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; procedure; duties of IEP team.

(i) As part of an initial evaluation, if appropriate, and as part of any reevaluation under this section, the IEP team and other qualified professionals, as appropriate, shall:
(1) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and
(2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
(A)Whether the child is an exceptional child and the educational needs of the child, or in the case of a reevaluation of a child, whether the child continues to be an exceptional child and the current educational needs of the child;
(B) the present levels of academic and related needs of the child;
(C) whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
(D) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

K.A.R. 91-40-8. Evaluations.

(c) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements:
(1) The evaluation team shall review existing evaluation data on the child, including the following information:
(A) Evaluations and information provided by the parent of the child;
(B) current classroom-based, local, and state assessments and classroom-based observations; and
(C) observations by teachers and related services providers.
(2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed to determine the following matters:
(A) Whether the child has a particular category of exceptionality or, in the case of a reevaluation of a child, whether the child continues to have such an exceptionality;
(B) what the present levels of academic achievement and educational and related developmental needs of the child are;
(C) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
(D) whether, in the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
(d) The team described in subsection (c) may conduct its review without a meeting.
(e) (1) If the team described in subsection (c) determines that additional data is required to make any of the determinations specified in paragraph (2) of subsection (c), the agency, after giving proper written notice to the parent and obtaining parental consent, shall administer those tests and evaluations that are appropriate to produce the needed data.

K.A.R. 91-40-10. Eligibility determination.

(c) An evaluation team shall not determine a child to be an exceptional child if the determinant factor for that eligibility determination is the child's lack of appropriate instruction in reading or mathematics or limited English proficiency, and if the child does not otherwise qualify as a child with an exceptionality.

K.A.R. 91-40-27. Parental consent.

(e) An agency shall not be required to obtain parental consent before taking either of the following actions:
(1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or
(2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.

2. Request for Consent

The school must obtain informed consent from the parent of the child before conducting the evaluation (K.A.R. 91-40-27(a)(1); 34 C.F.R. 300.300(a)). In determining that informed consent is obtained, the following must be ensured (K.A.R. 91-40-1(l); 34 C.F.R. 300.9):

a. The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
d. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

3. Failure to Respond or to Provide Consent

The school must make reasonable attempts to obtain consent from the parents to conduct the initial evaluation. Reasonable attempts are defined as at least 2 contacts by 2 different methods (phone calls, letters, visits, email, etc.) and documentation of such attempts should be kept including detailed records of telephone calls made or attempted and the results, copies of written correspondence sent to the parents and their response if any, and visits made to the parents' home or place of employment, and the results, if any, from the parents (K.A.R. 91-40-27(g); K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)).

If the parent does not provide (refuses) consent or fails to respond to a request to provide consent for an initial evaluation, the school may, but is not required to, pursue the initial evaluation by utilizing mediation or by requesting a due process hearing. The school does not violate its obligation for Child Find or for conducting an initial evaluation if it declines to pursue the evaluation (K.A.R. 91-40-27(f)(1), (3); 34 C.F.R. 300.300(a)(3)). Additionally, under the disciplinary protections, the school would not be deemed to have knowledge of the child's disability if the parent has not allowed an evaluation or refused services; or the child has been evaluated and determined not to have a disability (K.S.A. 72-3436(c)).

The district is required to locate, identify, and evaluate children who are home schooled, but not required to provide services unless the child is enrolled in a public school. If the parent of a child who is home schooled or voluntarily placed in a private school by the parents does not provide consent for the initial evaluation, or the parent fails to respond to a request to provide consent, the school can NOT use mediation or due process procedures to obtain consent. In this case the school is not required to consider the child as eligible for services and does not violate the FAPE requirement (K.A.R. 91-40-27(f)(2); 34 C.F.R. 300.300(d)(4)).

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; notice; procedure.

(b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;

(2) not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child;

(3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(4) in determining whether a child has a specific learning disability, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.

K.S.A. 72-3430. Parental rights.

(b) The parents of exceptional children shall have the right to:

(2) written prior notice in accordance with K.S.A. 72-990, and amendments thereto, whenever an agency:

(A) Proposes to initiate or change; or

(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(e) A list of the rights available to the parents of exceptional children shall be given to the parents only one time each school year, except a copy also shall be given to the parents:

(A) Upon initial referral or parental request for evaluation;

(B) upon request of a parent; and

(C) upon the initial filing of a complaint under subsection (b)(4).

K.S.A. 72-3432. Notice of parental rights; contents.

The notice required by subsection (b)(2) of K.S.A. 72-988, and amendments thereto, shall include:

(a) A description of the action proposed or refused by the agency;

(b) an explanation of why the agency proposes or refuses to take the action;

(c) a description of other options that the agency or IEP team considered and the reasons those options were rejected;

(d) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(e) a description of any other factors that are relevant to the agency's proposal or refusal;

(f) a statement that the parents have protection under the procedural safeguards of this act and, if the notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and

(g) sources for parents to contact to obtain assistance in understanding the provisions of the federal law and this act.

K.S.A. 72-3436. School district knowledge that child is child with disability prior to determination

(a) A child who has not been determined to be eligible for special education and related services under this act and who has engaged in behavior that violated any rule or code of conduct of the school district may assert any of the protections provided for in this act if the school district had knowledge, as determined in accordance with this section, that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

K.A.R. 91-40-1. Definitions.

(l) "Consent" means that all of the following conditions are met:

(1) A parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.

(2) A parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom.

(3) A parent understands the following:

(A) The granting of consent is voluntary on the part of the parent and may be revoked at any time.

(B) If the parent revokes consent, the revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked

(C) The parent may revoke consent in writing for the continued provision of a particular service or placement only if the child's IEP team certifies in writing that the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

K.A.R. 91-40-17. IEP team meetings and participants.

(e) (1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.

(2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parent to provide notice of the meeting and to secure the parent's participation. The record shall include at least two of the following:

(A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;

(B) detailed records of visits made to the parent's home or homes, including the date, time, and person making the visit and the results of the visit;

(C) copies of correspondence sent to the parent and any responses receive

(D) detailed records of any other method attempted to contact the parent and the results of that attempt.

K.A.R. 91-40-26. Notice requirements.

(a) In providing any notice to the parents of an exceptional child in accordance with K.S.A. 72-990 and amendments thereto, regarding action proposed or refused by an agency, the agency shall ensure that the notice includes the following descriptions:

(1) a description of other options the agency considered and the reasons why those options were rejected; and

(2) a description of other factors that are relevant to the agency's proposal or refusal.

(b) The notice shall be is written in a language understandable to the general public and is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
(c) If the native language or other mode of communication of a parent is not a written language, the agency shall take steps to ensure all of the following:
(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.
(2) The parent understands the content of the notice.
(3) There is written evidence that the requirements of paragraphs (1) and (2) of this subsection have been met.

K.A.R. 91-40-27. Parental consent.

(a) Except as otherwise provided in this regulation, each agency shall obtain parental consent before taking any of the following actions:
(1) Conducting an initial evaluation or any reevaluation of an exceptional child;
(2) initially providing special education and related services to an exceptional child; or
(3) making a material change in services to, or a substantial change in the placement of, an exceptional child, unless the change is made under the provisions of K.A.R. 91-40-33 through 91-40-38 or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.
(b) When screening or other methods used by an agency indicate that a child may have a disability and need special education services, the agency shall make reasonable and prompt efforts to obtain informed consent from the child's parent to conduct an initial evaluation of the child and, if appropriate, to make the initial provision of services to the child.
(c) Unless a judicial order specifies to the contrary, each agency shall recognize the biological or adoptive parent of an exceptional child who is a minor as the educational decision maker for the child if the parent exerts the parent's rights on behalf of the child, even if one or more other persons meet the definition of parent for the particular child.
(d) An agency shall not construe parental consent for initial evaluation as consent for the initial provision of special education and related services to an exceptional child.
(e) An agency shall not be required to obtain parental consent before taking either of the following actions:
(1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or
(2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.
(f) (1) If a parent of an exceptional child who is enrolled or is seeking to enroll in a public school does not provide consent for an initial evaluation or any reevaluation, or for a proposed material change in services or a substantial change in the placement of the parent's child, an agency may, but shall not be required to, pursue the evaluation or proposed change by initiating due process or mediation procedures.
(2) If a parent of an exceptional child who is being homeschooled or has been placed in a private school by the parent does not provide consent for an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, an agency shall not pursue the evaluation or reevaluation by initiating mediation or due process procedures.
(3) An agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action.
(4) Each agency shall document its attempts to obtain parental consent for action proposed under this regulation.
(g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parent or parents have failed to respond.
(h) An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities or services offered by the agency.
(i) If, at any time after the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of all special education, related services, and supplementary aids and services, the following shall apply:
(1) The agency shall not continue to provide special education, related services, and supplementary aids and services to the child but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of those services.
(2) The agency shall not use the procedures in K.S.A. 72-972a or K.S.A. 72-996, and amendments thereto, or K.A.R. 91-40-28, including the mediation procedures and the due process procedures, in order to obtain an agreement or a ruling that the services may be provided to the child;
(3) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids and services.
(4) The agency shall not be required to convene an IEP team meeting or develop an IEP under K.S.A. 72-987, and amendments thereto, or K.A.R. 91-40-16 through K.A.R. 91-40-19 for the child for further provision of special education, related services. and supplementary aids and services.
(j) If a parent revokes consent in writing for the child's receipt of all special education and related services after the child is initially provided special education and related services, the agency shall not be required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
(k) If a parent revokes consent for the continued provision of particular special education, related services, supplementary aids and services, or placements, or any combination of these, and the IEP team certifies in writing that the child does not need the service or placement for which consent is being revoked in order to receive a free appropriate public education, the following shall apply;
(1) The agency shall not continue to provide the particular special education, related services, supplementary aids and services, and placements for which consent was revoked, but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of the particular special education, related services, supplementary aids and services and placements.
(2) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the particular special education, related services, supplementary aids and services, or placements, or any combination, for which parental consent was revoked.

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services, under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

C. THE EVALUATION TEAM

Once the consent has been obtained from the parent, a team is formed who will have the responsibility of carrying out the evaluation process. The members of the evaluation team are the same as those who would serve on the child's IEP Team (should the child be found eligible), including the parents. If the child is suspected of having a specific learning disability the team may include other qualified professionals, as appropriate.

Team members on each evaluation team may differ; however, there are specific members and skills that must be represented on the team. The makeup of this team would include:

- The parents of the child;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or if the child is less than school age, an individual qualified to teach a child of his or her age;
- Not less than one special education teacher of the child, or where appropriate, not less than one special education service provider of the child;
- A representative of the local education agency who:
    - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with exceptionalities,
    - Is knowledgeable about the general education curriculum, and
    - Is knowledgeable about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of evaluation results;
- At least one person qualified to conduct individual diagnostic examinations of children; and
- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (K.S.A. 72-3404(u); K.A.R. 91-40-11(a); 34 C.F.R. 300.321; 34 C.F.R. 300.308)

K.S.A. 72-3404. Definitions.

(u) "Individualized education program team" or "IEP team" means a group of individuals composed of:
(1) The parents of a child;
(2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment;
(3) at least one special education teacher or, where appropriate, at least one special education provider of the child;
(4) a representative of the agency directly involved in providing educational services for the child who:
(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children;
(B) is knowledgeable about the general curriculum; and
(C) is knowledgeable about the availability of resources of the agency;
(5) an individual who can interpret the instructional implications of evaluation results;
(6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
(7) whenever appropriate, the child.

K.A.R. 91-40-11. Evaluation for specific learning disability; use of response to intervention process.

(a) If a child is suspected of having a specific learning disability and believed to need special education services because of that disability, the agency shall ensure that the evaluation of the child is made by the child's parent and a group of qualified professionals, including the following individuals:
(1) (A) The child's regular education teacher or, if the child does not have a regular education teacher, a regular classroom teacher qualified to teach a child of the child's age; or

(B) for a child of less than school age, an individual who is qualified to teach a child of the child's age; and
(2) at least one person qualified to conduct individual diagnostic examinations of children, including a school psychologist, speech-language pathologist, or remedial reading teacher.

D. TIMELINE FOR CONDUCTING THE INITIAL EVALUATION

Kansas has established a 60 school-day timeline consistent with federal regulations (K.A.R. 91-40-8(f); 34 C.F.R. 300.301(c)). The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services or completion of the evaluation report if the child is not found eligible for special education services.

For children who transfer from one public agency to another in the same school year, assessments are coordinated with the child's prior school, as necessary and as expeditiously as possible, to ensure prompt completion of an evaluation begun by the prior school (K.S.A. 72-3428(c)(4)).

INITIAL EVALUATION TIMELINE

The initial evaluation is to be completed within the 60-school-day timeline required in K.A.R. 91-40-8(f). There is no specified timeline for the initial evaluation itself, but several requirements must all be completed within 60 school days unless an agency can justify the need for a longer period of time or has obtained written parent consent for an extension of time. (K.A.R. 91-40-16 addresses IEP requirements, and K.A.R. 91-40-17 specifies the IEP Team participants.)

Preceding the initiation of this timeline, the school provides the parents with their Parent Rights Notice upon referral, Prior Written Notice for initial evaluation, and Request for Consent.

1. The 60-school-day timeline begins when the agency receives written parent consent to conduct the initial evaluation (K.A.R. 91-40-8(f)).
2. The initial evaluation is started within a reasonable time.
3. The initial evaluation is completed, and, on the basis of the evaluation data, the team determines eligibility for special education and related services.
4. The evaluation/eligibility team provides the parents with the Evaluation/Eligibility Report within a reasonable period of time (K.S.A. 72-3428(e)(2); 34 C.F.R. 300.306(a)(2); 34 C.F.R. 99.10(b)).
5. The school provides the parents with Prior Written Notice for proposed identification (can be combined with notice for initial services).
6. The school provides the parents with the Notice of the IEP meeting at least 10 calendar days before the meeting (K.A.R. 91-40-17(a)(2)). (NOTE: If the team believes that eligibility and IEP development may be discussed at the same meeting, the IEP Meeting Notice must describe all proposed special education decisions to be addressed at the meeting.)
7. The IEP Team meets and develops an IEP within 30 calendar days of determination of eligibility but not later than 60 school days from the receipt of written parent consent to conduct the initial evaluation (K.A.R. 91-40-8(h) and 34 C.F.R. 300.323(c)(1)).
8. The school provides the parents with Prior Written Notice and request for consent for the initial provision of special education and related services to the child.
9. Services on the IEP are implemented not later than 10 school days after written parent consent for provision of special education services is granted, unless reasonable justification for a delay can be shown (K.A.R. 91-40-16(b)(2)).
10. The 60-school-day timeline ends when the IEP is implemented.

Exceptions to the Timeline

There are only three specific instances when an extension of the 60 school-day timeline may be justified:

a. The parent of the child repeatedly fails or refuses to produce the child for the evaluation; or,
b. If a child enrolls in a new district after the evaluation has begun and before the determination of eligibility, however, the new district is required to make sufficient progress to ensure a prompt completion of the evaluation, and the parent and the school district must agree to a specific timeline for completion.
c. If the parent consents in writing to extend the timeline. (K.A.R. 91-40-8(f)

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; procedure.

(c) An agency shall ensure that:

(4) the assessments of any child who transfers from another agency during the school year are coordinated with the child's prior school, as necessary and as expeditiously as possible, to ensure prompt completion of an evaluation begun by the prior school.
K.A.R. 91-40-8(f)(g)

(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:

(1) Conduct the evaluation of the child;

(2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the parent as required by K.A.R. 91-40-17(a); and

(3) implement the child's IEP in accordance with K.A.R. 91-40-16.

(g) An agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met:

(1) The parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation.

(2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.

(h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services.

K.A.R. 91-40-16. IEP requirements.

(b) Except as otherwise provided in subsection (c), each agency shall ensure that the following conditions are met:

(1) An IEP is in effect before special education and related services are provided to an exceptional child.

(2) Those services to which the parent has granted written consent as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

(3) An IEP is in effect for each exceptional child at the beginning of each school year.

(4) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.

(5) Each teacher and provider described in paragraph (4) of this subsection is informed of the following:

(A) That individual's specific responsibilities related to implementing the child's IEP; and

(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

E. CONDUCTING THE EVALUATION

The initial evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child, the educational needs of the child, and the content of the child's IEP, including information related to enabling the child to be involved, and progress in the general education curriculum or, for preschool children, to participate in appropriate activities (K.S.A. 72-3428(b)(1)). In addition, the procedures must also lead to the determination of the present levels of academic achievement and functional performance of the child. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data to determine:

- if the child is a child with an exceptionality;
- whether the child needs special education and related services;

- the educational needs of the child;
- the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (K.S.A. 72-3428(i)(2); K.A.R. 91-40-8(c); 34 C.F.R. 300.305(a)(2)).

As stated previously, the data collected is critical not only for the purpose of determining whether a child is eligible for special education, but also to assist in the development of present levels of academic achievement and functional performance. Regulations clearly state that the evaluation must result in determining the content of the child's IEP (if found eligible) including information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities) (K.S.A. 72-3428(b)(1); 34 C.F.R. 300.304(b)(ii)). However, the evaluation should assist in the development of an instructional plan for the child if the child is not found to be eligible.

If the team has proposed to conduct the evaluation based only on existing data, the existing data must meet the requirements of this section for an evaluation.

1. Evaluation Procedures

During the evaluation process, the child is assessed in all areas related to the suspected exceptionality, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (K.A.R. 91-40-9(b)(1), K.A.R. 91-40-11(b), (c); 34 C.F.R. 300.304(c)(4)). All assessment tools and strategies must provide relevant information that directly assists in determining the educational needs of the child (K.A.R. 91-40-9(a)(9); 34 C.F.R. 300.304(c)(7)).

When conducting an evaluation, no single measure or assessment shall be used as the sole criterion for determining whether the child is a child with an exceptionality and for determining an appropriate educational program for the child. When selecting assessment tools to assist in gathering the evaluation data across the five sources of data, those conducting the evaluation must also ensure the following requirements are met (K.A.R. 91-40-9; 34 C.F.R. 300.304(b), (c)):

- Use a variety of assessment tools and strategies.
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has an exceptionality and needs special education, rather than measuring the child's English language skills.
- Assessments and other evaluation materials are:
    - selected and administered so as not to be discriminatory on a racial or cultural basis;
    - provided and administered in the child's native language or other mode of communication, and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
    - used for the purposes for which the assessments or measures are valid and reliable;
    - administered by trained and knowledgeable personnel;

- administered in accordance with instructions provided by the producer of the assessments (Note: if an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.)
- tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient;
- selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the exceptionality category being considered for the child. If the child is found eligible, this information translates into the present levels of academic achievement and functional performance (PLAAFPs) and forms the basis for making all the decisions in the IEP. If the child is not found eligible, this information assists the school in determining other appropriate instruction and supports for the child. Ultimately, at the close of an evaluation, the team should have enough information to support the child whether or not the child is eligible for special education. The team should be able to describe where the child is currently performing within the general education curriculum and standards as well as be able to describe how (or if) the child's unique learning characteristics are impacting the child's ability to access and make progress in the general education curriculum (or for early childhood, to participate in appropriate activities). Other issues that are impacting the child's ability to function in the learning environment should also be described so that the extent of the child's needs may be realized.

There are two methods of evaluation, (i)"the child's response to scientific, research-based intervention" and (ii)"a pattern of strengths and weaknesses", which are outlined in federal regulations with regard to the identification of students with specific learning disabilities. However, in Kansas, both are also appropriate to use to determine eligibility for any of the areas of exceptionality. Below is a brief description of each method of evaluation. (K.S.A. 72-3428(b)(4)

The process based on the child's response to scientific, research-based intervention ((i) above) is referred to as Response to Intervention (RtI), and is based on a school-wide multi-tier system of interventions for all students. The evaluation data collected during this process will include results of school-wide universal screening, benchmark assessments, diagnostic assessments and processes, and information collected during problem-solving, and most importantly, the results of the child's response to various types of interventions including slope (growth), rate (closing the gap), and fidelity of those interventions. Most often, the child's response to intervention data will take the form of charts and graphs, which reflect individual child growth under various intervention conditions. Teams analyze and interpret this information to determine whether the child is a child with an exceptionality and to determine and describe the educational needs of the child.

The process based on a child's pattern of strengths and weaknesses ((ii) above) tends to rely more heavily on the results of norm-referenced tests and other assessments. Evaluation teams must decide which tests are appropriate to use given the referral question and what type of assessment is needed to answer questions about an individual student's need for intervention and support. As described

before, evaluations must be individually planned based on the presenting concern and review of existing data. The automatic administration of any assessments, including intelligence or achievement tests, for an evaluation is not an appropriate practice. If the evaluation team determines that intelligence or achievement tests are needed, then these measures are analyzed to identify patterns within academic skills or cognitive functions. The administration of intelligence and achievement tests solely to examine the discrepancy is not necessary since discrepancy is not an eligibility requirement. If achievement or intelligence tests are administered, they should be interpreted in combination with other relevant data to identify the child's strengths and weaknesses, including the child's approach to tasks, characteristic patterns of learning, and difficulties in processing information. The richest source of this information comes from the data collection conducted during the General Education Intervention process, as well as data regarding interventions conducted during the initial evaluation process. Teams analyze and interpret this information to determine whether the pattern of strengths and weaknesses is characteristic of a child with an exceptionality and to determine and describe the child's educational needs.

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; notice; procedure.

(b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;

(2) not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child;

(3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(4) in determining whether a child has a specific learning disability, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.

(c) An agency shall ensure that:

(1) Assessments and other evaluation materials used to assess a child under this section:

(A) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(B) are provided and administered in the language and form most likely to yield accurate information on what the child knows and is able to do academically, developmentally and functionally, unless it is not feasible to so provide or administer;

(C) are valid and reliable for the specific purpose for which they are used;

(D) are administered by trained and knowledgeable personnel; and

(E) are administered in accordance with instructions provided by the producer of such tests;

(2) the child is assessed in all areas of suspected exceptionality;

(3) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(4) the assessments of any child who transfers from another agency during the school year are coordinated with the child's prior school, as necessary and as expeditiously as possible, to ensure prompt completion of an evaluation begun by the prior school.

K.A.R. 91-40-8. Evaluations.

(c)As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements:

(1) The evaluation team shall review existing evaluation data on the child, including the following information:

(A) Evaluations and information provided by the parent of the child;

(B) current classroom-based, local, and state assessments and classroom-based observations; and

(C) observations by teachers and related services providers.

(2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed to determine the following matters:

(A) Whether the child has a particular category of exceptionality or, in the case of a reevaluation of a child, whether the child continues to have such an exceptionality;

(B) what the present levels of academic achievement and educational and related developmental needs of the child are;

(C) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(D) whether, in the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

K.A.R. 91-40-9. Evaluation procedures.

(a) If assessment instruments are used as a part of the evaluation or reevaluation of an exceptional child, the agency shall ensure that the following requirements are met:

(1) The assessment instruments or materials shall meet the following criteria:

(A) Be selected and administered so as not to be racially or culturally discriminatory; and

(B) be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless this is clearly not feasible.

(2) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has an exceptionality and needs special education, rather than measuring the child's English language skills.

(3) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved and progress in the general curriculum or, for a preschool child, to participate in appropriate activities that could assist in determining whether the child is an exceptional child and what the content of the child's IEP should be.

(4) Any standardized tests that are given to a child shall meet the following criteria:

(A) Have been validated for the specific purpose for which they are used; and

(B) be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment.

(5) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

(6) Assessments and other evaluation materials shall include those that are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(7) Assessments shall be selected and administered to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the results accurately reflect the child's aptitude or achievement level or whatever other factors the assessment purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the assessment purports to measure.

(8) A single procedure shall not be used as the sole criterion for determining whether a child is an exceptional child and for determining an appropriate educational program for the child.

(9) Each agency shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(b) (1) Each child shall be assessed in all areas related to a suspected exceptionality, including, if appropriate, the following:

(A) Health;

(B) vision;

(C) hearing;

(D) social and emotional status;

(E) general intelligence;

(F) academic performance;

(G) communicative status; and

(H) motor abilities.

(2) Each evaluation shall be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(c) If a child is suspected of having a specific learning disability, the agency also shall follow the procedures prescribed in K.A.R. 91-40-11 in conducting the evaluation of the child.

K.A.R. 91-40-11. Evaluation for specific learning disability; use of response to intervention process.

(b) (1) A group evaluating a child for a specific learning disability may determine that the child has that disability only if the following conditions are met:

(A) The child does not achieve adequately for the child's age or meet state-approved grade-level standards, if any, in one or more of the following areas, when the child is provided with learning experiences and instruction appropriate for the child's age and grade level:

(i) Oral expression;

(ii) listening comprehension;

(iii) written expression;

(iv) basic reading skill;

(v) reading fluency skills;

(vi) reading comprehension;

(vii) mathematics calculation; and

(viii) mathematics problem solving; and

(B) (i) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in paragraph (b)(1)(A) when using a process based on the child's response to scientific, research-based intervention; or

(ii) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development that is determined by the group conducting the evaluation to be relevant to the identification of a specific learning disability, using appropriate assessments.

(2) A child shall not be determined to be a child with a specific learning disability unless the group elevating the child determines that its findings under paragraphs (b)(1))(A) and (B) are not primarily the result of any of the following:

(i) A visual, hearing, or motor disability;
(ii) mental retardation;
(iii) emotional disturbance;
(iv) cultural factors;
(v) environmental or economic disadvantage; or
(vi) limited English proficiency.

(c) (1) The group evaluating the child shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(2) In conducting the observation, the group may employ either of the following procedures:

(A) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(B) have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

2. Collecting Evaluation Data

Collecting relevant functional, developmental and academic information related to enabling the child to be involved in, and progress in, the general curriculum (or for a preschool child, to participate in appropriate activities) requires that data be collected not only about the child, but about the child's interactions in the curriculum, instruction, and environment as well. Every evaluation should be approached and designed individually based on the specific concerns and the selection of assessment tools based on the information needed to answer the eligibility questions. It would be inappropriate to use the exact same battery of assessments for all children or to rely on any single tool to conduct an evaluation.

Data must be collected from the five sources referred to in Kansas as GRIOT. GRIOT represents five sources of data that teams need to be aware of and use as appropriate. The following is a discussion of each of the five sources of data:

G – General Education Interventions/Curriculum Progress: During the initial evaluation, we must look at two different "G"s:

(1) General Education Interventions: Whether you're operating within a school system that uses individual child problem solving (problem-solving teams, student information or intervention team (SIT), student assessment team (SAT), Care team, etc.) and/or a school-wide multi-tier model of interventions, when a child is referred for an initial evaluation there will be data on what scientific, research-based interventions have been used with the child and specific data about the effectiveness and results of the implementation of the interventions. K.A.R. 91-40-7(c) requires that results of the interventions provided to the child prior to a referral for an initial evaluation are documented and provided to the parent. Documentation may be done through a written intervention plan developed by the problem-solving team, which may include data that the child was provided appropriate instruction in general education settings, including repeated assessments of achievement at reasonable intervals, reflecting formal assessment of child progress during instruction. (See Chapter 2, Screening and General Education Interventions.)

(2) General Education Curriculum Progress: An evaluation team needs to understand how the child is progressing in general education curriculum across settings with the available supports. To do this they must understand the outcomes of the general education curriculum and how the skills represented in those outcomes relate to the needs of each child. Are the skills needed, for the child we are working with, different from the skills that general education children need? Is the

instruction required for the child to learn those skills different? The general education curriculum outcomes and the supports available through general education are unique to each school. Gaining an understanding of what support is available and the level of support needed by the child is one of the most important parts of the evaluation.

R – Record Review: The evaluation team should also include a review of records as part of the evaluation. These records would include such things as information provided by the parents, current classroom-based assessments, information from previous services providers, screenings, previous evaluations, reports from other agencies, portfolios, discipline records, cumulative files, and other records.

I – Interview: It is important to understand the perceptions of significant adults in the child's life and of the child himself. Parents, teachers, and the child can all typically provide insight into areas of strengths and needs. Interviews can also provide information about significant historical events in the child's life as well as about his performance in the classroom and other settings.

O – Observation: A district must ensure the child is observed in the child's learning environment (including the regular education classroom setting) to document the child's academic performance and behavior in the areas of difficulty (K.A.R. 91-40-11(c); 34 C.F.R. 300.310). In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. If the child is already in an educational setting, the observation should be conducted in that setting, as opposed to bringing them into a different setting just for observation. These observations could include structured observations, rating scales, ecological instruments (e.g., Eco-Behavioral Assessment Software System (EBASS), The Instructional Environment System-II (TIES-II), behavioral interventions, functional analysis of behavior and instruction, anecdotal, and other observations (conducted by parents, teachers, related services personnel, and others). The purpose of the observation is to help the evaluation team understand the extent to which the child's skills are impacting their ability to participate and progress in a variety of settings. Observations allow you to see firsthand how a child is functioning in naturally occurring settings. Observation data can also allow you to compare the child's' behavior to that of peers in the same setting. Observation data helps us to understand not only the child's current functional performance but also the level of independence demonstrated which can help determine necessary supports.

T – Test: A wide range of tests or assessments may be useful in determining an individual child's skills, abilities, interests, and aptitudes. Typically, a test is regarded as an individual measure of a specific skill or ability, while assessment is regarded as broader way of collecting information that may include tests and other approaches to data collection. Standardized norm-referenced tests are helpful if the information being sought is to determine how a child compares to a national group of children of the same age or grade. Criterion-reference tests are helpful in determining if the child has mastered skills expected of a certain age or grade level. Tests typically provide specific information but are never adequate as a single source of data to determine eligibility for special education. Because tests require a controlled testing environment, the result is that children are removed from their learning environments to participate. This is a very intrusive way of gathering data and the value of the data obtained should always be weighed carefully against the cost of missed class time. For this reason, tests should be thoughtfully selected and be used for specific purposes when data cannot be obtained through other sources. Some test information may already have been collected during the general education intervention process, especially if the child

attends a school that uses school-wide benchmark assessment. However, additional information may need to be collected during the initial evaluation. This might include curriculum-based assessments (CBA), measurements (CBM), or evaluations (CBE), performance-based assessments (i.e., rubric scoring), or other skill measures such as individual reading inventories. The testing that needs to be done will vary depending on what information already has been collected and the needs of the individual child. Diagnostic testing might include measures of reading, math, written language, or other academic skills, or tests of motor functioning, speech/language skills, adaptive behavior, self-concept, or any domain of concern. As with all types of data collection, the information from testing needs to be useful for both diagnostic and programmatic decision-making.

GRIOT offers a framework in which to organize and structure data collection. It is not that any data source or assessment procedure is inherently good or bad. All procedures and tools are appropriate as long as they are selected thoughtfully and for the appropriate purposes. A team will not necessarily use all data sources every time an evaluation is conducted. Thoughtful planning will need to be given for each child to ensure that the team is using the appropriate tools to collect data useful for both making the eligibility determination and for program planning.

F. ELIGIBILITY DETERMINATION AND DOCUMENTATION

Eligibility decisions are made by a team of qualified professionals and the parents of the child who has been evaluated [K.A.R. 91-40-10(a)(1)]. The parents participate with the team of qualified professionals in every aspect of the eligibility determination, except that parents are not required to certify whether an eligibility report reflects their conclusions and are not required to submit a separate statement if it does not. Because the team of qualified professionals and the parents have almost identical responsibilities in the eligibility determination, this handbook uses the term "team" to include parents.

At the time the evaluation is completed and the information is compiled, the team should schedule a time to convene in order to make the determination of eligibility. Parents are to be provided an opportunity to participate in the eligibility meeting, which can be conducted at the same time as the IEP team meeting. The school must provide a notice of the meeting at least 10 calendar days prior to the meeting date that includes the requirements in K.A.R. 91-40-17(b)(1).

The team must ensure that information obtained from all sources used in the evaluation is documented and carefully considered (K.A.R. 91-40-10(d)(2); 34 C.F.R. 300.306(c)(1)(ii)). The parents and qualified professionals review the results of the initial evaluation to determine:

(1) whether the child is a child with an exceptionality as defined in federal and state laws and regulations (K.A.R. 91-40-1(k), (w); and
(2) the educational needs of the child (K.A.R. 91-40-10(a)(1); 34 C.F.R. 300.306(a)).

When interpreting evaluation data for the purpose of making these determinations, the team must:

- draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- ensure that information obtained from all of these sources is documented and carefully considered (K.A.R. 91-40-10(d); 34 C.F.R. 300.306(c)(1)(i), (ii)) .

The team must ensure that the child meets the definition of one of the categories of exceptionality and, as a result of that exceptionality, needs special education and related services (i.e., 2 pronged test) (K.A.R. 91-40-1(k), (w); 34 C.F.R. 300.8). If a child meets the definition of an exceptionality category but

does not need special education and related services, the child will not be determined to be eligible. If the child has a need for special education and related services but does not meet the definition of an exceptionality category, the child will not be determined to be eligible. In the case of a child who is found to have a disability, but does not need special education and related services, a referral for a 504 evaluation may be considered. The team may utilize the "Eligibility Indicators" document at https://www.ksde.gov/student-success/special-education/special-education-resources-for-families-and-educators/eligibility when making the eligibility determination.

1. Determining Whether the Child is a Child with an Exceptionality

The team reviews the data to determine whether or not the child is a child with an exceptionality. To do this, team members compare the data about the child to see if there is a match to one of the exceptionality categories defined in the regulations. However, even when the data point to a particular area of exceptionality, the team must examine exclusionary factors before determining the child is a child with an exceptionality.

Regulations are very clear with regard to the fact that a child must NOT be determined to be a child with an exceptionality if:

(a) the determinant factor is:
- Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in the Elementary and Secondary Education Act as phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies);
- Lack of appropriate instruction in math; or
- Limited English proficiency ; and

(b) the child does not otherwise meet the eligibility criteria as a child with an exceptionality (K.S.A. 72-3428(f); K.A.R. 91-40-10(c); 34 C.F.R. 300.306(b)).

There are unique issues that must be examined before a child may be determined to have a specific learning disability. As defined in K.A.R. 91-40-1 (mmm), "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Dyslexia is a specific learning disability. In recent years, much debate has occurred regarding dyslexia and whether it is covered under the Individuals with Disabilities Education Act (IDEA) and in Kansas. The IDEA, as well as Kansas statute and regulations, recognize dyslexia as a disability as stated within the definition of specific learning disability.

The term specific learning disability shall not include learning problems that are primarily the result of any of the following: (1) Visual, hearing, or motor, disabilities; (2) intellectual disability; (3) emotional disability; or (4) environmental, cultural, or economic disadvantage. It is important that the team attend to collecting the data needed to examine these issues prior to and/or as part of the initial evaluation. According to K.A.R. 91-40-11(b) (34 C.F.R. 300.309(a)), the group evaluating a child for a specific learning disability collects the following:

(a) Data to determine that the child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

- oral expression;
- listening comprehension;
- written expression;
- basic reading skill;
- reading fluency skills;
- reading comprehension;
- mathematics calculation;
- mathematics problem solving.

Additionally, in order for a child to be eligible as a child with a specific learning disability, the evaluation and eligibility report must document that the child meets the following conditions:

a. The child does not achieve adequately for the child's age or to meet State-approved grade- level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards,

AND

(i) The child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention;

OR

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.

b. The determinate factor for why the child does not achieve adequately for the child's age or does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
   - A visual, hearing or motor disability;
   - intellectual disability;
   - emotional disability;
   - cultural factors;
   - environmental or economic disadvantage; or
   - limited English proficiency (K.A.R. 91-40-9(a)(2)(3), K.A.R. 91-40-11(b); 34 C.F.R. 300.309(a)(3)).

As previously discussed in the Conducting the Evaluation section, under Evaluation Procedures, the use of discrepancy between ability and achievement is not good practice and should not be used as the determining factor when documenting a pattern of strengths and weaknesses.

If the evaluation data indicates there is a match with a particular category of exceptionality and the team has ruled out the presence of any exclusionary factors, the team may determine that the child meets one of the requirements of eligibility as a child with an exceptionality (Prong 1 of the test of eligibility). If there is not a match or exclusionary factors are present, the team must determine that the child does not meet the eligibility of a child with an exceptionality.

2. Determining Whether the Child Needs Special Education and Related Services

The second prong of the test of eligibility is to determine whether or not the child needs special education and related services.

Definition of Special Education

Special education means specially designed instruction (K.A.R. 91-40-1(kkk); 34 C.F.R. 300.39(a)(1)),

and, that specially designed instruction means adapting the content, methodology or delivery of instruction to address the unique needs of a child that result from the child's exceptionality to ensure access of the child to the general education curriculum in order to meet the educational standards that apply to all children (K.A.R. 91-40-1(lll); 34 C.F.R. 300.39(b)(3)(i), (ii)). This implies that in order to have a need for special education, the child has specific needs which are so unique as to require specially designed instruction in order to access the general education curriculum. If the child only needs accommodations or modifications that do not require specially designed instruction, the child's needs may be met through a Section 504 plan or other means instead of an IEP.

Related Services as Special Education

The IDEA gives states the authority to define certain related services as special education rather than a related service (34 C.F.R. 300.39(a)(2)(i)). Accordingly, under Kansas law any related service is special education if the service consists of specially designed instruction to meet the unique needs of the child (K.A.R. 91-40-1(kkk)(2)). Further, occupational therapy, physical therapy, and interpreter services for deaf children are special education if a child would be educated in a more restrictive environment without any of these services (K.A.R. 91-40-1(kkk)3)). Thus, if the team determines a child with a disability needs a service that meets these criteria, the child needs special education and meets the second prong of the eligibility test. This determination must be made based on the child's individual needs, not based on the child's disability category.

Using Data to Determine Eligibility

Kansas regulations at K.A.R. 91-40-7(c), require that prior to referral for an initial evaluation the school must have data-based documentation of having provided appropriate instruction to the child and having implemented educational interventions and strategies for the child, along with repeated assessments of achievement at reasonable intervals, which reflect formal assessment of the child's progress during instruction. The results of which indicate that the child is suspected of having an exceptionality and may require special education and related services. If the school is implementing a multi-tiered model of intervention, it will have data regarding the child's needs related to the intensity of instruction and supports required for the child to be successful.

The team must review the evaluation data in such a way as to understand the extent of the child's needs with regard to specially designed instruction. The team should be able to use the data to describe the intensity of the support needed to assist the child in accessing and progressing in the general education curriculum. It is only through this discussion that the team can determine whether or not the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided without the support of special education.

If the team determines that the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided in regular education without the support of special education, the team may determine that the child needs special education and related services (Prong 2 of the eligibility test). If the data suggests the child's needs for instruction can be provided within regular education without the support of special education and related services, the team must determine that the child is not in need of special education and related services.

3. Eligibility Report

The evaluation team shall ensure that the information obtained from all sources is documented and considered. After carefully considering all data and making the eligibility determination, the team then must document the decision made regarding the child's eligibility for special education and related

services. Once the evaluation report and documentation of eligibility has been completed, each team member, other than the parent, must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions (K.A.R. 91-40-10(a)(2); 34 C.F.R. 300.311(b)). (See Evaluation/Eligibility Report Content Checklist at https://www.ksde.gov/student-success/special-education/special-education-resources-for-families-and-educators/eligibility).

The evaluation report serves as the documentation of the child's eligibility. The evaluation report must be provided, at no cost, to the parent (K.A.R. 91-40-10(b); 34 C.F.R. 300.306(a)(2)). Additionally, the school is not required to classify a child with an exceptionality according to the child's category of exceptionality if such child is regarded as a child with an exceptionality and is provided FAPE (K.A.R. 91-40-10(g)).

There are specific requirements for reporting the eligibility determination (K.A.R. 91-40-10(a), (e); 34 C.F.R. 300.311).

The evaluation report must include the following statements:

a. whether the child is a child with an exceptionality;
b. the basis for making the determination, including an assurance that the determination was made in accordance with applicable laws and regulations;
c. the relevant behavior noted during the observation of the child; and for specific learning disability the relationship of that behavior to the child's academic functioning;
d. the educationally relevant medical findings, if any;
e. for a child determined to have a learning disability, the report must include documentation of the following:
    (i) the child does not achieve adequately for the child's age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards;
        AND
        - the child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention; OR
        - the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.

Kansas State Policies on the amount and nature of student performance data collected and general education services provided

The State's policy regarding the amount and nature of student performance data collected and general education services provided when a child participates in a process that that assesses the child's response to scientific, research-based intervention is provided in Kansas regulation K.A.R. 91-40-7(c), and is as follows:

(c) Any board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:
(1) School personnel have data-based documentation indicating that general education interventions and strategies would be inadequate to address the areas of concern for the child.
(2) School personnel have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met:
(A) The child was provided with appropriate instruction in regular education settings that was delivered by qualified personnel.
(B) The child's academic achievement was repeatedly assessed at reasonable intervals that reflected formal

(ii) the team determines the reason the child does not achieve adequately for the child's age, does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
- A visual, hearing, or motor disability;
- intellectual disability;
- emotional disability;
- cultural factors;
- environmental or economic disadvantage; or
- limited English proficiency.

(iii) if the child has participated in a process that assesses the child's response to scientific, research-based intervention (RtI), the report must also document
- the instructional strategies used; and
- the student-centered data collected.

(iv) Documentation that the child's parents were notified about the process, including the following information:
- the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided
- strategies for increasing the child's rate of learning; and
- the parent's right to request an evaluation (K.A.R. 91-40-10(e), (f); K.A.R. 91-40-9(a)(2), (3), K.A.R. 91-40-11; 34 C.F.R. 300.309(a)(3); 34 C.F.R. 300.311(a)); and

f. Signatures of each team member, except the parent, indicating whether the report reflects their conclusion. If it does not reflect the team member's conclusion, the team member must submit a separate statement presenting that team member's conclusion.

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; procedure.

(e) Upon completion of the administration of assessments and other evaluation materials:
(1) The determination of whether the child is an exceptional child shall be made by a team of qualified professionals and the parent of the child in accordance with this section; and
(2) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(f) In making a determination of eligibility under this section, a child shall not be determined to be an exceptional child if the determinant factor for such determination is lack of instruction in reading, including instruction using the essential components of reading instruction, math or limited English proficiency.

(g) (1) If it is determined that a child is an exceptional child, the agency shall seek consent from the parent of the child to provide special education and related services to the child. No such services shall be provided until consent is given by the parent.
(2) If the parent of a child refuses to consent to the provision of services, or fails to respond to a request for consent to services, the agency:
(A) Shall not initiate any procedure or proceeding under this act to gain authority to provide services to the child;
(B) shall not be considered to be in violation of the requirement to provide a free appropriate public education to the child; and
(C) shall not be required to convene an IEP meeting or develop an IEP for the child.

K.A.R. 91-40-1. Definitions.

(k) "Child with a disability" means the following:
(1) A child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services; and
(2) for children ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services.

(w) "Exceptional children" means children with disabilities and gifted children.

(kkk) "Special education" means the following:
(1) Specially designed instruction, at no cost to the parents, to meet the unique needs of an exceptional child, including the following:
(A) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(B) instruction in physical education;
(2) paraeducator services, speech-language pathology services, and any other related service, if the service consists of specially designed instruction to meet the unique needs of a child with a disability;

(3) occupational or physical therapy and interpreter services for deaf children if, without any of these services, a child would have to be educated in a more restrictive environment;
(4) travel training; and
(5) vocational education.

K.A.R. 91-40-10. Eligibility determination.

(a) (1) After completion of appropriate evaluation procedures, a team of qualified professionals and the parent of the child who has been evaluated shall prepare a written evaluation report that includes a statement regarding each of the following matters:
(A) The determination of whether the child has an exceptionality;
(B) the basis for making the determination;
(C) the relevant behavior noted during the observation of the child;
(D) the relationship of that behavior to the child's academic functioning;
(E) educationally relevant medical findings, if any; and
(F) if the child was evaluated for a specific learning disability, the additional information specified in subsection (e).
(2) Each team member shall certify in writing whether the report reflects the member's conclusion. If it the report does not reflect that member's conclusion, the team member shall submit a separate statement presenting the member's conclusion.

(b) Each agency shall provide, at no cost, a copy of the evaluation report to the child's parent.

(c) An evaluation team shall not determine a child to be an exceptional child if the determinant factor for that eligibility determination is the child's lack of appropriate instruction in reading or mathematics or limited English proficiency, and if the child does not otherwise qualify as a child with an exceptionality.

(d) Each evaluation team, in determining whether a child is an exceptional child and what the educational needs of the child are, shall meet the following requirements:
(1) The evaluation team shall draw upon information from a variety of sources, including the following:
(A) Aptitude and achievement tests;
(B) parent input;
(C) teacher recommendations;
(D) physical condition;
(E) social or cultural background; and
(F) adaptive behavior.
(2) The evaluation team shall ensure that the information obtained from all of the sources specified in paragraph (1) of this subsection is documented and considered.

(e) If the evaluation team and the parent determine the parent's child to be a child with a specific learning disability, the evaluation team and the parent shall prepare a written evaluation report that includes a statement regarding each of the following matters:
(1) An indication of whether the child has a specific learning disability;
(2) the basis for making the determination, including an assurance that the determination has been made in accordance with applicable laws and regulations;
(3) the relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
(4) educationally relevant medical findings, if any;
(5) an indication of whether the child meets the following criteria:
(A) Does not achieve adequately for the child's age or meet state-approved grade-level standards; and
(B) (i) Does not make sufficient progress to meet age standards or state-approved grade-level standards; or
(ii) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development; and
(6) the determination of the team concerning the effect of the following factors on the child's achievement level:
(i) Visual, hearing, or motor skills disability;
(ii) mental retardation;
(iii) emotional disturbance;
(iv) cultural factors;
(v) environmental or economic disadvantage; and
(vi) limited English proficiency.

(f) If the child has participated in a process that assessed the child's response to scientific, research-based intervention, the evaluation report shall also address the following matters:
(1) The instructional strategies used and the student-centered data collected; and
(2) the documentation indicating that the child's parent was notified about the following:
(A) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
(B) strategies for increasing the child's rate of learning; and
(C) the parent's right to request an evaluation.

(g) (1) Except as provided in paragraph (2) of this subsection, after a child has been determined to be a child with an exceptionality and has been provided special education or related services, an agency shall conduct a reevaluation of the child before terminating special education or related services to the child.

G. PRIOR WRITTEN NOTICE FOR IDENTIFICATION

After the eligibility determination is made, the school is required to provide Prior Written Notice to the parents that the school proposes to initially identify the child as a child with an exceptionality and that the child requires special education and related services. Likewise, school personnel must give Prior Written Notice to the parents if they determine that a child is not eligible for special education or related services. The required content of the Prior Written Notice is identical to the content described earlier in Section B of this chapter. However, parent consent is not required for identification of a child with an exceptionality. (See Prior Written Notice and Consent for Identification sample form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice)

H. INDEPENDENT EDUCATIONAL EVALUATION

After an initial evaluation (or reevaluation, see chapter 7) is completed, if the parents disagree with the school's evaluation, they have the right to ask for an independent educational evaluation at public expense. If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the school, if it meets the school's criteria, in any decision made with respect to the provision of FAPE to the child.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the child in question. Public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

If the parent requests an independent educational evaluation, the school must either:

- Provide information to the parent about where an independent educational evaluation can be obtained, the agency criteria (which may include qualifications of examiners and location to obtain the evaluation); and
- Ensure that the evaluation is provided at public expense, unless a special education due process hearing officer determines that the independent educational evaluation did not meet agency criteria; or
- Initiate a due process hearing to show that the school's evaluation was appropriate.

If a parent requests an independent educational evaluation, the agency may ask the reason for the objection to the public evaluation. However, the explanation by the parent shall not be required, and the agency shall not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

A due process hearing would determine whether the school must pay for the independent educational evaluation. If the school's evaluation is found to be appropriate and the parents still want an independent educational evaluation, the expense is the responsibility of the parents. When an independent educational evaluation is conducted, the school or a special education due process hearing officer, or both must consider the results of the independent educational evaluation in decisions made with respect to a free appropriate public education for the child.

If an independent educational evaluation is provided at public expense, the criteria under which the evaluation is obtained must be the same as the criteria that the school uses when it initiates an evaluation. These criteria may include the location of the evaluation and the qualifications of the

examiner. The credentials of the independent evaluator or evaluators must be comparable to the school's evaluators. The school may set reasonable limitations on the costs for which it will be responsible. The school may have to exceed those costs if necessary to ensure that the independent educational evaluation meets the child's unique needs.

If a special education due process hearing officer requests an independent educational evaluation, the evaluation is provided at public expense. The school either pays the full cost of the evaluation, or ensures that the evaluation is otherwise provided at no cost to the parents. A parent is entitled to only one independent education evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees (34 C.F.R. 300.502(b)(5)).

K.A.R. 91-40-12. Right to independent educational evaluation.

(a) (1) Subject to the conditions specified in this regulation, the parent of an exceptional child shall have the right to request an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the agency.
(2) The parent shall be eligible for only one independent educational evaluation at public expense in response to an evaluation conducted by the agency.

(b) If a parent requests an independent educational evaluation of the child, the agency, without unnecessary delay, shall take one of the following actions:
(1) Initiate a due process hearing to show that its evaluation is appropriate; or
(2) (A) Provide information to the parent about where an independent educational evaluation may be obtained and the agency criteria prescribed under subsection (g)that apply to independent educational evaluations; and
(B) take either of the following actions:
(i) Pay the full cost of the independent educational evaluation or otherwise ensure that the evaluation is provided at no cost to the parent; or
(ii) initiate a due process hearing to show that the evaluation obtained by the parent does not meet agency criteria.

(c) If the agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent shall still have the right to an independent educational evaluation, but the agency shall not be required to pay the cost of that evaluation.

(d) If a parent requests an independent educational evaluation, the agency may ask the reason for the objection to the public evaluation. However, the explanation by the parent shall not be required, and the agency shall not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(e) If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. The results of this evaluation may be presented as evidence at a due process hearing regarding that child.

(f) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be paid by the agency.

(g) (1) Subject to the provisions of paragraph (2) of this subsection, each agency shall adopt criteria for obtaining an independent educational evaluation at public expense. The criteria may include the qualifications of the examiner and the location of the evaluation, but shall not impose other conditions or timelines for obtaining the evaluation.
(2) The criteria adopted by an agency under paragraph (1) of this subsection shall be the same as the criteria that the agency uses when it conducts an evaluation, to the extent that those criteria are consistent with the parents' right to obtain an independent educational evaluation.

QUESTIONS AND ANSWERS ABOUT INITIAL EVALUATION AND ELIGIBILITY

1. Can a district require a mandatory time period for the implementation of interventions before a child can be referred for a special education evaluation?

No, a child who is suspected of having a disability must be evaluated, and it is inconsistent with federal law to use a GEI system in a manner which delays evaluations of children who are suspected of having a disability. Whether the system is called a student information or intervention team (SIT), general education intervention (GEI), Multi-Tier System of Supports (MTSS), or Response to Intervention (RtI), it cannot be used in a manner which results in delaying evaluation of children who are suspected of having a disability.

There are numerous court decisions stating that requiring a student to go through one of these systems, or to stay in one of these systems, for a specified time, before being referred for a special

education evaluation is inconsistent with law. The U.S. Department of Education's Office of Special Education Programs released a memorandum on January 25, 2011, which expresses the same opinion. If school personnel suspect a child has a disability and needs special education services, the school has a legal duty to refer the child for an evaluation even if the child has not been involved in one of these systems or has only just begun to be involved in one of these systems. Our state regulations, at K.A.R. 91-40-7(c)(3), expressly authorize districts to evaluate a child without going through any GEI if the child's parents consent to an evaluation and the school agrees that an evaluation is appropriate.

2. If the district decides not to evaluate a child, is the district required to continue the GEI process with the student?

   No. There is no mandated intervention process for when a district or cooperative refuses to evaluate a child. When this occurs the district or cooperative is required to give the parents a Prior Written Notice telling the parents that the child will not be evaluated and telling the parents why that decision was made. This notice also tells parents that certain procedural safeguards are available to the parents, including a right to initiate a due process hearing. There is not a legal requirement that a student participates in a GEI process for eight weeks or for any other specified time, including after a district or cooperative has refused a request for an evaluation.

3. What triggers a referral for a special education evaluation?

   There are four ways that a child may be referred for a special education evaluation. (1) The parent requests an evaluation; (2) the child is referred based on an early childhood screening or from a Part C Infant-Toddler program; (3) an adult student requests an evaluation; or (4) school personnel suspect that a child may be a child with an exceptionality and need special education services. Typically, school personnel determine this through the GEI process.

4. What happens when a child transfers to a different school district during the initial evaluation?

   Assessments for a child who transfers to a different school district during the initial evaluation are coordinated with the child's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. The 60 school day timeline for the initial evaluation may be extended only if the new school is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the new school agree to a specific time when the evaluation will be completed.

5. How can school staff ensure that evaluation materials and procedures used to assess racially and culturally diverse children are appropriate?

   It is important that professionals conducting evaluations be aware of the potential bias that exists in all areas of assessment and seek to choose techniques and tools that reduce bias to the largest extent possible. This may involve being more aware of the growing body of research literature on this topic, developing a deeper understanding of the cultural and linguistic diversity represented in the school, purchasing evaluation materials that have been developed to reduce bias, and utilizing trained bilingual examiners. Further, professionals conducting the evaluation must document the extent that an assessment was not conducted under standard conditions (e.g., giving a standardized test in a language other than the one it was originally developed for). Teams should carefully consider the presence of bias and interpret the results of that evaluation accordingly.

6. What are the qualifications of the people doing the assessment?

   The qualifications of the examiner will depend on the type of assessment being administered as well as the suspected exceptionality of the student. Each assessment must be given by "trained and knowledgeable" personnel in accordance with any instructions provided by the producer of the assessment (34 C.F.R. 300.304(c)(1)(iv) and (v); K.A.R. 91-40-9(a)(4)(B)). Many standardized test instructions include a description of the qualifications required of the examiner, and the examiner must meet those qualifications. Further, if the student is being evaluated for a specific learning disability, the evaluation team must include at least one person qualified to conduct individual diagnostic examinations, such as a school psychologist, speech-language pathologist, or remedial reading teacher (34 C.F.R. 300.308(b); K.A.R. 91-40-11(a)(2)). It is important to note that assessments during initial evaluations encompass much more than test administration. When planning to collect the data for an evaluation, teams should determine which individuals have the most appropriate skills and knowledge to obtain whatever data is needed.

7. May an initial evaluation consist only of existing data?

   Yes. Existing data should be reviewed as a part of any initial evaluation. The review of existing data may occur without parent consent. This would include evaluations and information provided by the parents, current classroom-based, local, or state assessments; classroom-based observations; and observations from teachers and related service providers. For an initial evaluation, such data would help the team decide if more information is needed to determine eligibility–both the presence of an exceptionality and the determination of the child's educational need. The existing data also will help identify the present levels of academic achievement and related developmental needs of the child; whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child; and to participate, as appropriate, in the general education curriculum, or for preschool-age children, appropriate activities. If the team has enough information from all five required sources of data (GEI or Screening, Record Review, Interviews, Observations, Tests), the team may conclude that no additional data are needed and eligibility may be determined based upon existing data. Once the team determines that no additional data are needed, parent consent should be obtained to then conduct the evaluation based on that existing data. The Prior Written Notice would include: (1) a statement of this fact and the reasons for it; and (2) a statement of the right of the parents to request additional assessments to determine whether the child is a child with an exceptionality. Parent consent to conduct the initial evaluation is required, whether or not additional data is needed.

8. Is this (an initial evaluation may consist of only existing data) also true for children transitioning from Part C Services?

   Yes. When conducting initial evaluations on young children transitioning from Infant Toddler Services (Part C) to Preschool Services (Part B), evaluation teams are encouraged to review and use existing assessment data, progress monitoring, and other information presented in the Individual Family Service Plan (IFSP). Often, the information presented may be useful in determining if the child has a disability, whether the child needs special education and related services, and the nature and extent of the special education and related services that the child needs. If projected services will be changed considerably from what was provided in the IFSP, it may be necessary to conduct further assessments or gather additional information to identify the child's present levels of academic achievement and functional performance (related developmental needs) of the child;

and determine whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate in appropriate activities.

9. What starts the 60-school-day timeline for evaluation?

   The 60-school-day timeline for evaluation begins when the agency receives written parental consent to conduct the initial evaluation. When an agency receives a parent's request for an initial evaluation of their child, the agency must provide the parent with a Prior Written Notice, either proposing to conduct the requested evaluation or refusing to conduct the requested evaluation. The 60-school-day timeline cannot be delayed by unreasonably delaying a response to a parent's request for an initial evaluation. Under most circumstances, the Kansas State Department of Education considers 15 school days to be a reasonable time in which to respond to a parent's request for an evaluation. Any delay in excess of 15 school days in responding to a parent's request for an evaluation with a Prior Written Notice will require a reasonable justification for the delay. (See Chapter 1.) It is recommended that the date the parent's request for evaluation is received is noted somewhere in the student's education records.

10. What is required to successfully meet the 60-school-day timeline for evaluation?

    If the student is eligible, the timeline is successfully met when the IEP is implemented. If the student is not eligible, the timeline is successfully met when the Prior Written Notice is given to the parents indicating that it has been determined that a child is not eligible for special education or related services.

11. What is the parent's role in the review of existing data?

    As members of the evaluation team, parents may review any existing data, as well as provide existing data to the evaluation team. Parents may contribute relevant medical data or other records that the parent has concerning the child.

12. Does an evaluation report have to specify the particular category of exceptionality under which a child has been identified?

    Kansas regulations, at K.A.R. 91-40-10(a)(1)(A), require that the evaluation report include a statement as to whether the child has an exceptionality. These regulations do not require that the evaluation report include the particular category of exceptionality in which a child has been identified.

    However, no information should be withheld from parents. It is important that parents be informed of the particular category of exceptionality in which eligibility for special education was determined, and which is reported by the school to the state through the Management Information System (MIS). In a court case where the school did not inform the parents that the special education evaluation identified their child as having autism, the United States Circuit Court of Appeals said:

    "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. . . . These procedural violations, which prevented Amanda's parents from learning critical medical information about their child, rendered the accomplishment of the IDEA's goals –and the achievement of a FAPE –impossible." *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892, 894 (9th Cir. 2001).

    In essence, this court said that the IEP team could not create a valid IEP that addressed the child's unique needs if required members of the team (the parents) were not fully informed of the evaluation results, which indicated their child had autism. Although this court did not address it, when a parent is not fully informed of the results of an evaluation, it is also likely that any consent

given by the parent will be deficient. For these reasons, it is recommended that the evaluation report include the specific category of exceptionality in which a child is identified as an exceptional child. If the category of exceptionality is not identified in the evaluation report, it is important that school personnel document in some other way that the parents have been informed of this important information.

13. There are several categories of disability that reference particular disorders within them (e.g., specific learning disability (SLD) includes perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia; other health impairment (OHI) may include asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome; emotional disability (ED) includes schizophrenia; etc.) Does this mean that the school team is diagnosing these disorders? Does this mean the school team must obtain (e.g., from a physician or clinical psychologist) a diagnosis of one of these disorders?

    No. The work of a school psychologist and evaluation/eligibility team needs to focus on the question of eligibility within the categories defined by state and federal special education regulations. This does not require the school team to diagnose particular disorders associated with any category of disability within the Individuals with Disabilities Education Act (IDEA). What it requires is that data exists to meet both prongs of eligibility (e.g., presence of an exceptionality, as defined in regulation, and need for specially designed instruction).

    A diagnosis made outside a school team is not always needed. The definition of the category should guide school teams regarding this matter. For example, when a team is considering the category of OHI, which, by definition requires the presence of a chronic or acute health problem, health information would be required. On the other hand, a diagnosis is not required by the definition of ED or SLD. A diagnosis may provide supporting documentation, but it is not required for a determination of eligibility.

    Parents may have already obtained information about particular disorders their child may have and may provide it to the school team. A school team may also determine that additional information from clinical or medical personnel is needed, but if so, the school would need to obtain this at no cost to the parents. This information should be considered by the evaluation/eligibility team during the process of determining eligibility.

14. What evidence is needed to show that behavior “adversely affects educational performance”?

    This is a part of the definition for several disability categories. Documentation of this may include information regarding things such as: exclusion from the classroom or extracurricular activities; inability to access the general education curriculum; low achievement scores; inability to participate in group learning activities; failing grades; inability to progress to the next grade level or failure to earn credit; etc. While low achievement scores may be supporting evidence of the disability adversely affecting the student’s educational performance, it should not be the sole criterion for determination of eligibility.

15. If the eligibility determination team fails to reach consensus about a child’s eligibility for special education, who makes the decision?

    The team should try to reach consensus about the eligibility decision. If a member of the school team does not agree with the others, they are must record their disagreement on the eligibility

report and submit a separate statement presenting their conclusions. Parents who disagree with the report may, but are not required to, submit a separate statement. However, if the team cannot reach agreement, the final decision rests with the person who serves as the LEA representative at the eligibility determination meeting.

16. Because KSDE discourages use of aptitude/achievement discrepancy as the determining factor for eligibility under the category of specific learning disability (SLD), is it still considered good practice to use cognitive assessment?

    Discouraging the use of IQ-achievement discrepancy as the determining factor for eligibility determination does not mean discouraging the appropriate use of IQ and achievement tests. However, the automatic administration of any intelligence or achievement test for evaluating all students is not considered appropriate practice.

    For each referral of an individual student, the evaluation team must decide (1) which tests are appropriate to use given the referral question(s), and (2) what type of assessment will answer questions about an individual student's need for intervention and support. In general, eligibility decisions should focus on student achievement within the context of age and/or grade-level standards, and not on within-child deficits for a student with a specific learning disability.

    If using the cognitive correlates approach within a Patterns of Strengths and Weaknesses method of evaluation, you will need to collect information about a student's cognitive skills. An intelligence test might be used to collect information about some of these skills, but the evaluation team might decide to assess these skills using other tests which have technical validity and provide useful information. It is the responsibility of the evaluation team to decide which abilities and skills need to be measured and how the members of the evaluation team will collect the needed information.

    If using the Response to Intervention (RtI) method of evaluation, most of the data will come from universal screening, the diagnostic process, progress monitoring, and intervention logs demonstrating focus of intervention, intensity, fidelity, and student response. Any additional assessment and intervention to be conducted should be based on the referral question. Based upon the GEI data, the team will need to decide whether or not additional data, including an assessment of cognitive skills, needs to be completed.

    Regardless of the method of evaluation used, the team must make sure it addresses all issues related to the referral concern for an individual student. If there are concerns about behavior, attention, or motor skills, for example, then additional information about the student's functioning in those domains will need to be collected and analyzed as well. The revised Eligibility Indicators Document can help the evaluation team identify information that is needed for meeting the two-prong test of eligibility, including consideration of the exclusionary criteria for each category of exceptionality. That document is available at https://www.ksde.gov/student-success/special-education/special-education-resources-for-families-and-educators/eligibility.

17. Once a child has been exited from special education services, must you complete an initial evaluation upon a referral to determine need for special education?

    Yes. Once a child who has been identified as a child with an exceptionality has been exited, either through revocation of consent or a reevaluation resulting in a determination that the child is no longer eligible, a subsequent evaluation would be an initial evaluation. A reevaluation is used to determine continued eligibility and continued need for special education and related services. As such, a reevaluation only applies to a child currently identified as a child with an exceptionality.

However, this does not necessarily mean the initial evaluation must include new assessments. If appropriate as a part of the initial evaluation, the team must conduct a review of existing data. If there is enough current data available, the team may determine there does not need to be any further assessments conducted.

18. If the parent presents written information from an outside agency (i.e., medical doctor) stating the need for an evaluation and/or IEP is the school district obligated to complete an evaluation to determine eligibility?

    This should be considered a referral for an evaluation. However, the school has the right to determine the need for an evaluation. In most cases, the school should ensure that the child has been presented with appropriate GEIs whether before or during the evaluation and collect data to determine the child's need for an evaluation. The school must provide Prior Written Notice to the parent if school staff proposes to conduct an evaluation or refuse to conduct an evaluation.

19. How should school staff respond if the parent and/or outside agency request a specific assessment be completed as part of an evaluation?

    The school evaluation team is to determine what assessments are to be conducted as part of the evaluation. They should consider any request from the parent or outside agency; however, if the school proposes to conduct the evaluation without additional data, the parent may request that the school conduct an assessment to determine if the child is a child with an exceptionality and to determine the educational needs of the child.

20. If a parent presents an outside evaluation report to the school, is the school district obligated to implement the recommendations made by the outside evaluation team?

    After an initial evaluation is completed, if the parents disagree with the school's evaluation, they have the right to ask for an independent educational evaluation at public expense. If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the school, if it meets the school's criteria, in any decision made with respect to the provision of FAPE to the child. However, the school is not obligated to implement the recommendations made by the outside evaluation team.

21. May diagnostic assessments be used prior to a referral for special education evaluation and obtaining parental consent?

    Parent permission is not required to administer assessments that are used to plan GEI and instruction. This would include assessments that are given to all students, as well as additional assessments that are given to individual students to obtain data needed to better match instruction with student needs.

    Parents always need to be informed about the school's practices for collecting data and providing instruction. Often this information is included in parent handbooks, newsletters, and other communications. Parents should also be provided with copies of their child's data which is collected as interventions are provided and monitored. Schools should include parents in decision making whenever possible.

    Prior Written Notice and informed parental consent is required before beginning an evaluation for special education. This is a parent right that is protected by special education statute and regulation.

CHAPTER 4: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

INTRODUCTION

The Individualized Education Program (IEP) is defined as a written statement for each student with an exceptionality, which describes that child's educational program and is developed, reviewed, and revised in accordance with special education laws and regulations. The team that develops the IEP includes parents, school professionals, the student (when appropriate), and personnel from other agencies as appropriate (when addressing transition). Each IEP must be developed with careful consideration of the individual child's capabilities, strengths, needs, and interests. The IEP should direct the child toward high expectations and toward becoming a member of his or her community and the workforce. It should function as the tool that directs and guides the development of meaningful educational experiences, thereby helping the child learn skills that will help them achieve his or her goals. In short, it should assist the child in meeting the goals and challenging standards of our educational system as well as identified postsecondary goals.

The IEP describes services for each child on an individual basis. The IEP also assists teachers and other staff to have very specific, well-defined measurable annual goals for each eligible child. All persons involved should have high expectations for children and work from a strengths perspective in developing educational programs. The IDEA includes numerous IEP requirements. Kansas has statutes and regulations regarding IEPs, which also include children identified as gifted. Additionally, for children ages 3-5, an Individualized Family Service Plan (IFSP) may be used, with parent consent.

This chapter addresses the following topics:

A. IEP Team
B. Notice of IEP Team Meeting
C. Using An IFSP Instead of An IEP
D. When IEP/IFSP Must Be in Effect
E. Development of the IEP
F. Meeting to Review and Revise the IEP
G. Transfer within State or from Out-Of-State
H. Implementing the IEP

A. IEP TEAM

The Individualized Education Program (IEP) team is a group of people, knowledgeable about the child, who come together at an IEP meeting in order to develop or review and revise a child's IEP. Collaboration among IEP team members is essential to ensure that each child's educational experience is appropriate and meaningful. All members of the IEP team are equal partners in IEP discussions. Because of their long-term perspective and unique relationship, parents bring a valuable understanding of their child to the table. Children also can express their own needs, strengths, and interests. Educators, on the other hand, bring an educational focus to the meeting; an understanding of the curriculum, the challenging educational standards for the child, and the relationship to the general education environment. With this in mind, parents and educators must continue to recognize their

responsibility to maintain and enhance partnerships with each other and the child throughout the school year in order to create a collaborative environment at each IEP team meeting.

The IEP team should work toward consensus, however, if an IEP team is unable to come to consensus the school has the ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). Following the IEP team meeting, the school must provide the parents Prior Written Notice of the school's proposal for services as identified in the child's IEP. If, after all options have been exhausted, the parents and the school cannot come to agreement either party may ultimately utilize mediation or due process proceedings to resolve the differences.

1. IEP Team Membership

The members of the IEP team are specifically identified and described in state and federal statutes and regulations. In addition to the following listed members of the IEP team, if parents need a sign language or foreign language interpreter, the school must provide that service (K.S.A. 72-3404(u); K.A.R. 91-40-17(d); 34 C.F.R. 300.322(e); 34 CRF 300.321).

(a) *The student* must be invited to attend the student's own IEP meeting beginning at age 14, or younger, if a purpose of the meeting is consideration of the student's postsecondary goals and the transition services needed to assist the student in reaching those goals. If the student elects not to participate, the IEP team must take other steps to ensure that the student's preferences and interests are considered in developing the IEP (K.S.A. 72-3429(c)(8); K.A.R. 91-40-17(f); (34 C.F.R. 300.321(b)(2)). The school may invite the student to attend their own IEP team meeting at any age if appropriate.

The school is not required to give students younger than age 18 the same notice of meeting that is required for parents, but should document that the student was invited to the meeting. Beginning at age 18, if rights have transferred to the student, both the student and parents must receive 10-day written notice of the IEP team meeting (K.S.A. 72-3431; K.A.R. 91-40-17(a)(2)).

(b) *The parents* must be members of the IEP team. The parents are equal partners and play an active role in providing critical information about their child's abilities, interests, performance, and history. They are involved in the decision-making process throughout the development of the IEP (K.A.R. 91-40-17(a)).

(See Chapter 1 of this Process Handbook for a discussion of who may act as a parent.)

(c) *The special education teacher(s)* or provider(s); not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child. The school may determine the particular individual(s) to be members of the IEP team.

(d) *The general education teacher(s)* not less than one general education teacher of the child, if the child is, or may be, participating in the general education environment (K.S.A. 72-3404(u)(2)). This must be a teacher who is or may be working with the child to ensure success in the general curriculum and implement portions of the IEP. The general education teacher is knowledgeable about the curriculum, appropriate activities of typically developing peers, and how the child's exceptionality affect the child's participation (involvement and progress) in the curriculum or those appropriate activities. General education teachers assist in the development, review and revision of the IEP including determining appropriate positive behavioral interventions and supports and other strategies for the child, as well as supplementary aids and services, program

modifications and supports to enable general education teachers to work with the child (K.A.R. 91-40-17(h)).

If the child has several general education teachers, at least one must attend the IEP meeting. However, it may be appropriate for more to attend. The school may designate which teacher or teachers will serve as IEP team member(s), taking into account the best interests of the child. The general education teacher who serves as a member of the child's IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. The school is strongly encouraged to seek input from the teachers who will not be attending the IEP team meeting. All general education teachers of the child must be informed by the IEP team of their specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. The child's IEP must be accessible to each general education teacher who is responsible for its implementation (K.A.R. 91-40-16(b)(4), (5)).

GENERAL EDUCATION TEACHER FOR EARLY CHILDHOOD

As stated above, K.S.A. 72-3404(u)(2) states that a general education teacher must be included in the IEP meeting if the child is, or may be, participating in the general education environment. If a school district provides 'regular education' preschool services to nondisabled children, or if a preschool child with disabilities is enrolled in a preschool program for children without disabilities operated by the school district, the preschool teacher has the same requirements to attend the IEP meeting as for school age children. If the child is enrolled in a preschool program for children without disabilities that is not operated by the school district, the school is required to invite the preschool teacher, but has no authority to require the preschool teacher's attendance. If the preschool teacher of the child does not attend, the school shall designate a teacher who, under state standards, is qualified to serve children without disabilities of the same age.

For a child 3–5 years of age, the representative may be a preschool teacher (e.g., regular preschool, Title I preschool, Even Start, Head Start, Migrant, Bilingual, Early Learning Kansans, Kansas Parent Education Program, etc.). For a 4- or 5-year-old child, the general education teacher may be the kindergarten teacher, if the child is or will be attending kindergarten within the term of the IEP. Early childhood providers working in various community settings must meet the credentialing requirements of their hiring agencies. KSDE acknowledges those requirements, and encourages those providers to take part in IEP meetings, as appropriate, for preschool-aged children.

For a child 3–5 years of age that is in a setting that does not provide a preschool educational component (e.g., home setting or child care) it is considered the child does not have a regular education teacher and is not participating in a general education environment, therefore, a general education teacher is not required to be part of the IEP team. However, a parent may invite a child care provider to attend the IEP team meeting as a person with knowledge or expertise about the child.

See Regular Education Preschool Teacher at the IEP/IFSP Meeting at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms, for additional guidance on when a preschool general education teacher

must attend the IEP meeting and who meets the requirements of a general education teacher for early childhood.

GENERAL EDUCATION TEACHER FOR CHILDREN IN SEPARATE SETTINGS

The circumstances will be rare in which a general education teacher would not be required to be a member of the child's IEP team. However, there may be situations where a child is placed in a separate school and participates only in meals, recess periods, transportation, and extracurricular activities with children without exceptionalities and is not otherwise participating in the general education environment, and there is a general consensus among the IEP team that no change in that degree of participation is anticipated during the next twelve months. In these instances, since there would be no current or anticipated general education teacher for a child during the period of the IEP, it would not be necessary for a general education teacher to be a member of the child's IEP team.

Note that the educational environment (placement) of the child must not be predetermined before the meeting, in which all members, including the parents, have a chance to consider the relevant information and provide input. K.S.A. 72-3404(u)(2) requires that the IEP team includes at least one regular education teacher of the child, if the child is, ***or may be, participating in the regular education environment*** (emphasis added). Thus, deciding not to include a general education teacher on the IEP Team may be perceived as predetermining that the child will not participate in the regular education environment in the future.

(e) ***The School Representative*** or designee must be a member of the IEP team. There are three requirements of the school representative or designee. The school representative or designee:

i. is qualified to provide or supervise provision of special education services;
ii. has knowledge of the general education curriculum; and
iii. is knowledgeable about the availability of the school's resources. (K.S.A. 72-3404(u)(4))

The primary responsibility of the school representative or designee must be to commit school resources and ensure that services written in the IEP will be provided. The school representative must have the authority to commit school resources and be able to ensure that whatever services are described in an IEP will actually be provided because the school will be bound by the IEP that is developed at an IEP meeting (Federal Register, August 14, 2006, p. 46670).

(f) ***A person who can interpret instructional implications*** of any evaluation or assessment results must also be a member of the IEP team. This may include individuals who participated on the evaluation team. Certainly, a school psychologist, a special education teacher, general education teacher, speech/language pathologist, or other related service provider might have evaluation results that need to be interpreted and provide instructional implications.

(g) ***Others*** include individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, and those who are invited by the parents or the school to attend the IEP meeting.

The determination of who has knowledge or special expertise regarding the child is made by the party (parents or school) who invited the individual to be a member of the IEP team. Therefore, the other party may not bring into question the expertise of an individual invited to be a member of the IEP team and may not exclude another team member's expert based on the amount or quality of their expertise (K.A.R. 91-40-17(j); 34 C.F.R. 300.321(c)). Although parents are

not required to do so, the school may ask the parents to inform them of the individuals they are bringing. The person who contacts the parents may wish to ask them if they intend to bring other people to be sure that the room is adequate for the number of participants.

The district may add other team members, based on the child's individual needs. For example, for a child who uses assistive technology or who may be in need of such services, an internal or outside expert may be required at this meeting. In other circumstances, the school nurse or another health professional should attend. Any child with a need for a Health Care Plan should have a health professional participate at the annual review meeting for the IEP, and other meetings as appropriate. Other team members might be speech-language pathologists, occupational or physical therapists, adapted physical education teachers, or others as appropriate.

(h) *Representatives of any other agencies*: For a child with a disability age 14 or older the IEP team will consider the transition services of the child, and the IEP team must determine, to the extent appropriate, any other public agency that must be invited to the IEP meeting because they are likely to be responsible for providing or paying for transition services. The parents, or a student who is 18 year of age, must provide consent for the school to invite any outside agency who may be providing secondary transition services to the IEP meeting (K.A.R. 91-40-17(g); 34 C.F.R. 300.321(b)(3)).

Consent from the parent (or adult student) is required when inviting outside agencies to ensure the protection of confidentiality of any personally identifiable data, information and records collected or maintained by the school. Although the school has the responsibility to invite (after receiving parent or adult student consent) individuals from other agencies, the school district does not have the authority to require the other agency representative to attend the IEP meeting (Federal Register, August 14, 2006, p. 46672). (See Consent to Invite Representative of Noneducational Agency to IEP Meeting at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms).

(i) *Representative of Part C services*: When conducting an initial IEP team meeting for a child who was previously served under Part C of the federal law, a school, at the request of the parent, shall send an invitation to attend the IEP meeting to the local Part C services coordinator or other representative of the Part C system to assist with the smooth transition of services (K.S.A. 72-3429(a)(2)(B).

(j) *Multiple roles*: The law allows for individuals to represent more than one of the membership roles on the IEP team. If a person is representing more than one role, that person must meet the individual qualifications for each role at the IEP team meeting. Additionally, all of the requirements for one representative do not have to be filled by one person; other members of the school team may meet one or any of these requirements. Individuals assuming more than one role at an IEP team meeting should document their roles within whatever attendance record is used during the IEP Team meeting. Although there is no legal minimum number of participants at IEP team meetings, the number of participants should be reasonable and appropriate to address the needs of the child and to carry out the intent of the law. It would probably not be reasonable or appropriate for only one member of the school staff to adequately represent every required membership role at an IEP team meeting (K.A.R. 91-40-17(i)).

State statutes and regulations and federal regulations (34 C.F.R. 300.321) address required IEP team members:

K.S.A. 72-3404. Definitions.

(u) "Individualized education program team" or "IEP team" means a group of individuals composed of:

(1) The parents of a child;

(2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment;

(3) at least one special education teacher or, where appropriate, at least one special education provider of the child;

(4) a representative of the agency directly involved in providing educational services for the child who:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children;

(B) is knowledgeable about the general curriculum; and

(C) is knowledgeable about the availability of resources of the agency;

(5) an individual who can interpret the instructional implications of evaluation results;

(6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate

K.S.A. 72-3429. Individualized education program or family service plan.

(a) (2) (B) In conducting the initial IEP meeting for a child who was previously served under part C of the federal law, an agency, at the request of the parent, shall send an invitation to attend the IEP meeting to the part C services coordinator or other representatives of the part C system to assist with the smooth transition of services.

K.S.A. 72-3431. Rights of child with disability upon reaching 18 years of age.

When a person who has been determined to be a child with a disability reaches the age of 18, except for such a person who has been determined to be incompetent under state law:

(a) An agency shall provide to both the person and to the person's parents any notice required by this act;

(b) all other rights accorded to parents under this act transfer to the person;

(c) the agency shall notify the person and the parents of the transfer of rights; and

(d) all rights accorded to parents under this act transfer to the person if incarcerated in an adult or juvenile federal, state or local correctional institution.

K.A.R. 91-40-17. IEP team meetings and participants.

(a) Each agency shall take steps to ensure that a parent of an exceptional child is present at each IEP team meeting or is afforded the opportunity to participate. These steps shall include the following:

(1) Scheduling each meeting at a mutually agreed-upon time and place and informing the parent of the information specified in subsection (b) of this regulation;

(2) except as otherwise provided in K.A.R. 91-40-37, providing written notice, in conformance with subsection (b) of this regulation, to the parent of any IEP team meeting at least 10 days in advance of the meeting.

(b) The notice required in subsection (a) of this regulation shall meet the following requirements:

(1) The notice shall indicate the purpose, time, and location of the IEP team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services.

(2) If the meeting is for a child who has been receiving special education services under the infant and toddler provisions of the federal law but is now transitioning to the provisions for older children, the notice shall inform the parent that the parent may require that a representative of the infant and toddler program be invited to attend the initial IEP team meeting to assist with the smooth transition of services.

(3) The notice shall indicate the following information, if a purpose is to consider postsecondary goals and transition services for the child:

(A) The agency will invite the parent's child to attend.

(B) One of the purposes of the meeting will be to consider the postsecondary goals and needed transition services for the student.

(4) The notice shall inform the parent that the parent has the right to invite to the IEP team meeting individuals whom the parent believes to have knowledge or special expertise about the child.

(c) If a parent of an exceptional child cannot be physically present for an IEP team meeting for the child, the agency shall attempt other measures to ensure parental participation, including individual or conference telephone calls.

(d) An agency shall take action to ensure that parents understand the discussions that occur at IEP team meetings, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(e) (1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.

(2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parent to provide notice of the meeting and to secure the parent's participation. The record shall include at least two of the following:

(A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;

(B) detailed records of visits made to the parent's home or homes, including the date, time, and person making the visit and the results of the visit;

(C) copies of correspondence sent to the parent and any responses received; and
(D) detailed records of any other method attempted to contact the parent and the results of that attempt.

(f) (1) An agency shall invite a child with a disability, regardless of the child's age, to attend any IEP team meeting for the child if a purpose of the meeting is consideration of the child's postsecondary goals and transition services needs.
(2) If the child with a disability does not attend the IEP team meeting, an agency shall take other steps to ensure that the child's preferences and interests are considered.

(g) If a purpose of any IEP team meeting for a child with a disability is consideration of the postsecondary goals of the child and the transition services needed to assist the child to reach those goals, the agency, with the consent of the parent or the child if the child is at least 18 years old, shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(h) A regular education teacher of an exceptional child, as a member of an IEP team shall participate to the extent appropriate in the development, review, and revision of the child's IEP. This participation shall include assisting in making the following determinations:
(1) The appropriate positive behavioral interventions and strategies for the child;
(2) the supplementary aids and services needed by the child; and
(3) the program modifications or supports for school personnel that will be provided to assist the child.

(i) If qualified to do so, an agency member of the IEP team may serve in the role of two or more required members of a child's IEP team.

(j) In asking individuals with knowledge or special expertise about a child to be members of the child's IEP team the party asking the person to participate shall have the sole discretion in determining whether the invited person has knowledge or special expertise regarding the child.

2. IEP Team Attendance and Excusals

A required member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with an exceptionality and the school agree, in writing, that the attendance of the IEP team member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

A required member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

- The parent, in writing, and the school consent to the excusal; and
- The IEP team member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting (K.S.A. 72-3429(b)(2), (3); 34 C.F.R. 300.321(e)).

Informed parental consent means that the school must provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse a required IEP team member from attending an IEP team meeting in which the member's area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP team meeting must be held with that IEP team member in attendance (Federal Register, August 14, 2006, p 46674). To ensure that the parent is fully informed and written agreement or consent is appropriately documented, it is highly recommended that the school use the KSDE sample form for excusing a member of the IEP team. (See Excusal from IEP Team Meeting form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms.)

Excusals through written agreement or consent apply only to the required IEP team members. Other members of the team, who have been invited by the school district or the parent, may be excused from attending the meeting without agreement or consent. If an individual that is not a required IEP team member, as described above, but is invited to attend a meeting, and is included on the notice of meeting, it is not required for the parent and school to consent and/or provide written agreement to excuse those individuals because they are not required members of an IEP team (Federal Register, August 14, 2006, p. 46675).

Schools are encouraged to carefully consider, based on the individual needs of the child and the issues that need to be addressed at the IEP team meeting, whether it makes sense to offer to hold the IEP team meeting without a particular IEP team member in attendance or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion (Federal Register,

August 14, 2006, p. 46674). Each school district should consider developing a policy indicating who the local representative is that has authority to consent to the excusal of a member of the IEP team.

K.S.A. 72-3429. Individualized education program or family service plan; development.

(b) (2) A member of a child's IEP team shall not be required to attend an IEP meeting, if the parent of the child and the agency agree that the attendance of such IEP member is not necessary because the IEP member's area of curriculum or related service is not to be discussed or modified at the meeting. The parent's agreement shall be in writing.

(3) A member of a child's IEP team may be excused from attending an IEP meeting when the meeting is to involve a discussion of, and possibly a modification to, the IEP member's area of the curriculum or related service, if:

(A) The parent and the agency consent to the excusal;

(B) the IEP member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting; and

(C) the parent's consent to the excusal is in writing.

B. NOTICE OF IEP TEAM MEETING

The school must take steps to ensure that one or both parents are present at each Individualized Education Program (IEP) team meeting or are otherwise afforded the opportunity to participate in the IEP team meeting. The meeting is to be scheduled at a mutually agreed upon time and place. The school must provide notice of an IEP team meeting to the parents for the initial IEP team meeting and any subsequent IEP team meetings. The notice must be provided in writing at least 10 calendar days prior to the meeting (K.A.R. 91-40-17(a)(2)) and if the child is at least 14 years old, inform the parents that their child is invited to attend the meeting. (See Meeting Notice at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice.)

IEP Team Meeting Requirements

	IEP Meeting for Annual Review	IEP Meeting for any other purpose	Amend an IEP without Meeting
Notice of Meeting (10-Days Prior to Meeting)	Yes	Yes	No
Required Member Attendance	Yes	Yes	No
IEP Team Considerations Must be Addressed	Yes	As Needed	As Needed
Update Present Levels	Yes	As Needed	As Needed
Update/Change Annual Goals	Yes	As Needed	As Needed
Update/Change Assessment Participation	Yes	As Needed	As Needed
Update/Change Postsecondary Goals	As Needed	As Needed	As Needed
Update/Change Statement of Special Education and Related Services including Transition Services*	As Needed*	As Needed*	As Needed*
Educational Placement*	Yes*	As Needed*	As Needed*
Consideration of Least Restrictive Placement	Yes	As Needed	As Needed
IEP Amendment Form	No	No	Yes
Notice of Proposed Action (of any/all changes in IEP)	Yes	Yes	Yes
Resets Annual Review Date of IEP	Yes	No	No
Parent Receive a Copy of the IEP	Yes	Yes	Upon Request

Consent *Only on * items above and meet one of the criteria below.*

**Consent is required when a change in Special Education and Related Services or Placement meets any of these criteria:*

1. *Substantial change in placement (more than 25% of the child's school day)*
2. *Material change in services (25% or more of any one service)*
3. *Add a new service, or delete a service completely (100%)*

If parents are divorced, regardless of which parent has primary custody, the school must notify both parents unless a court order precludes this from happening. This applies to all special education notice requirements including notice of an IEP team meeting. If the school is only aware of one parent's address, the school must make reasonable efforts to locate the other parent in order to provide notice.

The school is not required to conduct duplicate IEP team meetings for divorced parents that do not wish to attend the same meeting.

Beginning at age 14, or younger, if a purpose of the meeting is consideration of the student's postsecondary goals or transition services, the student must be invited to attend and participate in the IEP team meetings. The school is not required to give children who are younger than age 18 the same notice that is required for parents, but should document that the student was invited to the meeting. The school is required to invite the student to the IEP team meeting even if the student's parents do not want their child to attend the meeting. However, because parents have authority to make educational decisions for their child (under 18 years of age), the parents make the final determination of whether their child will attend the meeting (Federal Register, August 14, 2006, p. 46671).

Beginning at age 18, if rights have transferred to the student, all notices are to go to both the adult student and the parent, including the notice of the IEP team meeting (K.S.A. 72-3431(a)). When a student reaches 18 years of age, the parents no longer have a right to attend or participate in an IEP meeting for their child. The school or the student may invite the parents to attend the meeting as persons with knowledge or expertise about the student. The notice of the IEP team meeting could be used as an invitation for all team members who are invited to attend the IEP team meeting. An IEP team meeting requirements checklist has been developed to ensure all requirements are met (https://www.ksdetasn.org/resources/760).

1. Content of Notice of IEP Meeting

The written notice must indicate (K.A.R. 91-40-17(b); 34 CRF 300.322(b)):

(a) the purpose;
(b) date;
(c) time;
(d) location of the meeting;
(e) the titles or positions of the persons who will attend on behalf of the school (The school is to notify the parents about who will be in attendance at an IEP team meeting, however, individuals may be indicated by position only. The school may elect to identify participants by name, but they have no obligation to do so.);
(f) inform the parents of their right to invite to the IEP team meeting individuals whom the parents believe to have knowledge or special expertise about their child; and
(g) inform the parents that if their child was previously served in Part C they may request that the local Part C coordinator or other representative be invited to participate in the initial IEP team meeting to ensure a smooth transition of services.

In addition, beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team;

(h) indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services;
(i) indicate that the school will invite the student; and
(j) identify any other agency that will be invited, with parent consent (or adult student consent), to send a representative (K.A.R. 91-40-17(g)).

See sample Notice of Meeting form at the https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice.

2. Methods to Ensure Parent Participation

IEP team meetings are to be scheduled at a mutually agreed upon time and place. The school should work with the parent to reach an amicable agreement about scheduling. If the parent, legal guardian, or person acting as parent cannot be located the school shall request an education advocate (See Chapter 1 for more information on identifying who may act as a parent and appointing an educational advocate).

The school must take whatever action is necessary to ensure the parents understand the proceedings at the IEP team meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English (K.A.R. 91-40-17(d); 34 C.F.R. 300.322(e)).

If neither parent is able to physically attend the IEP team meeting, the parent and the school may agree to use alternative means of participation, such as video conferences and individual or conference telephone calls (K.S.A. 72-3429(b)(1); K.A.R. 91-40-17(c); 34 C.F.R. 300.322(c); 34 C.F.R. 300.328).

If the parents are unable to meet prior to the annual review date of the IEP and request that the IEP team meeting be extended for a short period of time until they can be involved in the meeting, the school may honor their request and document why the IEP has not been reviewed and when the IEP will be reviewed and revised. This situation should not be a common practice and to avoid this issue it is best to schedule IEP meetings far enough in advance of the annual review date to allow for rescheduling if necessary. Schools should be aware that there is no exception permitted in the law to the requirement to annually review a child's IEP. But when schools schedule IEP team meetings too close to the annual review deadline, schools must balance the obligation to meet the annual review deadline with giving the parent required notice of the IEP team meeting and working with the parent to reach an amicable agreement about scheduling the meeting.

Each parent must be provided a final copy of the IEP at no cost to the parent (K.A.R. 91-40-18(d); 34 C.F.R. 300.322(f)).

3. Conducting the IEP Team Meeting Without a Parent

A school may conduct an IEP team meeting without the parent(s) in attendance if the school, despite repeated attempts, has been unable to contact the parents to arrange for a mutually agreed upon time or to convince the parents that they should participate (K.A.R. 91-40-17(e)(1); 34 C.F.R. 300.322(d)). The school must keep a record of its attempts to arrange a mutually agreed on time and place to secure the parents' participation. The record shall include at least two of the following:

- Detailed records of telephone calls made or attempted, including the date, time, person making the calls, and the results of those calls;
- Detailed records of visits made to the parents' home or place of employment, including the date, time, person making the visit, and the results of the visits;
- Copies of correspondence sent to the parents and any responses received; and
- Detailed records of any other method attempted to contact the parents and the results of that attempt.
  K.A.R. 91-40-17(e)(2)

Districts are encouraged to use their judgment about what constitutes a good-faith effort in making repeated attempts to involve each family in the IEP process. At minimum, school districts must at least make two attempts, using at least two methods, to involve the parents in the IEP team meeting.

C. USING AN IFSP INSTEAD OF AN IEP

The Individualized Education Program (IEP) team must consider the use of an Individualized Family Service Plan (IFSP) in place of an IEP for children with a disability ages 3–5. The IFSP would be developed in accordance with all of the IEP procedures, but contain the content described in Part C at 20 U.S.C. 1436. At the discretion of the school, Part B services may be provided for a 2-year-old child who is identified as eligible under Part B and who will turn age 3 during the school year (K.S.A. 72-3429(a)(2); K.A.R. 91-40-16-(c)(1)).

If the school and the parents agree to use an IFSP, the school must provide the child's parents a detailed explanation of the differences between an IFSP and an IEP, and obtain written informed consent from the parents (K.A.R. 91-40-16(c)(2)).

If the school uses the IFSP, as stated above, the IFSP must include the natural environments statement required under Part C (34 C.F.R. 303.18; 34 C.F.R. 303.344(d)(1)(ii)). The IFSP must also contain an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills (34 C.F.R. 300.323(b)).

If the child has participated in the Part C Infant-Toddler Program prior to being determined eligible for early childhood special education services, and already has an IFSP that is in effect, the IEP team may review the content of the child's current IFSP to see if it meets the needs of the child for one year, as identified through the Part B evaluation process. If it does, the IEP team may use the existing IFSP, but must ensure that all of the requirements for the development of an IEP are met, including timelines for development and implementation, and designation of a new current implementation date for the IFSP. If the current IFSP does not meet the needs of the child for one year, the IEP team, including the parent, will develop a new IFSP, or IEP, for the child.

D. WHEN THE IEP/IFSP MUST BE IN EFFECT

Each school district must make FAPE available to all eligible children beginning on their third birthday, and continuing until: (a) a reevaluation indicates the child is no longer eligible and the parents consent to termination of services; (b) the child graduated with a regular education diploma; or (c) the end of the school year in which the child reaches age 21. For children with disabilities, age 3 through 5, an Individualized Family Services Plan (IFSP) may serve as the Individualized Education Program (IEP) of the child if the school and the parents agree. If the parents and the school agree, an IFSP may also serve as the IEP of a child with a disability who is 2 years old, but will reach three years of age during the school year. An IEP must be developed within 30 calendar days of a determination that the child needs special education and related services and must be implemented within 10 school days after written parent consent is granted for the services in the IEP or IFSP unless reasonable justification for a delay can be shown. It is important to keep in mind the requirements of IEP development and implementation of the IEP are both part of the 60 school day timeline of initial evaluation. In addition, the school is required to ensure that an IEP or IFSP is in effect at the beginning of each school year for each child with an exceptionality (K.S.A. 72-3429(a)(1); K.A.R. 91-40-8(h), (i); K.A.R. 91-40-16(b)(1)–(3); K.A.R. 91-40-16(c); 34 C.F.R. 300.323(a), (c)).

For Children Transitioning from Part C Infant Toddler Services to Part B Preschool Services

The school is required to ensure that:

(a) the parents are provided with a copy of the Parent Rights Notice (procedural safeguards)

(b) eligibility is determined according to Part B requirements through an initial evaluation;

(c) if eligible, an IEP or IFSP is in effect by the child's 3rd birthday;

(d) if a child's 3rd birthday occurs during the summer, the child's IEP team determines the date when services will begin, but not later than the beginning of the school year following the 3rd birthday; and

(e) A representative of the district will participate in transition planning conferences arranged by the Part C program. (K.A.R. 91-40-2(b))

34 C.F.R. 300.323. When IEPs must be in effect.

(b) *IEP or IFSP for children aged three through five.*

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must--

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

34 C.F.R. 303.13. Early intervention services.

(a) *General. Early intervention services* means developmental services that—

(8) To the maximum extent appropriate, are provided in natural environments, as defined in §303.26 and consistent with §§303.126 and 303.344(d).

34 C.F.R. 303.26 Natural environments.

Natural environments means settings that are natural or typical for a same-aged infant or toddler without a disability, may include home or community settings, and must be consistent with the provisions of §303.126.

34 C.F.R. 303.344. Content of an IFSP

d) *Early intervention services.* (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including—

(i) The length, duration, frequency, intensity, and method of delivering the early intervention services;

(ii) (A) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment.

(B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service must be—

(1) Made by the IFSP Team (which includes the parent and other team members);

(2) Consistent with the provisions in §§303.13(a)(8), 303.26, and 303.126; and

(3) Based on the child's outcomes that are identified by the IFSP Team in paragraph (c) of this section;

(iii) The location of the early intervention services; and

(iv) The payment arrangements, if any.

K.S.A. 72-3429. Individualized education program or family service plan; contents; development; duties of IEP team.

(a) (1) Except as specified in provision (2), at the beginning of each school year, each agency shall have an individualized education program in effect for each exceptional child.

(2) (A) In the case of a child with a disability aged three through five and for two year-old children with a disability who will turn age three during the school year, an individualized family service plan that contains the material described in 20 U.S.C. 1436, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is agreed to by the agency and the child's parents.

(B) In conducting the initial IEP meeting for a child who was previously served under part C of the federal law, an agency, at the request of the parent, shall send an invitation to attend the IEP meeting to the part C services coordinator or other representatives of the part C system to assist with the smooth transition of services.

K.A.R. 91-40-2. FAPE

(b) (1) Each agency shall make FAPE available to each child with a disability residing in its jurisdiction beginning not later than the child's third birthday.

(2) An IEP or IFSP shall be in effect by the child's third birthday, but, if that birthday occurs during the summer when school is not in session, the child's IEP team shall determine the date when services will begin.

(3) If a child is transitioning from early intervention services provided under part C of the federal law, the agency responsible for providing FAPE to the child shall participate in transition planning conferences for the child.

K.A.R. 91-40-8. Evaluations.

(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:

(1) Conduct the evaluation of the child;

(2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the child's parent or parents as required by K.A.R. 91-40-17(a); and

(3) implement the child's IEP in accordance with K.A.R. 91-40-16.

(g) An agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met:

(1) The parent or parents of the child who is to be evaluated repeatedly fail or refuse to produce the child for the evaluation.

(2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.

(h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services.

K.A.R. 91-40-16. IEP requirements.

(b) Except as otherwise provided in subsection (c), each agency shall ensure that the following conditions are met:

(1) An IEP is in effect before special education and related services are provided to an exceptional child.

(2) Those services to which the parent has granted written consent as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

(3) An IEP is in effect for each exceptional child at the beginning of each school year.

(4) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.

(5) Each teacher and provider described in paragraph (4) of this subsection is informed of the following:

(A) That individual's specific responsibilities related to implementing the child's IEP; and

(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(c) (1) If an agency and a child's parents agree, an IFSP that meets the requirements of the federal law and that is developed in accordance with this article may serve as the IEP of a child with a disability who is two years old but will reach three years of age during the next school year or who is three, four, or five years of age.

(2) Before using an IFSP as an IEP each agency shall meet the following requirements:

(A) The agency shall provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP.

(B) If the parent chooses an IFSP, the agency shall obtain written consent from the parents for use of the IFSP as the child's IEP.

E. DEVELOPMENT OF THE IEP

An Individualized Education Program (IEP) that promotes challenging expectations and ensures participation and progress in the general education curriculum is one that focuses on local and state curricular content standards and related assessments. Thus, statements of present levels of academic achievement and functional performance (PLAAFPs), measurable annual goals, special education and related services, and the ongoing monitoring and evaluation of IEPs, should relate to state and local standards. It is also important that the IEP address each of the child's other educational needs identified in the PLAAFPs that result directly from the child's exceptionality. For example, measurable annual goals for instruction in Braille may be appropriate for children who are blind, even though Braille is not included in the general education curriculum. Likewise, measurable annual goals for instruction in sign language may be appropriate for children who are deaf, even though sign language may not be part of the general education curriculum. Annual goals in academic content areas will be drawn from the general education curriculum. Other annual goals may be based on standards that are appropriate to meet the child's unique needs that result from the exceptionality and that allow the child to participate and progress in the general curriculum. A checklist for IEP content has been developed to assist in ensuring all necessary content has been included (See IEP Checklist at https://www.ksdetasn.org/resources/760).

1. IEP Team Considerations

In order to assure that the IEP team addresses all of the special education and related service needs of the child there are several special factors that the IEP team must consider in the development of the IEP (K.S.A. 72-3429(d)). These considerations must be documented but there is no requirement on

where they are documented. Some districts may choose to include documentation of these considerations within the IEP while others may choose to keep documentation separately and maintain it in the student's file.

a. Strengths of the Child
   The IEP team should be aware of the strengths of the child, and utilize those strengths during the development of the IEP to assist in addressing the child's needs where possible. The strengths should be included in the present levels of academic achievement and functional performance of the child, as identified through the evaluation.

b. Concerns of the Parents for Enhancing the Education of Their Child
   Parents should have the opportunity to express their concerns for enhancing the education of their child during the IEP meeting. This provides the parents an opportunity to share with the school what they see as most important in meeting the needs of their child. The concerns of the parents must be considered by the IEP team, but do not obligate the IEP team.

c. Results of the Initial Evaluation or Most Recent Reevaluation
   In developing each child's IEP, the IEP team must consider the results of the initial or most recent reevaluation of the child. This must include a review of valid evaluation data and the observed needs of the child resulting from the evaluation process and, as appropriate, any existing data, including data from current classroom-based, local and state assessments.

d. The Academic, Developmental and Functional Needs of the Child
   In developing each child's IEP, the IEP team is required to consider the academic, developmental, and functional needs of the child. A child's performance on state or district assessments would logically be included in the IEP team's consideration of the child's academic needs. In addition, as part of an initial evaluation or reevaluation, the IEP team must review existing evaluation data, including data from current classroom based, local, and state assessments. The consideration of state and district-wide assessment programs is consistent with the emphasis on the importance of ensuring that children with disabilities participate in the general curriculum and are expected to meet high achievement standards. Effective IEP development is central to helping children with IEPs meet these high standards

e. Behavioral Concerns
   In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior. The focus of behavioral interventions and supports in the IEP is prevention of the behavior, not just provision for consequences subsequent to the behavior. This means that the team will need to attempt to identify the function of the behavior, usually through a functional behavioral assessment, and develop strategies to prevent the behavior from occurring again in the future.

   The positive behavioral interventions and supports could be implemented through the IEP annual goals, program modifications, or a behavioral intervention plan (BIP). If a BIP is developed by the IEP team, it becomes part of the IEP and any changes to it would require a meeting of the IEP team to consider the proposed changes to the plan. If the BIP is developed by a building based problem solving team or other group of individuals other than the IEP team it does not have to be included in the IEP. Special education statutes and regulations place a strong emphasis on supports and interventions, including positive behavior interventions and supports that are scientifically research-based. Scientifically-based research means that the interventions or supports must be accepted by a peer-reviewed journal or approved by a panel of

independent experts through a comparably rigorous, objective, and scientific review. (Federal Register, August 14, 2006, p. 46683) These strategies are designed to foster increased participation of children with exceptionalities in general education environments or other less restrictive environments, not to serve as a basis for placing children with exceptionalities in more restrictive settings. No child should be denied access to special education services and the opportunity to progress in the general education curriculum.

f. Limited English Proficiency

The IEP team must consider the language needs of the child who has limited English proficiency as those needs relate to the IEP including the impact of how service provides communicate with the student and progress is measured.

g. Braille (only for Children with Disabilities)

For a child who is blind or visually impaired, the IEP team must consider instruction in Braille. The use of Braille should be provided unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child. If Braille is to be taught as a method of accessing printed material, it is to be indicated in the IEP.

h. Communication Needs

The communication needs of all students with exceptionalities must be considered on each IEP. Depending on whether the student is Deaf/Hard of Hearing or has other exceptionalities will impact which considerations must be made.

1. For Children with Exceptionalities
   It is required that the IEP team considers the communication needs of each child. This consideration must include the unique communication needs of all children in order to help them achieve their educational goals.
2. For Children who are Deaf/Hard of Hearing (only for Children with Disabilities)
   For a child who is deaf or hard of hearing, the IEP team must consider the child's language and communication needs, including the opportunity for direct communication with peers and professional personnel in the child's language and communication mode, as well as academic level, and full range of needs including opportunities for direct instruction in the child's language and communication mode. It is important that the school recognize that this consideration is not an administrative decision for only one particular type of sign language interpreting to be available, nor is it a parental decision based on parental choice. Instead, it is an IEP team decision based on the unique communication needs of each child. The school must provide the communication services that each child requires.

i. Assistive Technology (only for Children with Disabilities)

The IEP team must determine whether an individual child needs an assistive technology (AT) device or service, and if so, the nature and extent to be provided. It is possible that an assistive technology evaluation will be required to determine if the child would need an assistive technology service and/or assistive technology device. Any needs identified should be reflected in the content of the IEP, including, as appropriate, the instructional program and services provided to the child. According to current Medicaid reimbursement rules, if an AT device is purchased with Medicaid-funds (or from private insurance), it belongs to the family.

j. Extended School Year Services (only for Children with Disabilities)
For children with disabilities, the IEP team must consider each individual child's need for extended school year (ESY) services during time periods when other children, both disabled and nondisabled, normally would not be served. If ESY is determined to be necessary to enable the child to benefit from his or her education, then the type and amount of special education services to be provided, including frequency, location and duration, are documented in the IEP. Schools must not limit the availability of ESY services to children in particular categories of disabilities, or limit the type, amount, or duration of these necessary services. Kansas law does not allow ESY services for children identified as gifted.

For an eligible child who will turn 3 during the summer, the IEP team must make the determination of the need for ESY services during that summer. (See Chapter 5 for more information on ESY.)

k. Notification to Kansas Department for Children and Families' (DCF) Rehabilitation Services (only for Students with Disabilities)
When a student turns 16, the IEP team must determine if the needs of the student warrant the school's notifying the district office of DCF's Rehabilitation Services (K.S.A. 75-53,101). If the student may have any need for vocational rehabilitation services regardless of whether the student is headed directly to employment or into education/training, notification to DCF may be appropriate. This is only a notification and not a referral for services. If notification is determined not to be necessary, the IEP team must document reasons for that decision. When making this notification, it is important for the school to remember that the notification contains personally identifiable information regarding the student, and parental consent to disclose confidential information is required.

l. Physical Education Needs (only for Children with Disabilities)
The IEP team must consider the physical education needs of the child, which may need to be adapted physical education services. If adapted physical education is required, it should be addressed in the IEP (K.A.R. 91-40-3(c)).

m. Potential Harmful Effects (only for Children with Disabilities)
The IEP team must consider the potential harmful effects of the placement of a student with a disability no matter where on the continuum the child is placed. This consideration must include both the child and the quality of the services the student needs (K.A.R. 91-40-21(g)).

(For more information, see Chapter 5, Special Education and Related Services and IEP Team Considerations.)

K.S.A. 72-3429. Individualized education program or family service plan; contents; development; duties of IEP team.
(d) In developing each child's IEP, the IEP team shall consider:
(1) The strengths of the child and the concerns of the parents for enhancing the education of their child;
(2) the results of the initial evaluation or most recent evaluation of the child;
(3) the academic, developmental and functional needs of the child;
(4) in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior;
(5) in the case of a child with limited English proficiency, the language needs of the child as such needs relate to the child's IEP;
(6) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;
(7) the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(8) whether the child requires assistive technology devices and services.

K.S.A. 75-53,101. Transition planning services for individuals with disabilities; compilation of background information.

(a) If the secretary provides services under this act and staff is available, an individual with disabilities who has been receiving special education under the provisions of K.S.A. 72-3403 et seq., and amendments thereto, and public law 101-476 (the individuals with disabilities education act) shall receive transition planning services upon attaining the age of 16 years. The local education authority which is responsible for the education of a person, with the consent of the person or the person's parent or guardian, shall notify the secretary of the name and address of such person, the record of the special education services being provided to such person and the expected date of termination of such services.

(b) Within 30 days after such notification, the secretary shall begin to prepare a case file on such person consisting of all available information relevant to the questions of whether such person has a disability and what services may be necessary or appropriate upon termination or graduation. The local education authority, with the consent of such person or the person's parent or guardian, shall provide the secretary with copies of relevant current portions of the record of such person, which shall be included in such person's case file. The secretary also shall provide an opportunity for the submission by or on behalf of such person, of information relative to such person's training needs and all information so provided shall be included in such person's case file. History: L. 1992, ch. 129, § 3; July 1.

K.A.R. 91-40-18. IEP development and content.

(a) In developing or reviewing the IEP of any exceptional child, each agency shall comply with the requirements of K.S.A. 72-3429 and amendments thereto, and, as appropriate, shall consider the results of the child's performance on any general state or districtwide assessment programs.

(b) If, as a result of its consideration of the special factors described in K.S.A. 72-3429(c) and amendments thereto, an IEP team determines that a child needs behavioral interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive FAPE, the IEP team shall include those items in the child's IEP.

(c) Each agency shall ensure that the IEP of each exceptional child includes the information required by K.S.A. 72-3429(b) and amendments thereto.

(d) Each agency shall give the parent a copy of the child's IEP at no cost to the parent.

(e) At least one year before an exceptional child reaches 18 years of age, the agency providing services to the child shall ensure that the child's IEP includes a statement the student has been informed of rights provided in the federal law, if any, that will transfer to the child on reaching 18 years of age.

2. Content of the IEP

Evaluation information for a child with an exceptionality must identify each of the child's educational needs that result from the exceptionality, provide baseline information and describe how the exceptionality affects the child's participation and progress in the general education curriculum (or for preschool children, appropriate activities). Utilizing baseline data established in the present levels of academic achievement and functional performance (PLAAFPs), the IEP team must develop measurable annual goals, including academic and functional goals that meet the child's needs and enable the child to be involved in and make progress in the general education curriculum. The special education, related services, supplementary aids and services, program modifications, and supports for school personnel described in the IEP must reflect the child's needs in order to ensure he or she receives educational benefit.

a. Present Levels of Academic Achievement and Functional Performance

In previous versions of the Individuals with Disabilities Education Act, present levels of academic achievement and functional performance (PLAAFPs) have been called present levels of educational performance or PLEPs. The requirements of a present level statement is not any different, however, the name was changed slightly in 2004 to emphasize the importance of issues beyond academics only.

The IEP for each exceptional child shall include a statement of the child's present levels of academic achievement and functional performance, including:

1. how the child's disability or giftedness affects the child's involvement and progress in the general education curriculum;
2. for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

3. for those children with disabilities who take alternate assessments aligned with alternate achievement standards, a description of benchmarks or short-term objectives (K.S.A. 72-3429(c), 34 C.F.R. 300.320(a)(2)(ii)).

The PLAAFPs summarize the child's current performance and provide the foundation upon which all other decisions in the child's IEP will be made. The PLAAFPs identify and prioritize the specific needs of a child and establish a baseline from which to develop meaningful and measurable goals. For a PLAAFP to be complete it needs to include information about:

1. Current Academic Achievement and Functional Performance: This is the broadest type of information that is included in the present level statement. It helps the team to begin to sort through information and data to determine how well the child is performing and to make note of additional issues outside of academic and functional behavior that have a direct impact upon how well the child performs in school. This communicates a more global understanding of the child. This might include information such as standardized assessments, learning rate, social issues, vocational interests, independent living skills, and other interests, strengths, and weaknesses.
2. Impact of Exceptionality upon ability to access and progress in the general curriculum: In addition to describing the child's current performance (academics and functional areas), PLAAFPs must describe how the exceptionality affects the child's involvement and progress in the general curriculum. The present level statement must also include more specific information that clearly describes how the child's exceptionality impacts (or manifests itself) within the general education curriculum that prevents them from appropriately accessing or progressing. By drafting this statement it will make it clear to the team what the child's needs are and which ones are of highest priority to be addressed.
3. Baseline: Baseline data provides the starting point for each measurable annual goal, so there must be one baseline data point for every measurable annual goal on the child's IEP. Baseline data in the PLAAFPs are derived from locally developed or adopted assessments that align with the general education curriculum. Examples of baseline data include percent of correct responses, words read correctly, number of times behavior occurs, and mean length of utterances. Another issue important in collecting baseline data is the understanding that any goal written will have the same measurement method as was used in collecting its baseline data. Also, when selecting baseline data it needs to be (a) specific – to the skill/behavior that is being measured, (b) objective – so that others will be able to measure it and get the same results, (c) measurable – it must be something that can be observed, counted, or somehow measured, and (d) able to be collected frequently – when progress reports are sent out the progress of the student toward the goal will have to be reported using the same measurement method as used to collect the baseline data. Non-examples of this would be self-esteem or social awareness without a more specific description of what it means.
4. Local school districts have a variety of places to document these components. In the IEP there is no single place these components must be documented and the law explicitly states that information included in one part of the IEP does not have to be duplicated in another part. So when looking at your local forms you may find baseline data in the main section of the present levels or in boxes alongside the measurable annual goals. Both are acceptable and legal as long as the data they contain are correct.

5. For preschool children, the PLAAFPs describe how the disability affects the child's participation in appropriate activities. The term "appropriate activities" includes activities that children of that chronological age engage in as part of a preschool program or in informal activities. Examples of appropriate activities include social activities, pre-reading and math activities, sharing-time, independent play, listening skills, and birth to 6 curricular measures. Federal regulations at 34 C.F.R. 300.323(b) indicate that preschool programs for children with disabilities should have an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills. Teachers should become familiar with the Kansas Early Learning Standards https://www.ksde.gov/student-success/early-childhood/kansas-early-learning-standards to know what preschool age children should know and be able to do as a result of experiencing quality early learning opportunities.
6. For children ages 14 and older (or younger if appropriate), the PLAAFPs also describe the child's transition needs in the areas of education/training, employment and, where appropriate, independent living skills.

The IEP team should consider the following questions when writing the PLAAFPs:

- In areas of concern, what is the child's present level of performance in relationship to district standards and benchmarks in the general education curriculum (or to the extended standards)?
- In areas of concern, what is the child's present level of performance in relationship to level of performance that will be required to achieve the postsecondary goals?
- Are there functional areas of concern related to the disability not reflected in the general education curriculum (e.g., self-care skills, social skills, classroom survival, etc.)?
- What is the degree of match between the skills of the child and the instructional environment?
- What strengths of the child are relevant to address the identified concerns?

Examples of PLAAFP Statements:

Example of Current Academic Achievement and Functional Performance:

Jeremiah is a 9-year-old fourth grade student with average ability, whose achievement testing shows relative strength in reading and weakness in math. Jeremiah is reading at grade level and has good comprehension. He likes to read and he also enjoys science activities. His most recent Curriculum Based Measurement (CBM) testing showed that he read 111 words per minute, which is at the 65th percentile on local norms. Math CBM testing showed that he scored 9 digits correct in a two minute timing, which is at the 17 percentile on district fourth grade norms. Mom reports that he brings home assignments requiring reading, but he forgets his math homework.

Example of Impact of Exceptionality:

Jeremiah has difficulty paying attention during class time. His inability to stay on task and follow directions is negatively affecting his classroom performance. When asked to begin work, he often looks around as if he does not know what to do. Observations indicate he often looks to peers for directions, rather than attending to the teacher. This occurs in both classes that he likes and in those he does not like. When the teacher goes to him to provide individual help, he refuses help and insists he understands what to do, but then he often completes the assignment incorrectly.

Jeremiah also needs to work on staying in his personal space and not invading others' personal space. This is exhibited when he swings a backpack or his arms around in a crowded room or while walking down the hall. Observations of Jeremiah show this is also an issue during games in Physical Education class and in unstructured activities during recess, such as playing tag. He is unable to appropriately interact with others. He sometimes stands very close to other students, squaring up to them, in a posture that is intimidating to younger students, and challenging to those his own age. He has also been observed to inappropriately touch other students. These behaviors have been especially problematic during special out-of-school activities, and Jeremiah has not been allowed to attend the last two class field trips, because of the severity of problems on earlier field trips.

Example of Baseline Data:

Teachers estimate that Jeremiah inappropriately invades other's space at least 50% of the time during unstructured activities. Observations using interval recording indicate that during recess he invaded others' space (using defined behavioral criteria) during 70% of the observation intervals. During classroom time, he was out of his seat and inappropriately close to another student during 35% of the observation intervals. Total off-task behavior during classroom observation was 60% of observed intervals.

Other Examples of PLAAFP Statements:

Example of Current Academic Achievement and Functional Performance:

In his general education 8th grade math classroom, Mike is currently turning in about half of his assignments, and only about a third of those assignments are completed. Accuracy of his turned-in work fluctuates markedly. Because of his poor assignment completion, Mike received a mid-quarter failing warning letter. Mike's completion of assignments in other curricular areas is not a concern.

Example of Impact of Exceptionality:

Stephanie, a third grader, when given a sixth grade-level mixed math operations probe that includes fractions, decimals, and percents, is able to correctly solve 87% of all problems presented. This means that Stephanie is approximately 3 years ahead of her typical third grade peers in math calculation. In areas of math other than calculation, Stephanie has mastered most of the fourth grade, but very few of the fifth grade math standards. She is not yet able to solve one-step equations with one variable and she is not yet able to use function tables to model algebraic relationships. She has learned to make one, but not two transformations in the area of geometry. In probability, she has not yet learned how to use fractions to represent the probability of an event.

Example of Baseline Data:

Todd, a fourth grader, currently reads 85 words per minute with 5 errors when given a first semester, second grade-level passage. According to district norms, Todd is reading at the 5th percentile for fourth graders in the fall.

Example of Present Levels of Academic Achievement and Functional Performance:

Katie is an outgoing 4-year-old girl with cerebral palsy who has a motor disability affecting primarily the right side of her body. She is above average intellectually and is very verbal. Katie has many friends at home and at school, and is described by her teachers as very motivated to learn new things. Katie enjoys preschool and spends time in all of the learning centers. Katie's parents are concerned about Katie's writing ability and how that might

impact her ability to be successful in kindergarten. During classroom observations in the writing and art center and work sample analysis, Katie was observed holding crayons, markers, and other writing utensils in her fists, rather than in an appropriate grasp. Katie holds onto writing and other utensils in this manner due to excessive muscle tone, which also limits her ability to rotate her wrists. During a painting activity, Katie painted using down strokes with her paintbrush in her fist. When asked to draw a picture of herself, Katie was able to scribble on her paper using back and forth motions. Typically, children of the same age hold writing utensils between their thumb and forefingers and can copy lines, circles and simple figures. They are able to make up and down strokes as well as circular patterns with a paintbrush. Katie's fine motor disability keeps her from being able to participate in prewriting activities and create representational artwork like that of other children her own age.

Example of Impact of Exceptionality:

Katie's fine motor disability keeps her from being able to participate in prewriting activities and create representational artwork like that of other children her own age. Katie's parents are concerned about Katie's writing ability and how that might impact her ability to be successful in kindergarten. Evaluation and assessment data support this concern.

Example of Baseline Data:

Katie was observed holding crayons, markers, and other writing utensils in her fists, rather than in an appropriate grasp. Katie holds onto writing and other utensils in this manner due to excessive muscle tone, which also limits her ability to rotate her wrists. During a painting activity Katie painted using down strokes with her paintbrush in her fist. When asked to draw a picture of herself, Katie was able to scribble on her paper using back and forth motions.

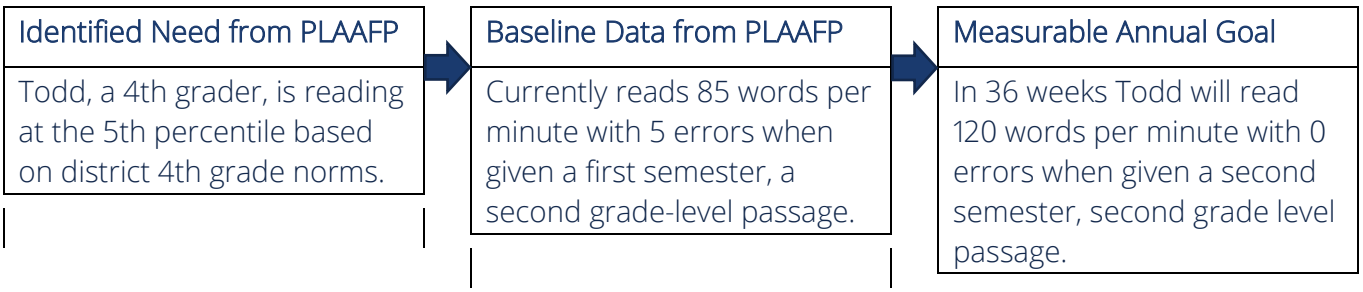
b. Measurable Annual Goals

Measurable annual goals are descriptions of what a child can reasonably be expected to accomplish within a 12-month period with the provision of special education (specially designed instruction) and related services. When selecting areas of need to address through annual goals, the IEP team's focus should be on selecting goals from the most highly prioritized needs from the PLAAFPS. For curricular needs, the IEP team should consider identifying goals from the standards and benchmarks of the local district or from the Kansas Extended Standards. To accomplish this, it is necessary that the child's performance be measured against the district or state standards, benchmarks, and indicators. As districts develop assessments to measure their standards, all children need to be included.

Measurable annual goals must be related to meeting the child's needs that result from the child's exceptionality, to enable the child to be involved and progress in the general or advanced curriculum. In addition, they must meet each of the child's other educational needs that result from the child's exceptionality (K.S.A. 72-3429(c)(2)). Annual goals are not required for areas of the general curriculum in which the child's exceptionality does not affect the ability to be involved and progress in the general curriculum. The annual goals included in each child's IEP should be individually selected to meet the unique needs of the individual child. The goals should not be determined based on the category of the child's exceptionality or on commonly exhibited traits of children in a category of exceptionality.

There is a direct relationship between the measurable annual goal, baseline data, and the needs identified in the PLAAFPs. Because the PLAAFPs are baseline data for the development of

measurable annual goals, the same criteria used in establishing the PLAAFPs must also be used in setting the annual goal.



Four critical components of a well-written goal are:

- Timeframe is usually specified in the number of weeks or a certain date for completion. A year is the maximum allowed length for the timeframe.
    - In 36 instructional weeks…
    - By November 19, 2018…
    - By the end of the 2018–19 school year…
- Conditions specify the manner in which progress toward the goal is measured. Conditions are dependent on the behavior being measured and involve the application of skills or knowledge.
    - When presented with 2nd-grade-level text…
    - Given a mixed, 4th-grade-level math calculation probe…
    - Given a story prompt and 30 minutes to write…
    - When given a directive…
- Behavior clearly identifies the performance that is being monitored, usually reflects an action or can be directly observed, and is measurable.
    - Sarah will read…
    - Claude will correctly solve…
    - Mary will score…
    - Rex will follow a one-step direction
- Criterion identifies how much, how often, or to what standards the behavior must occur in order to demonstrate that the goal has been reached. The goal criterion specifies the amount of growth the child is expected to make by the end of the annual goal period.
    - 96 words per minute with 5 or fewer errors.
    - 85% or more correct for all problems presented.
    - 4 or better when graded according to the 6-trait writing rubric.
    - Within one minute without help, 3 times a day, for 2 weeks.

Well written measurable annual goals will pass the "Stranger Test." This test involves evaluating the goal to determine if it is written so that a teacher who does not know the child could use it to develop appropriate instructional plans and assess the child's progress.

The number of goals addressed in the IEP depends on the child's needs. Prerequisite skills, immediate needs, and general applicability are all factors to consider when establishing priorities. Parents, general education teachers, and children are also essential sources of information when setting priorities.

If the child needs accommodations or modifications in order to progress in an area of the general curriculum, the IEP does not need to include a goal for that area; however the IEP would

need to specify the modification and accommodations. Each IEP must have at least one measurable annual goal. If the child only needs accommodations or modifications that do not require specially designed instruction, the child's needs may be met through a Section 504 plan or other means instead of an IEP; thus it may be appropriate for the team to reevaluate eligibility to consider whether the child continues to need special education.

c. Benchmarks or Short-Term Objectives (disabilities only)

Benchmarks or Short-Term Objectives are only required on the IEP of a child with a disability who takes an alternate assessment aligned to alternate achievement standards (K.S.A. 72-3429(c)(1); 34 C.F.R. 320(a)(2)(ii)). This means that only children who take an Alternate Assessment would be required to have short-term objectives or benchmarks on their IEPs. This requirement would apply to preschool children and children with disabilities in kindergarten through grade two only if these children are assessed with a state or district-wide assessment program based on alternate achievement standards. However, this requirement would not prohibit the use of benchmarks or short-term objectives to be used to measure progress toward meeting the measurable annual goals for any child with an exceptionality (Federal Register, August 14, 2006, p. 46663).

i. Benchmarks (Milestones or Major Milestones)

Benchmarks are major milestones that describe content to be learned or skills to be performed in sequential order. They establish expected performance levels that coincide with progress reporting periods for the purpose of gauging whether a child's progress is sufficient to achieve the annual goal. It is important to note that the term "benchmark," as it is used in the IEP, should not be confused with the term "benchmark" as it is used in state and local standards. In the curricular standards, a benchmark is a specific statement of what a child should know and be able to do. In the context of IEPs, benchmarks measure intermediate progress toward the measurable annual goal.

Example PLAAFP Statement, Measurable Annual Goal, and Benchmarks for Student taking the Kansas Alternate Assessment (Dynamic Learning Maps)

PLAAFP: Jennifer uses the BIGmack switch or step by step when it is presented, but she uses these devices only with adults, and not with her peers. She requires physical prompting to use the devices at least 90% of the time. She does not acknowledge the presence of peer communicative partners in an observable manner.

Measurable Annual Goal 1:

Within 36 educational weeks, Jennifer will acknowledge the presence of a peer communicative partner as evidenced by gestures, changes in body position, or vocalizations, and participate in a familiar structured turn taking communicative routine with physical prompting in at least one school setting.

Benchmarks:

1. In 9 instructional weeks, when joined by a peer, Jennifer will acknowledge the presence of a peer communicative partner as evidenced by gestures, changes in body position, or vocalizations.
2. In 18 instructional weeks, when joined by a peer, Jennifer will acknowledge the presence of a peer communicative partner as evidenced by gestures, changes in

body position, or vocalizations, and will participate in a structured turn--taking activity with a peer when physically prompted by an adult.
3. In 27 instructional weeks, while participating in a familiar, structured turn--taking activity with a peer, Jennifer will recognize when it is appropriate to take her turn and respond to this opportunity as evidenced by gestures, changes in body position, vocalizations, or actions, and by activating a voice output device at the appropriate time with physical prompts from an adult.

ii. Short-Term Objectives (Intermediate Steps)

Short-term objectives are measurable, intermediate steps between a child's baseline data in the present level and the annual goal, with the conditions under which the skill is to be performed, the behavior to be observed, and the criteria for success. A short-term objective follows the same pattern of the goal, with a shorter timeframe and intermediate criteria to be attained. The goal and short-term objectives establish how child outcomes will be measured. Diagnostic assessment will provide the information needed to develop an instructional plan for achieving the goals and objectives.

Example PLAAFP Statement, Measurable Annual Goal, and Benchmarks for Student taking the Kansas Alternate Assessment (Dynamic Learning Maps)

PLAAFP: Jennifer has significant difficulty with motor strength and endurance. Currently, Jennifer is able to sit in a classroom chair while engaged in a classroom activity for only 4 minutes.

Measurable Annual Goal 2:

In 36 instructional weeks, Jennifer will sit in a classroom chair for 20 minutes while engaged in a classroom activity.

Short-Term Objectives:

1. In 9 instructional weeks, Jennifer will sit in a classroom chair for 8 minutes while engaged in a classroom activity.
2. In 18 instructional weeks, Jennifer will sit in a classroom chair for 12 minutes while engaged in a classroom activity.
3. In 27 instructional weeks, Jennifer will sit in a classroom chair for 16 minutes while engaged in a classroom activity.

d. Measuring and Reporting Progress on Annual Goals

Once the IEP team has developed measurable annual goals for a child, the team must include a description of how the child's progress toward meeting the annual goals will be measured. This measure of progress will enable parents, children, and educators to monitor progress during the year, and, if appropriate, to revise the IEP to be consistent with the child's instructional needs. The idea is to use progress monitoring information in a formative way, to help with decision-making about instructional changes that may be needed. If a measurable annual goal is written correctly with the 4 components (behavior, criteria, condition and timeframe) the requirement of how progress toward the goal is measured is contained within the goal and no additional information is required.

The IEP must include a description of when parents will be provided periodic reports about their child's progress toward meeting the annual goals. An example might be through the use of

quarterly or other periodic reports concurrent with the issuance of district report cards (K.S.A. 72-3429(c)(3); 34 C.F.R. 300.320(a)(3)). The reporting may be carried out in writing or through a meeting with the parents (including documentation of information shared at the meeting); whichever would be a more effective means of communication. Whatever the method chosen, progress toward the goals must be monitored in the method indicated on the IEP and progress reports should include a description of the child's progress towards the child's measurable annual goals.

e. Participation in State Assessments and District-Wide Assessments (disabilities only)

The IEP team must make a decision about how the child with a disability will participate in state assessments and district-wide assessments. There are two options for each content area available to children with disabilities for the state assessments. The IEP team is to make the decision which assessment is appropriate for the child for each curricular area being assessed in that child's grade level during the upcoming IEP year. These options include the:

1. State Assessment, and
2. Kansas Alternate Assessment (Dynamic Learning Maps)).

The intent is that all children will be assessed and will be part of the state and district accountability systems. The IEP team should apply the eligibility criteria for the Kansas Alternate Assessment (Dynamic Learning Maps) to help determine which assessment is the most appropriate for the child. The eligibility criteria for each assessment are available online at https://www.ksde.gov/student-success/assessments and https://www.ksde.gov/student-success/assessments/dynamic-learning-maps-and-essential-elements.

If the IEP team determines that the child shall take the Kansas Alternate Assessment (Dynamic Learning Maps), the IEP must include a statement of:

a) which assessment the child will participate in,
b) why the child cannot participate in the regular assessment and
c) why the alternate assessment selected is appropriate for the child (K.S.A. 72-3429(c)(6)).

Goals on any student's IEP should be based upon a student's present levels of academic achievement and functional performance (PLAAFPs) and consideration of the Kansas content standards.

The State has identified allowable accommodations for state assessments for both general education and special education children. These are listed in the Kansas Accessibility Manual available at https://ksdetasn.org/resources/2283. The Kansas Accessibility Manual provides information on accommodations appropriate for classroom instruction and classroom assessment and allowable accommodations for state assessments. Most accommodations allowed for the state assessment are for all students, but certain accommodations are designated as allowed for students with IEPs or 504 Plans only.

If a student with an IEP needs a read-aloud accommodation for the state assessments, that need must be documented on the student's IEP. The need for the read-aloud accommodation should be determined for each individual content area being assessed. In order to use Text to Speech (TTS) accommodation on state assessments, the student must have the TTS accommodation provided in the classroom on a regular basis (i.e. as an on-going practice, for both instructional material and assessments/tests.

Any accommodation regularly used in instruction should be used on classroom assessments for children with IEPs. Individual school districts may establish their own policies for allowable accommodations for district-wide assessments. All accommodations that are necessary in order for the child to participate in state or district-wide assessments must be documented on the IEP.

For current information regarding the state assessments see https://www.ksde.gov/student-success/assessments.

f. Secondary Transition (ONLY for students with disabilities)

Beginning at age 14, and updated annually, the IEP must contain (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training/education, employment and where appropriate, independent living skills; and (2) the transition services, including appropriate courses of study, needed to assist the child in reaching the stated postsecondary goals; and (3) beginning at age 16, or younger, if determined appropriate by the IEP team, a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages (K.S.A. 72-3429(c)(8)).

1. Transition Assessment

The LEA must conduct an age-appropriate transition assessment at a minimum in the areas of education/training, employment, and, where appropriate, independent living. The purpose of the transition assessment is to provide information to develop and write practical, achievable measurable post-secondary goals and assist in the identification of transition services necessary in helping the student reach those goals. Transition assessment must be conducted prior to the student reaching age 14 and prior to the development of the measurable post-secondary goals and transition services in the student's IEP. For each postsecondary goal, there must be evidence that at least one age-appropriate transition assessment was used to provide information on the student's needs, strengths, preferences, and interests regarding postsecondary goals. Evidence would most likely be found in the student's file.

Those responsible gather the information needed to understand student needs, taking into account strengths, preferences, and interests through career awareness and exploration activities and a variety of formal and informal transition assessments. These assessments should seek to answer questions such as:

a. What does the student want to do beyond school (e.g., further education or training, employment, military, continuing or adult education, etc.)?
b. Where and how does the student want to live (e.g., dorm, apartment, family home, group home, supported or independent)?
c. How does the student want to take part in the community (e.g., transportation, recreation, community activities, etc.)?

It is important to consider and understand that a transition assessment is not an evaluation or reevaluation but has the potential of leading to the need for a reevaluation. The Office of Special Education Programs (OSEP) has published informal guidance stating that, "Generally, parental consent is not required prior to conducting an age appropriate transition assessment because the purpose of the assessment is to develop appropriate postsecondary IEP goals and not to determine whether a child has or continues to have a

disability, and the nature and extent of the special education and related services that the child needs. If, however, the IEP Team determines that a reevaluations of the child is warranted in order to obtain additional data, based on the student's educational or related services needs including improved academic achievement and functional performance, the public agency is required to obtain parental consent consistent with 34 C.F.R. 300.300(c)" (Letter to Olex, 119 LRP 8445, Feb. 22, 2019)..

2. Measurable Postsecondary Goals

Each IEP for a student with a disability, who will be 14 or older during the time period of the IEP, must have measurable postsecondary goal(s) that address the areas of: training/education, employment, and independent living when appropriate. The only goal area that is not required based on individual student needs is independent living.

Descriptions of these categories are:

- Training/Education –vocational training program, apprenticeship, On-the-Job Training, military, Job Corps, 4-year college or university, technical college, 2-year college, technical certification training program, etc.
- Employment - paid (competitive, supported, sheltered), unpaid, non-employment, etc.
- Independent living– adult living, daily living, independent living, financial, transportation, etc.

Measurable postsecondary goals are different from measurable annual goals in that they measure an outcome that occurs after a student leaves high school where a measurable annual goal measures annual progress of the student while in school. It is important to note that each postsecondary goal, must be supported by one or more annual goal and each annual goal may support more than one postsecondary goal. When developing postsecondary goals, the team should understand what annual goals support the postsecondary goal.

The requirements for measurable postsecondary goals are specific to the areas of training/education, employment and independent living. Measurable postsecondary goals may not be combined across these areas. A student's IEP team must consider the unique needs of each individual student with a disability, in light of his or her plans after leaving high school, in developing postsecondary goals for a student. Each student's IEP must include, at minimum, separate postsecondary goals for (1) employment and (2) education/training. Postsecondary goals related to independent living are to be developed when the IEP team determines it would be appropriate for the student.

For each measurable postsecondary goal there must be evidence that at least one age-appropriate transition assessment was used to provide information on the student's needs, strengths, preferences and interests regarding postsecondary goals.

Examples of Measurable Postsecondary Goals:

Example Education/Training Goals:

After graduation from high school, Sara will attend college to study drafting.

After graduation from high school, Jamie will attend Central County Community College in the welding industry certificate program.

Example Employment Goals:

After graduation from high school, Sam will obtain employment as a CAD operator.

After graduation from high school, Jerry will work in an auto repair shop to gain experience in the automotive repair industry.

Note: Because the employment goal should be based on what the student wants to do after high school, the goal shouldn't merely reference a part-time job the student might hold while attending postsecondary education/training.

3. Transition Services, including Courses of Study

The IEP that will be in effect when the student turns age 14 must address transition services, including courses of study, needed to assist the student in reaching the student's postsecondary goals.

Transition services are a coordinated set of activities or strategies that support the student in achieving their desired postsecondary goals. The IEP team builds this set of activities from information contained in the PLAAFP that describe where the student is currently performing in relationship to the student's postsecondary goals. The IEP team should consider the individual child's needs, taking into account the child's strengths, preferences, and interests. With that as the starting point, the team needs to determine what skills, services, or supports the student will need in order to successfully transition from where the student is now to the student's desired postsecondary goals. The LEA may include a multi-year plan for transition services and activities in the IEP. If the LEA decides to include a multi-year plan there must be a clear distinction between those transition services that are being provided for the current IEP year and the services and activities that are being planned for the future.

Transition services should be developed as a coordinated set of activities by considering each of the following areas:

- Instruction the student needs to receive in specific areas to complete needed courses, succeed in the general curriculum, and gain skills needed post-high school.
- Related services the student may need to benefit from special education while in school and gain skills needed post-high school.
- Community experiences that are provided outside the school building or in community settings. Examples may include community-based work experiences and/or exploration, job site training, banking, shopping, transportation, counseling and recreation activities.
- Employment or other post-school adult living objectives the student needs to achieve desired post-school goals.
- Acquisition of daily living skills (if appropriate). Daily living skills are those activities that adults do every day (e.g., preparing meals, budgeting, maintaining a home, paying bills, caring for clothing, grooming, etc.).
- Functional vocational evaluation (if appropriate). This is an assessment process that provides information about job or career interests, aptitudes and skills. Information may be gathered through situational assessment, observation, or formal measures and should be practical. The IEP team could use this information to refine services outlined in the IEP.

Transition services are services to be provided by the school, or they may include services to be provided by other agencies. The transition services section of the IEP should not list what the parents or student will do. If the IEP Team determines that no transition services are needed, that consideration should be noted on the IEP in some way, such as a statement or checkbox indicating that transition services are not needed at this time or that transition

services provided by general education are sufficient to meet the child's needs. If the transition services statement includes a service that meets the definition of specialized instruction or a related service, then the frequency, location, and duration for that service should be listed.

Example of Frequency, Location, and Duration for a Transition Service:

- James will receive transportation to take him to visit the welding certification program at Happy Valley Community College (HVCC).
    - Frequency: once during first semester
    - Location: school vehicle
    - Duration: from the high school to HVCC and back

Beginning at age 14, transition services must include a description of courses of study. Courses of study are defined as a multi-year description of coursework to achieve the student's desired post-school goals, from the student's current to anticipated exit year. The courses of study may be identified on the student's IEP either as a list of courses of study or as a statement of instructional program, as appropriate for the student. If the IEP team chooses to identify the courses of study on the student's IEP as a list of courses of study, be aware that the IEP must be amended, using the IEP amendment process or an IEP team meeting, to reflect any changes to a list of courses of study.

The IEP team reviews the required courses leading to graduation or completion of a school program, and helps the student select courses and other educational experiences that are most likely to move the student toward his or her desired postsecondary goals (e.g., employment, education/training, independent living). The IEP team should work closely with the guidance counselor who keeps a transcript of required courses toward graduation. The IEP team should review the transcript and ensure that the courses identified support the student's postsecondary goals. The guidance counselor may be involved in the IEP meeting should there be changes to the coursework.

Each year the IEP team, including the student, reconsiders the student's postsecondary goals and aligns the courses of study with those desired goals. The decisions regarding the courses of study should relate directly to where the student is currently performing and what he or she wants to do after graduation. The IEP team may take the following steps:

- Review elective courses available and identify courses of study based on student's needs, taking into account preferences and interests.
- Consider other educational experiences such as work study, community-based instruction, independent living, and self-determination.
- Consider whether any prioritization is necessary.

The connection between the student's postsecondary goals and the courses of study should be obvious. To help develop the connection, the IEP team may wish to respond to the following questions:

- Do the transition services include courses of study that focus on improving the academic and functional achievement of the child to facilitate the child's movement from school to post-school objectives?
- Do the transition services include courses of study that align with the student's postsecondary goal(s)?

4. Transition Services, including Interagency Responsibilities and Linkages

Beginning at age 16, or younger, if determined appropriate by the IEP team, the statement of needed transition services for the child, must include, when appropriate, a statement of the interagency responsibilities or any needed linkages (K.S.A. 72-3429(c)(8)). This requirement is in ADDITION to the age 14 requirements.

The transition services statement for students aged 16 and older must:

1. Document activities and transition services for the current IEP year and identify the responsible party/agency.
2. Document who will provide or pay for which services if an agency outside of the school has responsibility.

The IEP team, which includes the student and parent, may find it helpful to answer the following questions as the transition services are developed:

- What services, supports, or programs does this student currently need? (For example, specially designed instruction, accommodations and modifications, related services, job coaching, special transportation, etc.)

Then, based on what the student currently needs:

- What additional services, supports, activities, or programs will this student need in order to achieve his or her desired postsecondary goals and lead to success as the student leaves high school?
- Are linkages being made to needed post-school services, supports or programs before the student leaves the school setting?
- Do the transition services include procedures to ensure students and parents are aware of, and connected to, needed post-school services, programs and supports before the student exits the school system?

The transition services should be developed as a coordinated set of activities by considering each of the following areas:

- Instruction the student needs to gain skills needed after high school.
- Generally, the IEP team should consider related service needs the student may have as the student leaves high school. If related services will be needed after school, the IEP should identify, as appropriate, linkages to adult agencies or providers before the student leaves the school system.
- Community experiences that are provided outside the school building or in community settings. **The IEP team should consider the need for linkages with community agencies that may support the child as he/she transitions to post-school activities.**
- Employment or other post-school adult living objectives the student needs to achieve desired post-school goals. These could be services leading to a job or career or those that support activities done occasionally such as registering to vote, filing taxes, renting a home, accessing medical services, applying for insurance, or accessing adult services such as Social Security Income (SSI). **The IEP team should consider linkages with agencies that may support the child with adult living objectives.**

- Acquisition of daily living skills (if appropriate). Again, the IEP team needs to consider **linkages needed to agencies that may help support the student with daily living skills in an adult setting.**
- Functional vocational evaluation (if appropriate). This is an assessment process that provides information about job or career interests, aptitudes and skills. Information may be gathered through situational assessment, observation, or formal measures and should be practical. The IEP team needs to consider whether other agencies might help provide needed functional vocational evaluations for the student.

The IEP team must determine, to the extent appropriate, any other public agency that must be invited to the IEP meeting because they are likely to be responsible for providing or paying for transition services. The parents, or a student who is 18 years of age, must provide consent for the school to invite any outside agency to the IEP meeting (K.A.R. 91-40-17(g); 34 C.F.R. 300.321(b)(3)). Consent from the parent (or adult student) is required when inviting outside agencies to ensure the protection of confidentiality of information under FERPA (Federal Register, August 14, 2006, p. 46672). (See Consent to Invite Noneducation Agency to IEP Meeting form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms).

It is expected that transition services to be provided by agencies other than the school will be included in the IEP. If an agency other than the school, fails to provide the transition service in the IEP that it had agreed to provide, the school must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child that are set out in the IEP (34 C.F.R. 300.324(c)(1)). Alternative strategies might include the identification of another funding source, referral to another agency, the public agency's identification of other district-wide or community resources that it can use to meet the student's identified needs appropriately or a combination of these strategies.

The school, or any participating agency, including the Kansas vocational rehabilitation agency, is responsible to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency. This is to be done without delay. The school may claim reimbursement from an outside agency that failed to provide or pay for the service pursuant to an interagency agreement or other financial arrangement (34 C.F.R. 300.324(c)(2); 34 C.F.R. 300.103; 34 C.F.R. 300.154). If a participating agency, other than the school district, fails to provide the transition services described in the IEP, the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child.

For students incarcerated in an adult correctional facility whose eligibility under IDEA will end because they will turn 21 years old before they will be eligible to be released from prison, the requirements relating to transition planning and transition services do not apply (K.A.R. 91-40-5(c)(2)(B); 34 C.F.R. 300.324(d)).

g. Age of Majority

Beginning at age 17, the IEP team must inform the student and the parents that at the age of majority, under state law (age 18 in Kansas), the rights under IDEA will transfer to the student. The school must provide documentation in the IEP, at least one year before the student is 18, that the student has been informed of rights provided in the federal and state law that will transfer to the student. If parents believe that their child may not be able to make educational

decisions, they may wish to find out about obtaining a limited guardianship or some other legal means to support the student upon reaching the age of majority. It is important for the school to provide information and resources to the student and parents early in the IEP process to assist them in understanding the implications of the transfer of these rights under special education law (K.S.A. 72-3431; K.A.R. 91-40-18(e)).

h. Statement of Special Education and Related Services

Each IEP for a child with an exceptionality must include a statement of:

- the special education services
- related services
- supplementary aids and services (including accommodations), based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child
- a statement of the program modifications, and
- supports for school personnel that will be provided for the child to:
    - advance appropriately toward attaining the annual goals;
    - be involved in and make progress in the general education curriculum, and participate in extracurricular and other nonacademic activities; and
    - be educated and participate with other children with exceptionalities and nonexceptional children in these activities (K.S.A. 72-3429(c)(4)).

Each of these areas must be addressed on the IEP even if the way it is addressed is indicating the child does not need the service. All services; special education and related services, supplementary aids and services, program modifications, and supports for school personnel, as outlined in the IEP (including transition activities that are special education and related services) must indicate the projected date for the beginning of the services and the anticipated frequency, location, and duration of those services(K.S.A. 72-3429(c)(7)). It is possible that service dates may vary throughout the year and should be indicated as such on the IEP.

The amount of services to be provided must be stated in the IEP so that the level of the school's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be: (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP (Federal Register, August 14, 2006, p. 46667).

(For more information, see Chapter 5, Special Education and Related Services.)

i. Least Restrictive Environment

Least restrictive environment (LRE) means the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled (K.A.R. 91-40-1(ll)). The IEP must contain an explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education class, and in extracurricular and nonacademic activities (K.S.A. 72-3429(c)(5)). Children with disabilities are to be removed from the general education environment only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services or modifications cannot be achieved satisfactorily (K.S.A. 72-3420(a)).

In determining the location for special education and related services the IEP team must consider the continuum of educational placements necessary to implement the IEP. The school must ensure that the parents of each child are members of any group that makes decisions on the educational placement of their child. The placement decision must be made in conformity with the requirement of providing services in the LRE. The educational placement is to be:

- determined at least annually; and
- based upon the child's IEP (K.A.R. 91-40-21).

Although placement in the LRE is not legally required for children identified as gifted, the provision of FAPE still requires that the IEP team make an individualized placement determination for the child. Additionally, parents of gifted children must be part of the team making placement decisions. (For additional information on Educational Placement and Least Restrictive Environment, see Chapter 6.)

34 C.F.R. 300.320. Definition of individualized education program.

(a) *General*. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include—

(2) (ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;

(c) Failure to meet transition objectives.

(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

K.S.A. 72-3429. Individualized education program or family service plan; contents.

(c) The IEP for each exceptional child shall include:

(1) A statement of the child's present levels of academic achievement and functional performance, including:

(A) How the child's disability or giftedness affects the child's involvement and progress in the general education curriculum;

(B) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(C) for those children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objections;*

(2) a statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the child's needs that result from the child's disability or giftedness, to enable the child to be involved in and make progress in the general education or advanced curriculum; and

(B) meet each of the child's other educational needs that result from the child's disability or giftedness;

(3) a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided, such as through the use of quarterly or other periodic reports issued concurrently with general education report cards;

(4) a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) to be involved in and make progress in the general education curriculum in accordance with provision (1) and to participate in extracurricular and other nonacademic activities; and

(C) to be educated and participate with other exceptional and nonexceptional children in the activities described in this paragraph;

(5) an explanation of the extent, if any, to which the child will not participate with nonexceptional children in the regular class and in the activities described in provision (4);

(6) (A) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments; and

(B) if the IEP team determines that the child shall take an alternate assessment on a particular state or district-wide assessment of student achievement or part of such an assessment, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;

(7) the projected date for the beginning of the services and modifications described in provision (4), and the anticipated frequency, location, and duration of those services and modifications;

(8) (A) beginning at age 14, and updated annually thereafter:

(A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and where appropriate, independent living skills; and

(B) the transition services, including appropriate courses of study, needed to assist the child in reaching the stated postsecondary goals; and

(C) beginning at age 16, or younger, if determined appropriate by the IEP team, a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

(9) beginning at least one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights, if any, that will transfer to the child on reaching the age of majority as provided in K.S.A. 72-989, and amendments thereto.

Nothing in this section shall be construed to require:

(1) That additional information be included in a child's IEP beyond that which is specifically required by this section; and

(2) that an IEP team include information under one component of a child's IEP that is already contained under another component of the IEP.

[*We note that K.S.A. 72-3429(c)(1)(C) incorrectly used the word "objections." We cite to the federal regulation, 34 C.F.R. 300.320, in order to use the correct language, "short-term objectives.*]

K.S.A. 72-3431. Rights of child with disability upon reaching 18 years of age.

When a person who has been determined to be a child with a disability reaches the age of 18, except for such a person who has been determined to be incompetent under state law:

(a) An agency shall provide to both the person and to the person's parents any notice required by this act;

(b) all other rights accorded to parents under this act transfer to the person;

(c) the agency shall notify the person and the parents of the transfer of rights; and

(d) all rights accorded to parents under this act transfer to the person if incarcerated in an adult or juvenile federal, state or local correctional institution.

K.A.R. 91-40-1. Definitions.

(ll) "Least restrictive environment" and "LRE" mean the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled, with this placement meeting the requirements of K.S.A. 72-976, and amendments thereto, and the following criteria:

(1) Determined at least annually;

(2) based upon the student's individualized education program; and

(3) provided as close as possible to the child's home.

K.A.R. 91-40-18. IEP development and content.

(e) At least one year before an exceptional child reaches 18 years of age, the agency providing services to the child shall ensure that the child's IEP includes a statement the student has been informed of rights provided in the federal law, if any, that will transfer to the child on reaching 18 years of age.

K.A.R. 91-40-21. Educational placement.

(a) Each agency shall ensure that the children with disabilities served by the agency are educated in the LRE.

(b) Each agency shall ensure that a continuum of alternative educational placements is available to meet the needs of children with disabilities. These alternative educational placements shall meet the following criteria:

(1) Include instruction in regular classes, special classes, and special schools; instruction in a child's home; and instruction in hospitals and other institutions; and

(2) make provision for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular class placement.

(c) (1) In determining the educational placement of a child with a disability, including a preschool child with a disability, each agency shall ensure that the placement decision meets the following requirements:

(A) The decision shall be made by a group of persons, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

(B) The decision shall be made in conformity with the requirement of providing services in the LRE.

(2) In determining the educational placement of a gifted child, each agency shall ensure that the placement decision is made by a group of persons, including the child's parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and appropriate placement options for gifted children.

F. MEETING TO REVIEW, REVISE, OR AMEND THE INDIVIDUALIZED EDUCATION PROGRAM

1. Annual Review of the Individualized Education Program

The individualized education program (IEP) is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The review and revision of the IEP is to address: (a) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (b) the results of any reevaluation conducted; (c) information about the child provided by the parents; (d) the child's

anticipated needs; or (e) other matters. The IEP team is to consider any of the special factors related to the child's IEP (see Section D.1. of this Chapter; K.S.A. 72-3429(f)).

2. Amend the IEP

At an annual IEP team meeting, changes to the IEP are to be made by the entire IEP team. However, between annual IEP reviews, if the parent and school representative agree, changes can be made without an IEP team meeting, by amending the IEP rather than by rewriting the entire IEP. School districts are encouraged to develop and implement a policy indicating who has the authority to amend the IEP without a meeting (K.S.A. 72-3429(b)(4)(A)).

In amending a child's IEP, the parent of a child with an exceptionality and the school representative may agree not to convene an IEP team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the child's current IEP. There are no restrictions on the types of changes that may be made, so long as the parent and the school representative agree to make the changes without an IEP team meeting. If changes are made to the child's IEP without a meeting, the school must ensure that the child's IEP team is informed of those changes (K.S.A. 72-3429(b)(4)(B); 34 C.F.R. 300.324(a)(4)). Upon request, the parent must be provided with a revised copy of the IEP with the amendments incorporated (see IEP Amendment Form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms; Federal Register, August 14, 2006, pp. 46685–86).

Even when using the IEP amendment process, the school must provide Prior Written Notice of any changes in the IEP. If the changes in the IEP constitute a substantial change in placement or a material change in services, the school must request parent consent to implement the change. [See Chapter 5 Services for further details about substantial change in placement and material change in services]

Specific day-to-day adjustments in instructional methods and approaches that are made by either a general or special education teacher to assist a child with an exceptionality to achieve his or her annual goals do not require action by the child's IEP team.

3. Request by Parent or School Staff for IEP Meeting

Although the school is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with an exceptionality have the right to request an IEP meeting at any time. The child's teacher or other school staff may also propose an IEP meeting at any time they feel the IEP has become inappropriate for the child and revision should be considered (K.S.A. 72-3429(f)).

K.S.A. 72-3429. Individualized education program or family service plan; contents; development; duties of IEP team.

(b) (4) (A) After the annual IEP meeting for a school year, the parent of an exceptional child and an appropriate representative of the agency providing services to the child may agree to develop a written document amending or modifying the child's current IEP, without convening an IEP meeting.

(B) If the parent and agency representative develop a written document amending or modifying a child's current IEP, the document shall be dated and signed by the parent and the agency representative. The parent and the agency shall be provided a copy of the document.

(f) Each agency shall ensure that the IEP team:

(1) Reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and

(2) revises the IEP, as appropriate, to address:

(A) Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

(B) the results of any reevaluation conducted under this section;

(C) information about the child provided by the parents;

(D) the child's anticipated needs; or

(E) other matters.

K.A.R. 91-40-16. IEP requirements.

(a) Each agency shall be responsible for initiating and conducting meetings to develop, review, and revise the IEP of each exceptional child served by the agency.

(b) Except as otherwise provided in subsection (c), each agency shall ensure that the following conditions are met:

(1) An IEP is in effect before special education and related services are provided to an exceptional child.

(2) Those services to which the parent has granted written consent as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

(3) An IEP is in effect for each exceptional child at the beginning of each school year.

(4) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.

(5) Each teacher and provider described in paragraph (4) of this subsection is informed of the following:

(A) That individual's specific responsibilities related to implementing the child's IEP; and

(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

G. TRANSFER WITHIN THE STATE AND FROM OUT OF STATE

When a student moves into a new school district, the school district must take reasonable steps to promptly obtain the child's records, including the individualized education program (IEP) and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school district in which the child was enrolled. The previous school district in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school district (K.S.A. 72-3429(g); 34 C.F.R. 300.323(e), (f), (g)). Parent consent is not required to transfer education records to a school where a student intends to enroll, or is already enrolled, if the sending school's annual Family Educational Rights and Privacy Act (FERPA) notice states that the school forwards education records to schools that have requested the records and in which the student seeks, or intends, to enroll, or is already enrolled (34 C.F.R. 99.31 (a)(2)).

1. Within State

When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide a free appropriate public education (FAPE) to the child, including services comparable to those described in the child's IEP from the previous school district. Once the new district receives the current IEP the new school district may adopt the child's IEP from the previous school district or develop and implement a new IEP. If the new district develops a new IEP, parent consent is required for any substantial change in placement or any material change in services proposed in the new IEP K.S.A. 72-3430(b)(6). When a student moves within the state, eligibility has already been established and a reevaluation is not required.

2. Out-of-State

When a child with an exceptionality, who has a current IEP in another state, transfers to a school district in Kansas, the new school district, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous school district until the Kansas school district either adopts the current IEP, or conducts an initial evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child. Comparable services have the meaning of services that are "similar" or "equivalent" to the services that were described in the child's IEP from the previous school, as determined by the child's newly designated IEP team in the new district (Federal Register, August 14, 2006, p. 46681). Accordingly, IEP teams should work together to come to a consensus in determining the content of the "comparable" services to be provided. If there is a dispute between the parent and the school district regarding what constitutes comparable services, the dispute could be resolved through mediation procedures or, as appropriate, the due process

hearing procedures. If the parent disagrees with the new school district about the comparability of services, stay-put would not apply (Federal Register, August 14, 2006, p. 46682).

The new school district may: (a) adopt the current IEP; (b) develop and implement a new IEP; or (c) conduct an initial evaluation to determine eligibility, and develop and implement a new IEP. If the district elects to conduct an evaluation, the evaluation conducted by the new school district would be to determine if the child is a child with an exceptionality in Kansas and to determine the educational needs of the child. The evaluation would be an initial evaluation, which would require parental consent. The new IEP generated from any of the three processes described above, in (a) through (c), is an initial offer of special education and related services in Kansas and is the initial Kansas IEP. As such, the district must have parent consent before implementing the services proposed in the initial Kansas IEP. If a parent refuses to consent, or fails to respond to the request for consent, to the initial services offered in the proposed initial Kansas IEP, the district may not provide those services, the district may not initiate due process or mediation procedures, and the district will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure of the district to provide the services specified in the proposed IEP (K.S.A. 72-3430(g)). The parent retains the right to request mediation or a due process hearing to challenge the district's offer of initial services.

Because the new Kansas IEP offered to a student who has transferred to Kansas from another state is the initial Kansas offer of special education and related services, the new Kansas IEP is not a proposed change in services or placement. Therefore, the consent requirement under Kansas law for making a substantial change in placement or material change in services does not apply to these initial Kansas IEPs for transfer students from other states.

K.S.A. 72-3429. Individualized education program or family service plan; contents; development; duties of IEP team.

(g) (1) If an exceptional child with a current IEP transfers from one Kansas school district to another during the academic year, the new school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the new school district either adopts the transferred IEP, or develops and implements a new IEP for the child.
(2) If during the academic year, an exceptional child who has a current IEP transfers from a school district in another state to a Kansas school district, the Kansas school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the Kansas school district either adopts the transferred IEP, or conducts an evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child.

H. IMPLEMENTING THE INDIVIDUALIZED EDUCATION PROGRAM

Once the individualized education program (IEP) team has completed developing the initial IEP, Prior Written Notice, describing the proposed action must be provided to the parents and a request made for consent to initiate special education and related services. Services are to be initiated within 10 school days after written parent consent is granted, unless reasonable justification for a delay can be shown. The implementation of initial services must be completed within the 60 school day timeline of initial evaluation (K.A.R. 91-40-8(f); K.A.R. 91-40-16(b)(2)).

The school must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. The school must make reasonable efforts to obtain informed consent from the parent. If the parent fails to respond or refuses to consent to the initial provision of services, the school may not use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child.

However, in such cases, the school will not be considered to be in violation of the requirement to make available a free appropriate public education (FAPE) to the child for the failure to provide the child with the services for which the school requests consent. Under these circumstances, the school is not required to convene an IEP team meeting or develop an IEP for the child. In the situation where the parent fails to respond or refuses consent, this would also exclude the child from IDEA discipline protections that are provided to students when a district suspects the child to be a child with a disability.

Once an IEP has been completed and consent for services has been obtained from the parents, the child's IEP must be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Regardless of whether an individual participates in the IEP meeting, all individuals who are providing education to the child (regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementation of the IEP) must be informed by the IEP team of

(1) his or her specific responsibilities related to implementing the child's IEP, and
(2) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP (K.A.R. 91-40-16(b)(5); 34 C.F.R. 300.323(d)(2)).

K.A.R. 91-40-8. Evaluations.

(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g) of this regulation, the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:
(1) Conduct the evaluation of the child;
(2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the parents as required by K.A.R. 91-40-17(a); and
(3) implement the child's IEP in accordance with K.A.R. 91-40-16.

(g) The agency shall not be subject to the timeframe prescribed in subsection (f) of this regulation if:
(1) the parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation; or
(2) the child enrolls in a different school before the evaluation is completed and the parent and new school agree to a specific time when the evaluation will be completed.

(h) In complying with subsection (f) of this regulation, each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services.

QUESTIONS AND ANSWERS ABOUT THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

1. May an individualized education program (IEP) be written with no measurable annual goals?

No, IEPs must have at least one measurable annual goal. Measurable annual goals document the child's anticipated progress as the result of special education. Special education is defined in K.A.R. 91-40-1(jjj) as "specially designed instruction to meet the unique needs of an exceptional child…" If no measurable annual goals are necessary and no specially designed instruction is necessary, the child's continued need for special education and related services should be reconsidered. If only modifications, accommodations, consultation, or services that don't require specially designed instruction are required, the child's needs may be able to be met through a Section 504 plan or other means.

2. When using short-term objectives for children who take an alternate assessment aligned to alternate achievement standards, can they be demonstrated through the use of graphs, or by simply stating the criteria for progress reporting periods without restating the entire goal multiple times?

No specific format for short-term objectives is prescribed by law. So long as the short-term objectives are measurable intermediate steps that "enable a child's teacher(s), parents, and others involved in developing and implementing the child's IEP to gauge, at intermediate times during the year, how well the child is progressing toward achievement of the annual goal," they are legally compliant.

3. May a teacher develop their own assessments, including rubrics and informal probes, as criteria for the measurable annual goals?

Yes, so long as the assessment contains specific, objective, measurable criteria that are aligned with local curriculum and instruction. Personal opinions and other subjective measures are not appropriate. If a teacher-made assessment is developed to establish baseline data in the present levels of academic achievement and functional performance (PLAAFP) and the measurable annual goal, it should be attached to the IEP so that anyone who may become involved in implementing the IEP can use it to develop appropriate instructional plans and assess child progress as necessary.

4. What happens when the IEP team cannot reach an agreement?

The IEP team should work toward consensus. It is not appropriate for an IEP team to make IEP decisions based upon a majority vote. If the IEP team cannot reach agreement the local education agency (LEA) representative at the meeting has the ultimate authority to make a decision and then to provide the parents with appropriate notice and request consent of the proposed action as appropriate.

5. What should the school do if the child's only parent is in jail and will not be released before the IEP annual review date?

If neither parent is able to attend the IEP team meeting, the school must take steps to ensure parent participation, including individual or conference telephone calls. Depending upon the facility, it may even be possible to hold the IEP team meeting at the jail. Incarceration of a parent does not invalidate the parent's right to participate in the development, review, and revision of their child's IEP.

6. Are IEP Team members required to sign the IEP?

No. There is nothing in state or federal special education law that requires IEP Team members to sign the IEP (Office of Special Education Programs, 71, Federal Register, August 14, 2006, p. 46682). Documentation for the IEP Team meeting should record who was present and participated in the IEP Team meeting. This is especially necessary should there ever be a dispute about whether all required IEP Team members were present at an IEP Team meeting or excused by following required excusal procedures in 34 C.F.R. 300.321(e). Sometimes school districts choose to document participation in an IEP Team meeting by requesting signatures on the IEP of those present . Signatures for this purpose are simply to record which IEP Team members were present for an IEP Team meeting.

7. May parents refuse consent for their child with a disability to participate in state and district-wide assessments, regardless of any decisions the IEP team may have made regarding the child's participation?

Yes, but school officials should encourage the parents to include their child in the state assessments. Any parent may request that their child be exempt from the state assessments. Not allowing parents of children with disabilities to exempt their children would be discrimination based on disability.

8. Must students incarcerated in adult prisons take state and district-wide assessments?

No. According to 34 C.F.R. 300.324(d) and K.A.R. 91-40-5(c)(2), requirements relating to students with disabilities taking state and district-wide assessments do not apply to students incarcerated in adult prisons. Students in local or state juvenile correctional facilities are not exempted from taking state and district-wide assessments.

9. If a child has many general education teachers or special education teachers and related services personnel, which one must be a member of the IEP team?

Not less than one general education teacher of the child and not less than one special education teacher or related services personnel who is or will be working with the child, must attend the IEP meeting. The school may designate which teacher or teachers will serve as IEP team member(s), taking into account the best interests of the child. The general education teacher who serves as a member of the child's IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. More than one teacher may attend as appropriate.

10. May parents sign a waiver stating that they do not wish to receive additional copies of the Parent Rights Notice this year?

No waiver of the right to receive the Parent Rights Notice is permissible under special education statutes or regulations. It is permissible for the school to send the notice through electronic mail communication if the parent agrees to it and the school makes that option available (34 C.F.R. 300.505). It is permissible for the parents to refuse the Parent Rights Notice after the school has offered it, or to return the document to the school. The school must document that it provided the notice at the required times.

The Parent Rights Notice must be given to parents, at a minimum:

(1) Only one time in a school year; and
(2) Upon initial referral or parent request for evaluation;
(3) Upon receipt of the first formal complaint to the State in a school year;
(4) Upon receipt of the first due process complaint in a school year;

(5) Upon initiation of a disciplinary change of placement; and
(6) Upon parent request.

11. What should the IEP team do if a child moves to the district with no records or IEP, or an unusable IEP?

The IEP team may need to develop an interim IEP for a shorter than normal period of time to allow time to locate the child's records or conduct the assessments necessary to develop a new IEP. The provision of the special education and related services the child needs in order to receive FAPE and progress in the general curriculum should not be withheld pending the receipt of records when the school knows the child has been identified as a child with an exceptionality and has an IEP.

12. Is it necessary to have the parent's signature to document that the parent received the 10-day written Notice of IEP team meetings?

No, the parent's signature is not required. Keeping a copy of the Notice to the parent that indicates the date it was sent is adequate documentation. It is also helpful to document on the 10-day notice any other parent contacts that may have occurred before the date the notice was sent. For example, "As we discussed during our telephone conversation on September 3, your child's IEP meeting has been scheduled for Friday, September 14, 2018, at 3:00 p.m. in room 204 of Southeast Elementary School."

13. If the IEP team does not have adequate information at the time of the IEP team meeting to determine what Extended School Year (ESY) services will be necessary for the child during the summer, what should be written on the IEP?

One of the responsibilities of the IEP team is to consider whether or not ESY services are necessary for each child with a disability. If the IEP team decides that ESY is necessary for the child, they must then determine what those services will be and include them in the IEP.

If the IEP meeting is held in the fall of the school year or if the child is new to the school, the IEP team may not have enough data to determine if the child needs ESY services or what those services should be. In this case, the team should include in the IEP a statement that ESY services were considered and that there was inadequate information at the time of the meeting to make an appropriate decision. The team should also include in this statement a date later in the school year when more information will be available to reconvene and determine if ESY services are needed and amend the IEP as necessary (34 C.F.R. 300.106).

14. If a child turns 21 during the school year, must ESY services be provided the summer after the student's final year of school?

Children continue to be eligible for all necessary special education and related services, including ESY, until they appropriately exit special education. A student with a disability may be eligible for special education and related services through the school year (ending June 30) in which they turn 21. Thus, it is an IEP team decision whether ESY is necessary for the student until June 30 after their 21st birthday. Some factors in the IEP team's decision may include whether or not the June 30 deadline will give the child time to complete ESY services and whether or not the child will benefit from ESY services.

15. After the child is age 14 or older, is the school required to provide the child with the child's own separate 10-day IEP meeting notice?

No, the school is not required to send the child the child's own separate notice. However, children ages 14 to 17 must be invited and the school must document the student's participation in the IEP

meeting or input into the IEP. After the age of majority (18 in Kansas), the school MUST provide any Notice to BOTH the adult student and the parents. The parents are only notified of the meeting. To attend the meeting, they will have to be invited by their child or the school.

16. What if the child does not want the parent to attend the IEP meeting? Is it mandatory to send the notice to both?

    For children under the age of 18, the parent is a required member of the IEP team and must attend the IEP team meeting. The notice is to be sent to the parent and, if the child is invited to the IEP team meeting, the notice may be sent/given to the child, or the child may be invited orally. Once the child turns age 18, the school is required to send the notice to both the parent and the adult student. However, the parent has no right to attend the meeting unless invited by the student or the school as a person with knowledge or expertise about the student.

17. What happens if the parent does not show up for the IEP meeting?

    The school may conduct an IEP meeting without the parents if the school has made repeated attempts (at least two contacts by two different methods), but has been unable to secure the parents participation.

    If a parent has received only one notice of the IEP team meeting at least 10 calendar days prior to the meeting which includes the meeting date, time and location, and agrees to participate, but does not come to the meeting, the school must contact the parent to reschedule the IEP team meeting and conduct a complete IEP team meeting with all members in attendance. If necessary, other means of parent participation may be used, such as conference calls. Detailed records are to be maintained of attempts to contact the parents.

18. What should the remaining IEP team members do if any required member of the IEP team who is invited to attend, and is not excused, does not show up for the meeting?

    If a required member, whose area of the curriculum or related services is being discussed or modified, has not been excused from the IEP team meeting, by consent of the parent and the school, and has not provided input into the development of the IEP in writing prior to the meeting, the school shall reschedule the meeting for a time when all required members can be present or can be officially excused, and, if necessary, provide written input into the meeting. To conduct an IEP meeting without all of the required IEP team members present or having the appropriate excusals is not legally compliant.

19. Can the IEP team develop a draft IEP prior to the IEP team meeting?

    Yes, a draft IEP may be developed before any IEP meeting. However, in order to ensure parent participation in the development of the IEP, the IEP may not be completed before the IEP team meeting. Members of the IEP team may come with evaluation findings and recommended IEP components, but should make it clear to the parents that these are only suggestions and that the parents' input is required in making any final recommendations. If school personnel bring drafts of some or all of the IEP content to the IEP meeting, there must be a full discussion with the IEP team, including the parents, before the child's IEP is finalized, regarding content, the child's needs and the services to be provided to meet those needs. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting for discussion (Federal Register, August 14, 2006, p. 46678).

20. May occupational therapy or physical therapy stand alone on the IEP as a special education service?

Yes, according to state law, OT and PT can be special education instead of a related service in certain circumstances (K.A.R. 91-40-1(kkk)(3)). The IEP team must determine the special education and related services needed by the child. If the child does not need specially designed academic instruction, but does need occupational therapy or physical therapy in order to be educated in the least restrictive environment (LRE), these services would be listed in the IEP as special education and addressed in the annual goals. It is important to note that this determination should be made based on the child's individual needs, not based on the child's disability category.

21. May other related services stand alone in the IEP as a special education service?

Yes, according to state law, any other related service can be special education instead of a related service if it consists of specially designed instruction (K.A.R. 91-40-1(kkk)(2)). If the child does not need any other specially designed academic instruction but does need a related service such as speech-language pathology, that related service can be the stand alone special education service in the IEP if the service consists of specially designed instruction to meet the unique needs of that child. Again, this determination should be made based on the child's individual needs, not based on the child's disability category.

22. If someone is listed on the Notice of IEP Team Meeting do they have to come?

No, listing a person's name on the Notice of IEP team meeting just documents they were invited and does not obligate their attendance unless they are one of the required IEP team members. The IEP may list the role of a team member, such as, general education teacher or speech therapist.

23. Can IEP team meetings be recorded with audio or video recorders?

There is no federal or state statute or regulation that either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. The school has the option to require, prohibit, or regulate the use of recording devices at IEP meetings. If there is a local policy that prohibits or limits the use of recording devices at IEP team meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to ensure parental rights guaranteed under Part B of the Individuals with Disabilities Education Act (IDEA). If a school adopts a policy, it should also ensure that the policy is uniformly applied. Additionally, any recording of an IEP team meeting maintained by the school is an "educational record" within the meaning of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g), and is subject to the confidentiality requirements of both FERPA and IDEA (Federal Register, March 12, 1999, p. 12477).

24. Who is the general education teacher invited to the IEP team meeting of a three-year old that is in a home setting?

The child who is receiving special education services in a home-based setting would not have a general education teacher unless the early childhood special education teacher is also licensed as an early childhood teacher. Therefore, a general education teacher would not be required to attend the IEP team meeting unless it is anticipated that the special education services will be provided in a general education setting during the next IEP year. In that case, the school would designate a teacher qualified to teach a child of that age.

25. Can a required IEP team member be excused from more than one IEP meeting at a time?

No, the excusal to attend an IEP meeting is specific to each individual meeting.

26. Can a district choose to not allow the excusal of required IEP team members?

Yes, a district may choose to implement a policy that would not allow any of the required IEP team members from being excused.

27. Do the Notice of the IEP team meeting, evaluation reports and progress reports have to be translated into the parent's native language?

The only legal requirements for providing documents in the parents native language of the parent or other mode of communication used by the parent are for the Prior Written Notice (34 C.F.R. 300.503(c)) and the Procedural Safeguards notice (34 C.F.R. 300.504(d)).

28. What is a consultation only IEP?

All IEPs must address all of the same legal requirements. If a student does not need specially designed instruction the IEP team should consider conducting a reevaluation to determine whether the child is still eligible for special education services. However, a child may receive specially designed instruction in a regular education classroom through the consultation of the special education teacher with the regular education teacher. There should be a goal addressing the child's needs on the IEP.

29. Can an attorney come to an IEP team meeting on behalf of the parent or school?

Yes, an attorney may attend an IEP meeting if the parents or school officials believe an attorney is needed. However, the presence of an attorney is discouraged as it often sets an adversarial tone for the meeting. If the attorney is coming at the invitation of the school, they must be included on the notice of meeting provided to the parents (34 C.F.R. 300.322(b)(1)(i)). Parents are encouraged, but are not required, to inform the school of any additional persons they are bringing regardless who they are.

30. If a child was found eligible for special education under emotional disability (ED) must they have a behavioral goal or may they have only an academic goal?

Measurable annual goals should never be dependent upon the child's exceptionality category; they should always be related to the individual child's needs. Therefore, some ED students will need behavioral goals, but others may not. The issue with many children with ED is that their behavior has interfered with their learning for so long, that even when their behavior comes under better control, they frequently continue to have academic deficits. The PLAAFP should clearly describe how the child's exceptionality impacts their ability to access and progress in the general education curriculum. Based upon the information the IEP team has they will need to prioritize needs and identify the goals, accommodations, behavior plans or other services needed to address the impact of the exceptionality. Depending upon the results of the assessment the child may have need for a behavioral goal and/or and academic goal. Either would be appropriate. For children whose behavior has improved, celebrate the achievement, and continue to address the issues around how their disability impacts their ability to access and progress in the general curriculum.

31. Can a teacher or a principal keep a child from attending special education services in an IEP because they have not completed their general education assignments or do not have passing grades?

Each teacher (and administrator) working with the child should be informed about the services on the child's IEP. They are legally responsible to ensure that the child receives the services. If they feel that the IEP is not adequate for the child to participate and make progress in the general education curriculum they can ask for an IEP meeting to see if the IEP should be revised.

32. Can an IEP Team or parent decide that a child doesn't need postsecondary goals for education/training and employment due to the nature or severity of the child's disability?

No. There is no exception for postsecondary goals in IDEA. Age appropriate assessments could be informal and include interviews with the child, observations of the child by teachers or the child's parents. IEP team members can request assistance from KSDE's Technical Assistance System Network (TASN) for additional guidance to suggest postsecondary goals that are appropriate for the child. Goals could include on-the-job training in a supported work environment, volunteering at an animal shelter if the child enjoys being around animals, etc.

CHAPTER 5: SPECIAL EDUCATION AND RELATED SERVICES

INTRODUCTION

Each school district must make a free, appropriate public education (FAPE) available to all children with exceptionalities. One of the most important considerations for individualized education program (IEP) teams is the special education, related services, and supplementary aids and services to be provided to the child or on behalf of the child. The IEP team must also consider the program modifications or supports for school personnel that will be provided on behalf of the child. All services and supports are provided to enable the child: (1) To advance appropriately toward attaining the annual goals; (2) to be involved in and make progress in the general education curriculum, or appropriate activities for children ages 3–5; (3) to participate in extracurricular and other nonacademic activities; and (4) to be educated and participate with their nondisabled peers to the maximum extent appropriate, in all of these activities. (See Chapter 4, The Individualized Education Program.)

Federal law emphasizes having high expectations for each child and enabling each child to participate and progress in the general education curriculum. Given those foundations, resulting educational placement decisions must be based upon providing services within the least restrictive environment. (See also Chapter 6, Educational Placement and Least Restrictive Environment.) The IEP team must consider special education and related services required to meet the individual needs of children with exceptionalities (including those who are gifted).

This chapter addresses these services and is organized according to the following headings:

A. Special Education Services
B. Related Services
C. Supplementary Aids and Services
D. Program Modifications and Supports for School Personnel
E. Permissive Use of Funds (previously Incidental Benefit)
F. Extended School Year/Day Services
G. Frequency, Location and Duration of Services
H. Home Schooling
I. Services In Local Detention Facilities and Department of Corrections Facilities
J. Facilities
K. Qualified Special Education Personnel

A. SPECIAL EDUCATION SERVICES

1. Local Authority

Each school district is responsible for ensuring that all children with exceptionalities receive the special education, related services, and supplementary aids and services that are specified in their individualized education program (IEP). State law gives local agencies the authority to provide services in numerous ways:

- In the schools;
- In the home, hospital, or other facilities;

- Through a contract with another district;
- Through a cooperative agreement with other districts; or
- Through a contract with a public or private institution.
  (K.S.A. 72-3410 to -3411).

Regardless of the method used for service delivery, providers must meet the standards and criteria set by the Kansas State Board of Education.

Additionally, when a child with an exceptionality is admitted to a hospital, treatment center, or other health care institution or facility, a group boarding home or other care facility, upon a referral by a person licensed to practice medicine and surgery, and the institution or facility is located outside the school district in which the child resides, the district of residence remains responsible for the provision of a free appropriate public education (FAPE) for the child. Special education and related services required may be provided pursuant to a contract entered into between the school district of which the child is a resident and the school district in which the child is housed. If a contract is not entered into between the two school districts, the child shall be deemed to be a pupil of the school district which is providing special education and related services to the child (K.S.A. 72-3410(b)).

K.S.A. 72-3410. Duties of boards of education in meeting requirements of law; responsibilities of state board of education and other state agencies; interagency agreements; dispute resolution.

(a) (1) Each board shall adopt and implement procedures to assure that all exceptional children residing in the school district, including homeless children, foster care children and children enrolled in private schools, who are in need of special education and related services, are identified, located and evaluated.
(2) Each board shall provide a free appropriate public education for exceptional children enrolled in the school district and for children with disabilities who are placed in a private school or facility by the school district as the means of carrying out the board's obligation to provide a free appropriate public education under this act and for children with disabilities who have been suspended for an extended term or expelled from school.
(3) Each board shall provide exceptional children who are enrolled by their parents in private schools with special education and related services in accordance with state law and federal law.

(b) If an exceptional child, upon referral by a person licensed to practice medicine and surgery, is admitted to a hospital, treatment center, or other health care institution, or to a group boarding home or other care facility, and the institution or facility is located outside the school district in which the child resides, the district in which the institution or facility is located may contract with the district in which a parent of the child resides to provide special education or related services, if such services are necessary for the child. Special education and related services required by this subsection may be provided pursuant to a contract entered into between the board of the school district of which the child is a resident and the board of the school district in which the child is housed. Any such contract shall be subject to the provisions of subsections (a)(3)and (c) of K.S.A. 72-967, and amendments thereto. If a contract is not entered into between the school districts, the child shall be deemed to be a pupil of the school district which is providing special education and related services to the child. Nothing in this subsection shall be construed to limit or supersede or in any manner affect or diminish the requirements of compliance by each school district with the provisions of subsection(a), but shall operate as a comity of school districts in assuring the provision of special education services for each exceptional child in the state.

(c) (1) Special education and related services required by this section shall meet standards and criteria set by the state board.

K.S.A. 72-3411. Methods of compliance with requirements of act; powers and duties of boards of education.

(a) Each board, in order to comply with the requirements of this act, shall have the authority to:
(1) Provide appropriate special education and related services for exceptional children within its schools.
(2) Provide for appropriate special education and related services in the home, in a hospital or in other facilities.
(3) Contract with another school district for special education and related services. Any such contract may provide for the payment of tuition and other costs by the school district in which the child is enrolled.
(4) Enter into cooperative agreements with one or more other school districts for special education and related services.
(5) Contract with any private nonprofit corporation or any public or private institution, within or outside the state, which has proper special education or related services for exceptional children. Whenever an exceptional child is educated by a private nonprofit corporation or a public or private institution as provided under this paragraph, such child shall be considered a pupil of the school district contracting for such education to the same extent as other pupils of such school district for the purpose of determining entitlements and participation in all state, federal and other financial assistance or payments to such school district.
(6)Furnish transportation for exceptional children, whether such children are residents or nonresidents of such school district, for the provision of special education or related services. In lieu of paying for transportation, the board of the school district in which an exceptional child resides may pay all or part of the cost of room and board for such exceptional child at the place where the special education or related services are provided.

(b) Special education and related services which are provided for exceptional children shall meet standards and criteria set by the state board and shall be subject to approval by the state board.

(c) Any contract entered into by a board under the provisions of this section shall be subject to change or termination by the legislature.

2. Provision of Special Education Services

Children with exceptionalities are entitled to receive special education and related services. This term means specially designed instruction to meet the unique needs of a child with an exceptionality, and includes physical education, travel training, and vocational education. Special education and related services must be provided at no cost to the parents.

All special education services, related services, and supplementary aids and services are to be based on peer-reviewed research, to the extent practicable (K.S.A. 72-3429(c)(4)). Peer-reviewed research is research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published. It may be important to note that the U.S. Department of Education's Office of Special Education Programs comments to the federal special education regulations, state that special education services that are based on "peer-reviewed research" are to be provided to the extent that it is possible, given the availability of the research. If no such research exists, the service may still be provided if the IEP team determines that such services are appropriate. Further, OSEP states that failure to base services on peer-reviewed research is not necessarily a violation of FAPE, because the IEP team determines what services the child will receive based on the child's individual needs. The IEP is not required to include specific instructional methodologies unless the IEP team determines that a certain instructional methodology is necessary for a child to receive FAPE (Federal Register, August 14, 2006, pp. 466–65).

Each IEP team makes decisions about the special education instruction and related services, as well as supplementary aids and services to be provided to the child, or on behalf of the child, so that the child will advance appropriately toward meeting the child's annual goals, advance in the general curriculum, and be educated with the child's peers.

The IEP must also include any services needed to support school personnel. For example, if the general education teacher needs instruction to learn how to use an assistive technology device that the child will use in the classroom, or if the general education teacher may need training in order to carry out a behavior intervention plan in the classroom, or the teacher is being sent to receiving training to work with a child with autism, these services would be included in the IEP for the child.

The decision about what services, the amount of services, and the setting of services necessary to meet the unique needs of an exceptional child is based on a variety of factors. The IEP team must identify the child's present levels of academic achievement and functional performance (PLAAFPs) and determine the annual goals and, if appropriate, benchmarks/short-term objectives. Once the PLAAFPs and goals are established, the IEP team decides what services are to be provided. The IEP team decides the specific services and the amount of services that will be needed for the child to make the necessary progress to achieve the measurable annual goals. After the IEP team determines which services and the amount of services are necessary the team next needs to decide where those services will be provided, and the amount of time the child will spend in general education settings, special educational settings, or in a combination of settings. All special education and related services must be individually determined in light of each child's unique abilities and needs to meet the annual goals in the IEP and make progress in the general education curriculum.

3. Paraeducator

The State of Kansas has no statewide requirements for employment as a paraeducator or paraprofessional in a school; however, state and federal funding for certain positions may have

requirements pertaining to those positions. Individual local education agencies (LEAs) may set requirements for employment. Paraeducators (paras) cannot be given responsibility for designing or be the primary person in charge of delivering classroom content. Paras working in non-KSDE licensed fields (speech-language pathology, occupational therapy, nursing, etc.) may need to meet specific requirements for training, supervision, and allowable duties. The "Special Education Reimbursement Guide: State Categorical Aid", found on the Categorical Aid Reimbursement page at https://www.ksde.gov/policy-and-funding/special-education/categorial-aid-reimbursement, outlines these requirements as well as overall minimum requirements for para time to be claimed for reimbursement, however each supervising professional's licensing body is the final authority.

When reporting IEP services in the Management Information System (MIS), paras are not to be reported separately from the special teacher supervising the para in providing services listed on a student's IEP. Paras are included in and reported as part of the supervising teacher's special education service time.

4. Related Services As Special Education Services

The IEP team may determine that the only special education service needed for a child with a disability is a related service, in certain circumstances:

- if it consists of specially designed instruction to meet the unique needs of the child, any related service, including para support or speech-language pathology, is considered special education
  or
- if a child needs OT, PT, or interpreter services for deaf children in order to be educated in the least restrictive environment, that service is considered special education

The provision of any such services to a child with a disability should be determined based on the child's individual unique needs, not based on the child's disability category.

State regulations identify the following related services as special education services:

> *"(kkk) 'Special education' means the following: (2) Paraeducator services, speech/language pathology services, and any other related services, if it consists of specially designed instruction to meet the unique needs of a child with a disability;*
>
> *(3) occupational or physical therapy and interpreter services for deaf children if, without any of these services, a child would have to be educated in a more restrictive environment"*
>
> *(K.A.R. 91-40-1(kkk)(2), (3))*

5. Special Education for Children Identified as Gifted

Each child identified as gifted shall be permitted to test out of, or work at an individual rate, and receive credit for required or prerequisite courses, or both, at all grade levels, if so specified in that child's IEP. Each gifted child may receive credit for college study at the college or high school level, or both. If a gifted child chooses to receive college credit, however, the student shall be responsible for the college tuition costs (K.A.R. 91-40-3(g), (h)).

K.S.A. 72-3429. Individualized education program or family service plan; contents.
(c) The IEP for each exceptional child shall include:
(4) a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;
(B) to be involved in and make progress in the general education curriculum in accordance with provision (1) and to participate in extracurricular and other nonacademic activities; and
(C) to be educated and participate with other exceptional and nonexceptional children in the activities described in this paragraph;
(5) an explanation of the extent, if any, to which the child will not participate with nonexceptional children in the regular class and in the activities described in provision (4);
(6) (A) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments; and
(B) if the IEP team determines that the child shall take an alternate assessment on a particular state or district-wide assessment of student achievement or part of such an assessment, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;
(7) the projected date for the beginning of the services and modifications described in provision (4), and the anticipated frequency, location, and duration of those services and modifications;

K.A.R. 91-40-1. Definitions.

(kkk) "Special education" means the following:
(1) Specially designed instruction, at no cost to the parents, to meet the unique needs of an exceptional child, including the following:
(A) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(B) Instruction in physical education;
(2) paraeducator services, speech-language pathology services and any other related service, if the service consists of specially designed instruction to meet the unique needs of a child with a disability;
(3) occupational or physical therapy and interpreter services for deaf children, if without any of these services, a child would have to be educated in a more restrictive environment;
(4) travel training; and
(5) vocational education.

(lll) "Specially designed instruction" means adapting, as appropriate to the needs of each exceptional child, the content, methodology or delivery of instruction for the following purposes:
(1) To address the unique needs of the child that result from the child's exceptionality; and
(2) to ensure access of any child with a disability to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children.

K.A.R. 91-40-3. Ancillary FAPE requirements.

(g) Each gifted child shall be permitted to test out of, or work at an individual rate, and receive credit for required or prerequisite courses, or both, at all grade levels, if so specified in that child's individualized education program.
(h) Any gifted child may receive credit for college study at the college or high school level, or both. If a gifted child chooses to receive college credit, however, the student shall be responsible for the college tuition costs.

B. RELATED SERVICES

Related services are developmental, corrective, and supportive services required to assist a child, who has been identified as a child with an exceptionality, to benefit from special education services. Generally, when needed, related services are provided in addition to special education instruction. Once the child has been identified as a child with an exceptionality the child need not meet the eligibility criteria for another area of exceptionality in order to receive related services. The individualized education program (IEP) team determines what additional services are necessary for the child to benefit from the special education services. The IEP team must consider each child's goals and the services or supports needed to assist the child to achieve them.

Related services are available for exceptional children; however, not all related services are available to children identified as gifted. To distinguish which related services are or are not available to children identified as gifted refer to the definitions of a particular related services in K.A.R. 91-40-1.

K.A.R. 91-40-1(ccc) includes the following as related services, which is not an all-inclusive list. Where additional definitions appear in state regulations, citations are provided with the term.

A. Art therapy
B. Assistive technology devices and services, K.A.R. 91-40-1(c), (d)
C. Audiology, K.A.R. 91-40-1(e)
D. Counseling services, K.A.R. 91-40-1(m)

E. Dance movement therapy
F. Early identification and assessment of disabilities, K.A.R. 91-40-1(s)
G. interpreting services, K.A.R. 91-40-1(kk)
H. Medical services for diagnostic or evaluation purposes, K.A.R. 91-40-1(nn)
I. Music therapy
J. Occupational therapy, K.A.R. 91-40-1(rr)
K. Orientation and mobility services, K.A.R. 91-40-1(ss)
L. Parent counseling and training, K.A.R. 91-40-1(ww)
M. Physical therapy, K.A.R. 91-40-1(yy)
N. Recreation, including therapeutic recreation, K.A.R. 91-40-1(aaa)
O. Rehabilitation counseling services, K.A.R. 91-40-1(bbb)
P. School health services, K.A.R. 91-40-1(fff)
Q. School nurse services, K.A.R. 91-40-1(ggg)
R. School psychological services, K.A.R. 91-40-1(hhh)
S. School social work services, K.A.R. 91-40-1(iii)
T. Speech and language, K.A.R. 91-40-1(nnn)
U. Transportation, K.A.R. 91-40-1(vvv)
V. Other developmental, corrective or supportive services

K.A.R. 91-40-1. Definitions.

(ccc) "Related services" means developmental, corrective, and supportive services that are required to assist an exceptional child to benefit from special education.

(1) Related services shall include the following:

(A) Art therapy;
(B) assistive technology devices and services;
(C) audiology;
(D) counseling services;
(E) dance movement therapy;
(F) early identification and assessment of disabilities;
(G) interpreting services;
(H) medical services for diagnostic or evaluation purposes;
(I) music therapy;
(J) occupational therapy;
(K) orientation and mobility services;
(L) parent counseling and training;
(M) physical therapy;
(N) recreation, including therapeutic recreation;
(O) rehabilitation counseling services;
(P) school health services;
(Q) school nurse services;
(R) school psychological services;
(S) school social work services;
(T) special education administration and supervision;
(U) special music education;
(V) speech and language services;
(W) transportation; and
(X) other developmental, corrective, or supportive services.

(2) Related services shall not include the provision of any medical device that is surgically implanted, including a cochlear implant, the optimization of the device's functioning, including mapping and maintenance of the device, and replacement of the device.

(kkk) "Special education" means the following:

(2) paraeducator services, speech-language pathology services, and any other related service, if the service consists of specially designed instruction to meet the unique needs of a child with a disability;

(3) occupational or physical therapy and interpreter services for deaf children if, without any of these services, a child would have to be educated in a more restrictive environment;

1. Surgically Implanted Devices

Related services do not include a medical device that is surgically implanted, including cochlear implants. They also do not include the optimization of that device's functioning (e.g., mapping), maintenance, or the replacement of that device. However, the child with a surgically implanted device may receive any of the related services that the IEP team determines is necessary for the child to receive a free appropriate public education (FAPE) (K.A.R. 91-40-1(ccc)(2)).

The school must appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school. The school must also routinely check external components of a surgically implanted device to make sure it is functioning properly. (K.A.R. 91-40-3(f)(2); 34 C.F.R. 300.34(b); 34 C.F.R. 300.113(b), (c))

2. Medical Services and School Health Services

There is an important distinction between "medical services" and "school health services." According to K.A.R. 91-40-1(nn) and 34 C.F.R. 300. 34(c)(5), medical services are defined as "services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." Schools are required to provide medical services only for diagnostic or evaluation purposes (34 C.F.R. 300.34(a)).

On the other hand, school health services are to be specified on the IEP of a child with a disability and are provided by a school nurse or other qualified person (K.A.R. 91-40-1(fff). School nurse services are services provided by a qualified school nurse (K.A.R. 91-40-1(ggg)). School health services and school nurse services are related services, which must be provided whenever needed to assist a child with a disability to benefit from special education (K.A.R. 91-40-1(ccc); 34 C.F.R. 300.34(a)).

The United States Supreme Court has clarified the distinction between medical services and health services. According to the Supreme Court, medical services are services that must be performed by a physician. It is only those services that require the skills of a physician, therefore, that are limited to diagnostic or evaluation purposes. Health services that may be performed by persons who are not physicians (nurses or other qualified persons) are related services which must be provided by the school when needed to assist a child with a disability to benefit from special education. In so holding, the Court stated that Clean Intermittent Catheterization, a procedure involving the insertion of a catheter into the urethra to drain the bladder, was a related service the school must provide to a student who needs it to benefit from special education (*Irving Independent School Dist. v. Tatro*, 468 U.S. 883 (1984)).

The US Supreme Court reviewed the *Tatro* decision in 1999. See *Cedar Rapids Community Sch. Dist. v. Garret F.*, 526 U.S. 66 (1999). In *Garret F.*, the Supreme Court reaffirmed its decision in *Tatro*. The *Garret F.* Court stated Clean Intermittent Catheterization, continuous one-on-one nursing services, and operation of a ventilator for life support were not medical services because they did not "demand the training, knowledge, and judgment of a licensed physician." The Court found these services to be related services, and that the school was required to provide these services to Garret because he needed such services in order to benefit from his special education services.

In summary, medical services may be a related service only when it involves a procedure requiring the training, knowledge, and judgment of a licensed physician. Even then, it is limited to diagnostic or evaluation purposes. Federal regulations and US Supreme Court cases indicate any health-related procedure that does not require the services of a physician is a related service (school health service),

which must be provided by the school when needed to assist a child with a disability to benefit from special education.

The Kansas Nurse Practice Act addresses the need for appropriate supervision and training for personnel providing services such as medication administration. Some procedures may not be delegated to personnel other than a nurse under any circumstances. For additional information, please consult the Kansas Nurse Practice Act Statutes & Administrative Regulations, https://ksbn.kansas.gov/npa/.

The Individuals with Disabilities Education Act (IDEA) is clear that parents cannot be required to obtain a prescription for medication for a child as a condition of attending school, receiving an evaluation, or receiving special education and related services (K.S.A. 72-3410(e); 34 C.F.R. 300.174)a)).

Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66 (1999).

When a school district refused to provide certain services to a medically fragile student, the parent requested a due process hearing. The disputed services were: urinary bladder catheterization, suctioning of tracheotomy, ventilator setting checks, ambu bag administrations as a back up to the ventilator, blood pressure monitoring, observation to determine if the student was in respiratory distress or autonomic hyperreflexia, and disimpation in the event of autonomic hyperreflexia. At due process, an administrative law judge [ALJ] ruled that the district was required to furnish the disputed health care services, as the services were related services. The school district appealed, and a federal district Court agreed with the ALJ that the district was required to provide the disputed services under the IDEA. On appeal to the 8th Circuit, the circuit court concluded the services were necessary for the student to attend school. Since the disputed services were not for diagnostic or evaluative reasons and did not need to be administered by a physician, the district was obligated by the "bright-line" test to furnish them, according to the circuit court. The school district appealed to the Supreme Court.

HELD: for the parent.

The Supreme Court agreed with the lower courts, finding the district was obligated to provide the disputed services. Looking to the IDEA definition of "related services" first, the court noted that the district admitted the disputed services were incorporated within the statutory definition of related services. The disputed services were deemed supportive services, as they were necessary for the student to attend school. In examining whether the medical services exclusion applied, the court noted that medical services are not explicitly defined within the statute, but an exclusion exists which limits the required medical services to services for "diagnostic and evaluation purposes." The scope of this exclusion was addressed by the Supreme Court in the *Tatro* decision, which held medical services are those services that must be performed by a physician. Applying the reasoning from *Tatro* to the current dispute, because the requested services did not have to be provided by a physician, the district was required to provide them. The court rejected the proposed multi-factor approach favored by the district as unsupported by the applicable judicial and statutory precedent. Neither the IDEA nor the IDEA regulations enumerate any type of multi-factor approach. The district's assertion that the continuous nature of the services required by the student made them medical services was also rejected. The cost factor, which the district claimed would result in an undue burden, was deemed inconsistent with the purposes of the IDEA. The purpose of the IDEA was to ensure access to public schools for students with disabilities. The court stated that if it adopted the district's cost-based standard it would be engaging in inappropriate judicial rule making. For these reasons, the court concluded the IDEA, *Tatro*, and the intent behind the IDEA, all supported the conclusion that the district was required to furnish the student with the requested services.

K.S.A. 72-3410. Duties of boards of education in meeting requirements of law; responsibilities of state board of education and other state agencies; interagency agreements; dispute resolution.

(e) Each school board and state agency is prohibited from requiring any child to obtain a prescription for a substance covered by the federal controlled substances act, 21 U.S.C. 801 et seq., as a condition for the child to attend school or be evaluated or receive special education services under this act.

K.A.R.91-40-1. Definitions.

(nn) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(fff) "School health services" means health services that are specified in the IEP of a child with a disability and that are provided by a school nurse or other qualified person.

(ggg) "School nurse services" means nursing services that are provided by a qualified nurse in accordance with the child's IEP.

K.A.R. 91-40-3. Ancillary FAPE requirements.

(f) (1) Each agency shall ensure that hearing aids worn in school by children with hearing impairments or deafness are functioning properly. (2) Each agency shall ensure that the external components of surgically implanted medical devices of children with disabilities are functioning properly. However, an agency shall not be responsible for the maintenance, programming, or replacement of any surgically implanted medical device or any external component of the device.

3. Transportation

Transportation is a related service when it is needed in order for the child to benefit from special education. There is no requirement that the need for transportation be related to the student's disability. If the IEP team determines that a child will not be able to access special education services without transportation being provided by the school district, the IEP team needs to add transportation to the IEP as a related service, even if the need for transportation is not related to the disability. IEP teams may take into account the parent's ability to transport the student, the student's ability to walk to school, and whether public transportation is available. Each situation is considered individually, and if for a particular child, transportation is required, then the school must provide it or make other arrangements for the child to be transported. In addition to travel to and from school, transportation, as a related service, also includes travel between schools as well as travel in and around school buildings. Thus, the IEP team may need to also assess a child's ability to access school facilities. Like all related services, when an IEP team determines it is needed, transportation services will be included on the child's IEP.

Generally, a school district is not required to transport a child to a location out of the district of residence. This would apply if a child attends a child care, preschool program, or after school program that is located in another district or if the child is attending a private school located in another district and requires special education and related services from the district of residence. (See more about transportation of private school students in Chapter 14.) Of course there are always exceptions, one of which would include when a child is placed by the school district in a school or facility outside of the district boundaries. In this case, the school district would be required to transport the child to the out-of-district location.

If the IEP team determines that the parent will provide transportation that should be indicated on the IEP. For some children, special considerations for transportation may be necessary. For example, if a child uses a wheelchair, a bus with a lift may be needed. The IEP for a child with severe asthma who requires air conditioning may need to specify an air-conditioned bus. A child may need a paraeducator on the bus for the child's safety and well-being. In determining who should attend the IEP meeting, the IEP team may consider the need to invite the bus driver, if there are special transportation needs. Behavioral considerations could be an example. Certainly, if a driver was included in a behavioral intervention plan, the driver could be involved in the development of that plan.

A service somewhat related to transportation is Driver's Education, which is a course some secondary schools provide for students. If the class is offered for students in the general education curriculum, it must be available for students receiving special education services, if appropriate. A student with physical disabilities may require an adapted car to drive. The IEP team should consider what transportation services and supports are needed for each individual child.

4. Interpreting Services

If a child is deaf or hard of hearing and the IEP team determines that the child needs a sign language interpreter to receive FAPE, then that service is required and must be written in the IEP as a special education service or a related service. The IEP team should also address the need for a sign language interpreter in nonacademic and extracurricular activities.

Interpreting services include oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication

access real-time translation (CART), C-Print, and TypeWell. Interpreting services would also include special interpreting services for children who are deaf-blind (K.A.R. 91-40-1(kk); 34 C.F.R. 300.34(c)(4)).

As any other special education service provider, sign language interpreters must be qualified to provide the related service. See the "Special Education Reimbursement Guide: State Categorical Aid", on the Categorical Aid Reimbursement page at https://www.ksde.gov/policy-and-funding/special-education/categorial-aid-reimbursement.

C. SUPPLEMENTARY AIDS AND SERVICES

The individualized education program (IEP) team determines what supplementary aids and services and other supports, are to be provided to the child with a disability or on behalf of the child in general education classes or other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate (the least restrictive environment) (K.A.R. 91-40-1(ttt)). The supplementary aids and services are to be based on peer-reviewed research to the extent that they are available. Examples of supplementary aids and services include paraeducator services, assistive technology devices and services, and other accommodations as appropriate.

1. Assistive Technology Devices and Services

An example of a supplementary aid or service is assistive technology, which may also be considered a related service. An IEP team may determine an evaluation is needed to assess the need for assistive technology devices and services. If a child needs assistive technology to remain in the general education class or other education-related setting to enable the child to be educated with children without exceptionalities to the maximum extent appropriate, then assistive technology must be listed as a supplementary aid or service on the IEP including the frequency, location, and duration. (See useful publications at the Wisconsin Assistive Technology Initiative website (http://www.wati.org/))

Questions may arise about the responsibility for maintaining, servicing, repairing, or insuring an assistive technology device. The definition in the federal special education regulations makes it clear that the school is responsible for maintaining, repairing, and replacing these devices identified on the IEP. The school may want to revise the district's insurance to cover such equipment, both on and off campus. If a device is used in the child's home or another location away from the school, the home insurance, school insurance, or other coverage may be used. In some cases, it may be worthwhile to purchase special insurance for some devices. For example, if the school has purchased an augmentative communication device or a hearing aid for a preschool-aged child, the nominal insurance fee may be worth considering, especially if the child is very active.

Another issue to consider is the need for the assistive technology device at home or in other settings (K.A.R. 91-40-3(d)(2)). Federal and state special education regulations make it clear that if the child needs access to the device at home or in other settings in order to receive a free appropriate public education, then it must be allowed and the IEP should state that the device is necessary in the non-school setting(s). An important consideration by the IEP team regarding this issue is that homework and extracurricular activities are an important component of the child's educational experiences.

The school is required to provide the needed assistive technology in a timely manner. Other resources may be available to loan devices or to help pay for them. Medicaid, the Program for Children with Special Health Care Needs, private health insurance, service clubs, and other funding sources may be able to pay for equipment. The Assistive Technology for Kansans regional Access Sites may also be

helpful to schools in locating evaluation and funding resources; call 800-KAN-DO IT to reach the office nearest your school.

If a child who needs an assistive technology device is covered by Medicaid insurance, and Medicaid pays for the device, the device is owned by the child and family. This ownership requirement is consistent with Medicaid rules. Likewise, if other resources (Special Health Services, civic groups, other organizations) have purchased the assistive technology device, it belongs to the child and family. Member districts may access the Kansas Infinitec Coalition at https://www.myinfinitec.org/login.

K.A.R. 91-40-1. Definitions.

(c) "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 shall not include any medical device that is surgically implanted or the replacement of the device.

(d) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include the following:

(1) Evaluating the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) providing training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(6) providing training or technical assistance for professionals including individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child.

(kk) "Interpreting services" means the following:

(1) For children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, including communication access real-time translation (CART), C-Print, and TypeWell; and

(2) special interpreting services for children who are deaf-blind.

(ttt) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, or other education-related settings, and extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

K.A.R. 91-40-3(d). Ancillary FAPE requirements.

(1) Each agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education or related services, or the child's supplementary aids and services.

(2) Each agency, on a case-by-case basis, shall allow the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices at home or in other settings in order to receive FAPE.

2. Nonacademic and Extracurricular Services

The IEP team must determine whether the child requires supplementary aids and services, that are appropriate and necessary, to afford the child an equal opportunity for participation in nonacademic and extracurricular services and activities. These are nonacademic and extracurricular activities that are school sponsored during the regular school year.

Nonacademic and extracurricular services may include counseling services, athletics, transportation, health services, recreational activities, referrals to agencies that provide assistance to individuals with exceptionalities, and employment of students, including employment by the school (K.A.R. 91-40-3(b)(2); 34 C.F.R. 300.107).

Nonacademic and extracurricular activities may include meals, recess, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with exceptionalities, both employment by the school and assistance in making outside employment available. Some other school-sponsored events or activities include Student Council, school dances, school sporting events, school newspaper or yearbook, school plays and musicals, school music concerts, academically related events

like spelling or math bees, and nonacademic events like pep rallies. This list is not all-inclusive; many options exist within each school. Appropriate involvement in such activities and events can enrich the lives of children with disabilities, just as they do for children without disabilities.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, field trips and the services specified above, the school must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate and to the needs of the child (K.A.R. 91-40-3(b)(1); 34 C.F.R. 300.117).

For example, the IEP team might consider if the child could attend an after-school activity, a club, or group meetings in which other students would participate. Another example might be a football game. If the school district is sponsoring the freshman class to go to a school football game on a bus, then the IEP team needs to provide an equal opportunity for that student to participate in that school-sponsored activity. However, if a child simply wishes to attend a football game in which there is no school-sponsored activity for the class, then that child would not necessarily require any accommodations provided through the IEP. If a child's IEP states that the child needs a sign language interpreter and if this school-sponsored event is after school or on the weekend, then the school needs to arrange for an interpreter to be available.

K.A.R. 91-40-3. Ancillary FAPE requirements.

(a) Each agency shall ensure that children with disabilities have available to them the same variety of educational programs and services that are available to nondisabled children served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(b) (1) Each agency shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, including the provision of supplementary aids and services as determined to be necessary by the child's IEP team.

(2) Nonacademic and extracurricular services and activities shall include the following:

(A) Counseling services;
(B) athletics;
(C) transportation;
(D) health services;
(E) recreational activities;
(F) special interest groups or clubs sponsored by the agency;
(G) referrals to agencies that provide assistance to individuals with disabilities; and
(H) employment of students, including both employment by the agency and assistance in making outside employment available.

(c) (1) Each agency shall make physical education services, specially designed if necessary, available to every child with a disability, unless the agency does not provide physical education to any children who are enrolled in the same grade.

3. Access to Instructional Materials

Kansas has adopted the National Instructional Materials Accessibility Standard (NIMAS), for the purposes of providing instructional materials to blind persons, or other persons with print disabilities, in a timely manner. Further, all public agencies, including the school, shall ensure children with disabilities who need instructional materials in accessible formats, but are not included in the definition of blind, or other persons with print disabilities, or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner (34 C.F.R. 300.172(a)(b); 34 C.F.R. 300.210). A "timely manner" means that the responsible public agency shall take all reasonable steps to ensure needed instructional materials, including instructional materials that cannot be produced from NIMAS files, are provided in accessible formats at the same time as other children receive instructional materials More information on how to access the National Instructional Materials Center can be found at https://www.ksde.gov/student-success/special-education/sensory-losses/blind-or-low-vision-resources.

D. PROGRAM MODIFICATIONS AND SUPPORTS FOR SCHOOL PERSONNEL

Each IEP for a child with an exceptionality must include a statement of the program modifications, or supports for school personnel that will be provided to the child, or on behalf of the child, to enable the child to participate with nonexceptional peers to the maximum extent appropriate and to enable the child to advance appropriately toward the annual goals. The modifications may address various areas including environmental and structural changes, how the child will participate in direct instruction, learning activities, collaborative work groups, large-group discussions, and other events occurring in their general education classroom. Necessary modifications for children with exceptionalities must be documented on the child's IEP. (K.S.A. 72-3429(c)(4); 34 C.F.R. 300.320(a)(4)(i))

The IEP should also include a statement of the supports for school personnel that need to be provided for each child to enable him/her to advance appropriately toward attaining their measurable annual goals and to be involved and progress in the general education curriculum. These supports may include specialized staff development (e.g., learn sign language, learn a software program the child will use), consultation by a special teacher, or materials or modifications to the environment.

The program modification and/or supports for school personnel in the IEP must indicate the projected date for the beginning of the services or supports, including the frequency, location, and duration.

E. PERMISSIVE USE OF FUNDS

Permissive use of funds refers to the benefits one or more children with or without exceptionalities receives from the special education and related services and supplementary aids and services that are provided to a child with an exceptionality in inclusive settings including the classroom and other educational related settings. This situation may also apply to other education-related settings, such as community-based job sites, the school bus, and other settings. Schools may deliver special education services in the general education classroom with nonexceptional children even if one or more children without exceptionalities benefit from such services as long as the service being provided is designed to meet the unique needs as described on the IEP of a child with an exceptionality.

20 USC 1413. Local educational agency eligibility.

(a) In general a local educational agency is eligible for assistance under this subchapter for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

(4) Permissive use of funds

(A) . . . [f]unds provided to the local education agency under this subchapter may be used for the following activities:

(i) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services.

F. EXTENDED SCHOOL YEAR/DAY SERVICE

1. Extended School Year Services

When the IEP is developed initially or reviewed annually, the IEP team shall consider the need for extended school year (ESY) services for children with disabilities. Children identified as gifted are not eligible for extended school year services. ESY services are different from general education summer school. ESY may or may not be provided in conjunction with the general education summer school. ESY may be needed by a child even though summer school is not offered for general education children. In fact, for certain children, services over winter or spring breaks may be needed. The reason for these services is to ensure the provision of FAPE so that the child can make progress toward the goals specified on the child's IEP and to prevent regression, which would impede such progress.

However, if a child with a disability is attending a summer school program for general education purposes, (not extended school year) the school shall consider what reasonable accommodations/modifications may be necessary for the child to have an equal opportunity to participate in the general education environment and curriculum. The necessary supports can be provided through a 504 plan.

The need for ESY is to be decided individually. Therefore, a district shall not have a policy that no ESY services will be provided, that they are only available to a certain group or age of children, or that services are only provided for a set amount of time or a specified number of days.

a. Determining whether ESY is needed

In Kansas, ESY eligibility does not require that a child first experience regression when predictive data indicate that regression is likely. There is a 10th Circuit Court of Appeals case that must guide the discussion of a Kansas IEP team on whether a student with a disability (not students who are gifted) needs ESY services. Kansas is within the 10th Circuit and is bound by the decisions of the 10th Circuit Court of Appeals. *Johnson v. Independent School District No. 4 of Bixby*, 921 F.2d 1022 (10th Cir. 1990) directs schools districts to first consider "whether the benefits accrued to the child during the regular school year will be significantly jeopardized if [the child] is not provided an educational program during the summer months. . . . The analysis of whether the child's level of achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child's parents as well as circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community." IEP teams cannot just stop after a regression-recoupment analysis. IEP teams must also consider:

1. The degree of impairment,
2. The degree of regression suffered by the child,
3. The recovery time from this regression,
4. The ability of the child's parents to provide the educational structure at home,
5. The child's rate of progress,
6. The child's behavioral and physical problems,
7. The availability of alternative resources,
8. The ability of the child to interact with [nondisabled] children,
9. The areas of the child's curriculum which need continuous attention,
10. The child's vocational needs, and
11. Whether the requested services is extraordinary for the child's condition, as opposed to an integral part of a program for those with the child's condition.

This list is not intended to be exhaustive, nor is it intended that each element would impact planning for each child's IEP.

b. Gathering relevant data for the ESY discussion

The *Johnson* case specifies that determining whether ESY is needed should be done in consultation with the parents. Additionally, the IEP team should gather information and data relevant to the criteria listed in the *Johnson* case. The following information and data may be useful in determining the need for ESY services:

1. Teacher assessment of the student's success with various instructional interventions;

2. Criterion-referenced and standardized test data;
3. Health and health-related factors, including physical and social/emotional functioning;
4. Past educational history, as appropriate, including any ESY services;
5. Direct observation of the student's classroom performance;
6. IEP goals and objectives;
7. Student performance (pretest and posttest data);
8. Behavior checklists; and
9. Student interviews where appropriate.

c. Addressing ESY in the IEP. Once the IEP team has gathered relevant data and determined that the student needs ESY services, it is important for the IEP Team to address the educational needs of each student and how they might be addressed through ESY services and documented in the student's IEP, such as:
    1. Scope of the special education instructional services including the duration and content of the program;
    2. Which current goals and objectives will be addressed to maintain present skills and behaviors;
    3. Implementer(s) of the ESY services;
    4. What related services will be made available; and
    5. If contracting with other schools or private agencies is needed.

State regulations set forth the following stipulations for ESY:

K.A.R. 91-40-1. Extended school year services.
(x) Extended school year services means special education and related services that are provided to a child with a disability under the following conditions:
(1) Beyond the school term provided to nondisabled children;
(2) in accordance with the child's IEP; and
(3) at no cost to the parents of the child.

K.A.R. 91-40-3. Ancillary FAPE requirements
(e) (1) Each agency shall ensure that extended school year services are available as necessary to provide FAPE to a child with a disability.
(2) An agency shall be required to provide extended school year services only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.
(3) An agency shall neither limit extended school year services to particular categories of disability nor unilaterally limit the type, amount, or duration of those services.

2. Extended School Day Services

In addition to services provided outside the typical school year (number of specified days), children may also need more hours per day than are typically provided. Such decisions must be made by the IEP team, based upon the decision making process described above.

G. FREQUENCY, LOCATION, AND DURATION OF SERVICES

Each IEP shall indicate the projected beginning date and the anticipated frequency, location, and duration for the special education and related services (including transition activities that are a special education or related service), supplementary aids and services, and modifications. It is possible that beginning and ending service dates may vary throughout the year and should be indicated as such on the IEP.

For data collection purposes KSDE requires that the frequency of the services and modifications be reported as minutes/days/weeks. This would indicate how many minutes per day, how many days per

week, and how many weeks per school year the services would be provided. This information would be determined at the IEP team meeting when decisions are being made about what services will be provided.

Sometimes it is difficult to be precise in determining just how much service will be required throughout the year. Sometimes services are provided on a situational basis, such as "reading the math test to the child." The IEP should not indicate these services are "as needed." The IEP has to describe when and how the service will be provided throughout the year. For example, the IEP might say that the math teacher gives a weekly math test over work covered each week, gives a chapter test at the end of each chapter, and the student is taking the State math assessment during the year. The student will go to the resource room to have each of these math tests read to the student. For reporting purposes you might estimate based on historical events or current information (use of existing data) that the total anticipated amount of time would be 1.5 hours per week over 36 weeks—or 90 minutes 1 day per week for 36 weeks.

In the context of an IEP, the location of services does not refer to the physical location where services will be provided, rather, location refers to the type of educational environment where the services will be provided. This should be described in the IEP so that the parents and the IEP team members will know, for example, whether the child is to receive services, in a regular classroom or a resource room (64 Fed. Reg. 12406, 12594 (Mar. 12, 1999)). KSDE requires the use of specific building codes and placement settings for reporting purposes. (For information on reporting frequency, location, and duration of services to KSDE see the "Data Dictionary" (revised annually) at https://www.ksde.gov/data-and-reporting/mis-and-student-data.)

The amount of services to be provided must be stated in the IEP so that the level of the school's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP (Federal Register, August 14, 2006, p. 46667). In addition, the IEP team addresses the extent, if any, to which the child will not participate with children without disabilities in the general education curriculum and nonacademic activities.

H. HOME SCHOOLING

School districts are required through their Child Find duties to locate, identify, and evaluate all children residing in the school district, including those who are home schooled. However, public schools are not required to make a free appropriate public education (FAPE) available to home-schooled children unless their parents choose to enroll them in the public schools. Therefore, if a home-schooled child is found to be a child with an exceptionality, parents should be informed, in writing, that special education and related services are available if the child is enrolled in the public schools and that the school district "stands ready, willing, and able to provide a free appropriate public education" to the child upon enrollment.

Under Kansas law, it is the duty of the parent of a child with a disability (does not include gifted) to require their child to attend school to receive the special education and related services in the child's IEP or the parent must provide such services privately (K.S.A. 72-3421). This requirement is in addition to and goes beyond the standard Kansas compulsory attendance statute at K.S.A. 72-3120.

Thus, if the school district is aware that an eligible child is not receiving needed special education and related services due to the parents' refusal to provide or accept the needed services, the school must

determine if it is necessary to report the child as a child in need of care as a result of truancy to the Kansas Department of Children and Families (DCF), if the child is under age 13, and to the District or County Attorney if the child is between the ages of 13 and 18. When making this determination, school districts should examine whether the parent has exercised their right to refuse to give consent for initiation of services or to revoke consent for all services.

Home schools generally do not meet the definition in K.S.A. 72-3461(c) of a private school for special education purposes. K.S.A. 72-3461(c) defines a private school for special education services to be, "an organization which regularly offers education at the elementary or secondary level, which is exempt from federal income taxation under section 501 of the federal internal revenue code of 1954, as amended, which conforms to the civil rights act of 1964, and attendance at which satisfies any compulsory school attendance laws of this state." Accordingly, a home school may be a private school for special education purposes, but only if it meets the definition of a private school in K.S.A. 72-3461(c).

However, K.S.A. 72-3120(h) has expanded the right of all children, including children with disabilities, who are being educated in homeschools to attend a public school on a part-time basis. For this purpose, the legislature refers to K.S.A. 72-4345, which defines “Nonaccredited Private Schools,” in a way that includes home schools registered with the Kansas State Department of Education (KSDE). That reference effectively makes children enrolled in home schools, that are registered as such with KSDE, to be eligible to enroll in a resident district on a part-time basis.

Because Kansas homeschools meet the definition in K.S.A. 72-4345 as a “Nonaccredited private school,” they meet requirement (A) in KS.A. 72-3120(h). That means that if (A) a child is being educated in a Kansas homeschool, (B) the parents request part-time enrollment, AND (C) the child meets the age of eligibility to attend school, the school district of residence must accept the child on a part-time basis to attend any of its courses, programs or services, including special education services specified in a child’s IEP.

K.S.A. 72-3120 (h)

(1) Each board of education of a school district shall allow any child to enroll part-time in the school district to allow the student to attend any courses, programs or services offered by the school district if the child:
(A) Is also enrolled in a nonaccredited private elementary or secondary school pursuant to K.S.A. 72-4345, and amendments thereto, or in any other private, denominational or parochial school pursuant to the provisions of subsection (a);
(B) requests to enroll part-time in the school district; and
(C) meets the age of eligibility requirements for school attendance pursuant to K.S.A. 72-3118, and amendments thereto.

(2) Each board of education of a school district shall adopt a policy regarding the part-time enrollment of students pursuant to this subsection and shall publish such policy on the school district's website. The board of education of a school district shall make a good faith attempt to accommodate scheduling requests of students enrolling in the school district pursuant to this subsection but shall not be required to make adjustments to accommodate every such request.

K.S.A. 72-4345. Nonaccredited private schools; pupil records; definitions. As used in this act:

(a) "Private elementary or secondary school" means an organization which regularly offers education at the elementary or secondary level and attendance at which satisfies the compulsory school attendance laws of this state, but which is not accredited by the state board of education.

(b) "Pupil records" means all records, files and data of pupils who are or have been in attendance at a private elementary or secondary school.

(c) "Official custodian" means any officer or employee of a private elementary or secondary school who is responsible for the custody and maintenance of pupil records.

I. SERVICES IN LOCAL DETENTION FACILITIES AND DEPARTMENT OF CORRECTIONS FACILITIES

The local school district is required to provide FAPE according to an IEP that meets the requirements of federal and state laws and regulations to each student with a disability detained or incarcerated in a local juvenile or adult detention facility located within its jurisdiction. The requirements concerning placement and LRE may be modified in accordance with the student's detention or incarceration.

If a student is in a juvenile correctional facility, the Secretary of Corrections (Kansas Department of Corrections (DOC)) is obligated to make FAPE available according to an IEP that meets the requirements of federal and state statutes and regulations for each student with a disability. Requirements concerning parental rights, placement, and LRE may be modified in accordance with state and federal laws and the student's conditions of detention or incarceration.

If a student is in a State adult correctional facility, the Secretary of Corrections (DOC) is obligated to make FAPE available according to an IEP that meets the requirements of federal and state laws and regulations for each student with a disability. However, the correctional institution or facility may modify the student's IEP or placement if it can demonstrate a bona fide security or compelling penological interest that cannot otherwise be accommodated. The following statutes and regulations are not required for students in adult correctional facilities:

- participation of students in state or local assessments; and
- transition planning and services with respect to any disabled student whose eligibility for special education services will end, because of the student's age, before the student is eligible to be released from the correctional facility based on consideration of the student's sentence and eligibility for early release.

A student previously identified as gifted only is not entitled to receive special education services while incarcerated. A student age 18 or over, who is incarcerated in an adult correctional institution or facility and was not identified as a student with a disability and did not have an IEP in their educational placement prior to incarceration, is not entitled to FAPE (K.A.R. 91-40-5).

K.A.R. 91-40-5. FAPE for detained or incarcerated children with disabilities.

(a) Local detention facilities.

(1) Subject to the provisions of K.S.A. 72-3122 and amendments thereto, each board shall provide FAPE to each child with a disability detained or incarcerated in a local juvenile or adult detention facility located within its jurisdiction.

(2) The requirements in this article concerning placement and LRE may be modified in accordance with the child's detention or incarceration.

(b) State juvenile correctional facilities.

(1) The commissioner of the juvenile justice authority shall make provision for FAPE for each child with a disability detained or incarcerated in any state juvenile correctional facility or other facility at the direction of the commissioner.

(2) The requirements in this article concerning parental rights, placement, and LRE may be modified in accordance with state and federal laws and the child's conditions of detention or incarceration.

(c) State adult correctional facilities.

(1) Except as otherwise provided in this regulation, provision for FAPE shall be made by the secretary of corrections for each child with a disability incarcerated in any state correctional institution or facility.

(2) In making provision for FAPE under paragraph (1) of this subsection, compliance with state or federal laws or regulations relating to the following shall not be required of the secretary of corrections:

(A) Participation of children with disabilities in state or local assessments; and

(B) transition planning and services with respect to any disabled child whose eligibility for special education services will end, because of the child's age, before the child is eligible to be released from the secretary's custody based on consideration of the child's sentence and eligibility for early release.

(3) Provision of FAPE to any person incarcerated in a state correctional institution or facility shall not be required by the secretary of corrections if the person meets both of the following criteria:

(A) The incarcerated person is at least 18 years of age.

(B) The incarcerated person, in the person's last educational placement before incarceration, was not identified as a child with a disability.

(4) (A) Except as otherwise provided in paragraph (4)(B) of this subsection, the IEP team of a child with a disability incarcerated in a state adult correctional institution or facility may modify the child's IEP or placement if personnel of the correctional institution or facility demonstrate a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(B) An IEP team of a child with a disability incarcerated in a state adult correctional institution or facility shall not modify the following requirements:

(i) That any decision regarding modifications to, and reviews and revisions of, any IEP shall be made by the IEP team; and

(ii) that, except as otherwise expressly provided in paragraph (c)(2), each IEP shall have the content specified in K.S.A. 72-987 and amendments thereto.

J. FACILITIES

State regulations at K.A.R. 91-40-52(d), include specific provisions regarding the facilities provided for the education of children with exceptionalities. This regulation requires each agency to provide facilities for children with exceptionalities that are comparable to those for nonexceptional children. This could be within the same school building as children without exceptionalities or in a separate facility solely for children with exceptionalities. All facilities must be age-appropriate environments and be appropriate for the instructional program being provided.

K.A.R. 91-40-52. School district eligibility for funding; facilities.

(d) Each agency shall ensure that all of the following requirements concerning facilities are met:

(1) All facilities for exceptional children shall be comparable to those for non-exceptional children within the same school building.

(2) If an agency operates a facility solely for exceptional children, the facility and the services and activities provided in the facility shall be comparable to those provided to nonexceptional children.

(3) All facilities for exceptional children shall be age-appropriate environments, and each environment shall be appropriate for the instructional program being provided.

K. QUALIFIED SPECIAL EDUCATION PERSONNEL

Each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. All special education personnel, as appropriate, shall have the content knowledge and skills to serve children with exceptionalities. This includes special education teachers, related services personnel and paraeducators. School districts must take steps to actively recruit, hire, train, and retain qualified personnel to provide special education and related services to children with disabilities. (34 C.F.R. 300.156; 34 C.F.R. 300.207).

Related services personnel must meet the qualifications of the Kansas licensing agency that apply to the professional discipline in which those personnel are providing special education or related services. Paraeducators must meet the requirements outlined in the "Special Education Reimbursement Guide State Categorical Aid," at https://www.ksde.gov/policy-and-funding/special-education/categorial-aid-reimbursement.

Each teacher employed by a public school as a special education teacher must meet KSDE qualifications (34 C.F.R. 300.156(c)). This requirement does not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by the school to provide equitable services to parentally-placed private school children with exceptionalities (K.A.R. 91-40-43(e)).

Special education teachers who provide "direct instruction" in one or more core content areas will need to meet State requirements for the content area(s). The content requirements pertain only to individuals who are coded as "special education" teachers in the Licensed Personnel Report and who provide direct instruction in a core content area(s) (English Language Arts, Science, Social Studies or

Math) for one or more children. Direct instruction is defined as being either the teacher of record or the teacher responsible for introducing new content material and providing initial instruction.

For additional information, contact Teacher Licensure at either TLALicense@ksde.gov or 785-296-2288

K.A.R. 91-40-43. Services to private school children.

(e) Each board shall ensure that the special education and related services provided to private school children are provided by personnel who meet the same standards as the standards for public school personnel, except that private school teachers who provide services to private school children shall not be required to be highly qualified under the federal law.

34 C.F.R. 300.156. Personnel qualifications.(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession—

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) Qualifications for special education teachers.

(1) The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school—

(i) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (c)(1)(i) of this section if that teacher is participating in an alternate route to special education certification program under which—

(i) The teacher—

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (c)(2)(i) of this section are met.

(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain personnel who meet the applicable requirements described in paragraph (c) of this section to provide special education and related services under this part to children with disabilities.

(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to meet the applicable requirements described in paragraph (c) of this section, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

34 C.F.R. 300.146. Responsibility of SEA.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for § 300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency.

34 C.F.R. 300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2102(b) of the ESEA.

QUESTIONS AND ANSWERS ABOUT SPECIAL EDUCATION AND RELATED SERVICES

1. What does a "free appropriate public education" or "FAPE" mean?

The term "free appropriate public education (FAPE)" is defined in regulation as special education and related services that are provided at no cost to the parent and in conformity with an individualized education program (K.A.R. 91-40-1(z)). In Endrew F. v. Douglas County School District, 117 LRP 9767 (S.C. 2017), the United States Supreme Court refined the legal standard for a free appropriate public education established in Rowley. The Court said in order to provide a free appropriate public education, "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Rowley outlined a two-part inquiry to be used to determine whether FAPE has been provided that is still followed: 1) Were the procedural requirements of IDEA met? and 2) Is the IEP reasonably calculated to provide some (more than trivial) educational benefit? The importance of the procedural requirements were diminished in the 2004 revision of the Individuals with Disabilities Education Act. The statutes were amended to limit a hearing officer's authority by stating that any determination of whether a child has received a FAPE must be based on substantive grounds. The amendment to the statutes further clarified that a hearing officer may determine that a procedural violation denies a child a FAPE only if the procedural violations: (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision making process; or (c) caused a deprivation of education benefit. 20 U.S.C. 1415(f)(3)(E)

2. What will a court consider in determining the adequacy of an IEP?

The adequacy of an IEP (whether it is reasonably calculated to enable the child to receive a meaningful educational benefit) is limited to an assessment of the terms in the written document itself. Only those services identified or described in the IEP will be considered in evaluating the appropriateness of the IEP. Oral agreements are not enforceable, so parents and school personnel should review the final IEP document to assure that it is written carefully and accurately reflects the decisions made at the meeting. See Sytsema v. Academy School District No. 20, 538. F.3d 1306, 50 IDELR 213, (10th Cir. 2008).

3. Once a child is determined eligible as gifted, what services is the child entitled to?

As with all children with exceptionalities, services for children who are gifted are determined on an individual basis by the IEP team. The IEP team will determine the special education, related services and supplementary aids and services necessary for the child to advance appropriately toward meeting the child’s annual goals. There may be a need to expand, enrich, or accelerate the curriculum. Children may test out of certain required classes or prerequisites in order to enroll in more advanced subjects if so specified in their IEP. Advanced placement or honors classes may be appropriate. In many areas, high school students are allowed to enroll in classes at a nearby community college or university. If a gifted student chooses to receive college credit for such classes the student is responsible for tuition costs (K.A.R. 91-40-3(h)). Students identified as gifted only are not entitled to extended school year or services in a correctional facility.

A child may be found eligible as having both giftedness as defined by KAR 91-40-1 and as having a disability area under IDEA. The child must meet the eligibility criteria for both the disability and giftedness. If a child is identified for both gifted and a disability, the disability should be entered as the primary exceptionality in the MIS system.

Children who are identified as both a child with a disability and gifted may receive any related services for which there is a documented need. Children identified only as gifted may receive only the related services of counseling services, parent counseling, school psychological services, school social work services, and transportation. Even if the child shows a weakness in an area (such as written language), the child cannot be provided with a related service to address the weakness unless the child meets the eligibility criteria for a disability under IDEA.

4. Depending on the individual situation, could a school be required to provide a computer or other assistive technology for a child with a disability in order to allow that child to remain in the least restrictive environment?

   Yes. Children with disabilities are entitled to special education and related services, as well as supplementary aids and services. As such, if an assistive technology evaluation demonstrated that the child needs an assistive technology device (e.g., software, computer, writing aids, prone stander, etc.) to remain in the least restrictive environment, the IEP team would list that service on the IEP, and the school must provide it or ensure that it is provided.

5. May an IEP include only related services?

   If a child with a disability only needs related services but does not need special education (specially designed instruction), the child does not meet prong 2 of the eligibility test and would not then qualify to have an IEP. However, in some instances a related service can be special education, rather than a related service. The federal regulations implementing the IDEA state that special education "includes any related service if the service is considered special education rather than a related service under State standards" (34 C.F.R. 300.39(a)(2)(i)). Accordingly, in Kansas, the state regulations provide that "special education means any related service if the service consists of specially designed instruction to meet the unique needs of a child with a disability" (K.A.R. 91-40-1(kkk)(2)). Further, the Kansas regulations also provide that "special education means occupational or physical therapy and interpreter services for deaf children if, without any of these services, a child would have to be educated in a more restrictive environment" (91-40-1(kkk)(3)).

   Thus, if the team determines a child with a disability needs a service that meets these criteria, the child needs special education and meets the second prong of the eligibility test. As a result, that service should be included in the IEP with at least one annual goal. This determination must be made based on the child's individual needs, not based on the child's disability category.

6. If providing transportation as a related service is not necessarily determined by the unique needs of a child's disability, when must transportation be provided for a child with an exceptionality?

   Transportation must be provided if the IEP team determines it is necessary for a child with a disability to benefit from special education. In Donald B. v. Bd. Of Sch. Comm. Of Mobile County, Ala., 26 IDELR 414 (11th Cir. 1997), the court said that the following factors may be considered when making this determination (1) the age of the student; (2) the distance that must be traveled; (3) the nature of the area through which the child must pass; (4) the child's access to private assistance in making the trip; and (5) the availability of other forms of public assistance in route, such as crossing guards or public transit. Safety was a primary concern for this court in each of the first three factors. This case involved a child with a speech impairment who was fully mobile. Though not at issue in this case, if the child had an intellectual disability, a court or investigator would likely also consider the capacity of the child to safely walk to school. This list is not exhaustive.

7. If the school has a school-wide reading program, and the whole school is teaching reading during first hour, is it permissible for the special education teacher to teach reading during first hour?

   Yes. This is permitted under the IDEA, either in the special education class (no incidental benefit), or in the general education setting (with incidental benefit). In either situation, the IEP goals of children with disabilities must be addressed appropriately. According to Federal regulation 34 C.F.R. 300.206(b)(2), this proportionate share of funds may be used without regard for the requirements for expenditures for children with disabilities in the Act. This would include special education and related services and supplementary aids and services provided in a general education class or other education-related setting to a child with a disability, in accordance with the IEP of the child, even if one or more children without disabilities benefit from these services.

8. May special education paraeducators provide services to children outside of the classroom? For example, may they assist during recess, lunch, and other school activities?

   Yes. The IEP team is to determine and address needs of the child during nonacademic and extracurricular activities, as appropriate. If paraeducator services are needed at recess, lunch, club activities, and other times identified by the IEP team, they would be included on the child's IEP.

9. May special education paraeducators be assigned to general school duties such as parking lot, recess, lunch, etc.?

   The answer to this question would depend on individual job requirements and district policy and expectations. This is also a funding issue. It may mean that the paraeducator working with general education for a period of time may not be reimbursed from special education funds for that period. The district may have State special education funds prorated. Categorical aid reimbursement is based on the percentage of the paraeducator's time being devoted to support activities that are directly related to implementing the child's IEP.

10. May special education paraeducators be asked by their supervising teacher or other professional to assist with bulletin boards, duplication of materials, clerical duties, and the like?

    Again, the answer would depend on the activities related to the child's IEP, individual job requirements, and district policy and expectations. There may be funding considerations as in Question #9.

11. Is secondary transition considered services or activities?

    Secondary transition can include both special education and related services and activities. Transition services are defined as a coordinated set of activities that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post school activities. Transition services that are special education and related services require a projected start date and specified frequency, location, and duration of those services or modifications. IEP teams should consider special education legal requirements to ensure that IEPs clearly delineate which transition services are special education and related services and require a projected start date and specified frequency, location, and duration and which transition services are activities that do not required a projected start date and specified frequency, location, and duration.

12. May the IEP of a child include transition services at a job located outside of district boundaries?

    Yes, however, this would only apply if the child was placed in that job through a specific provision in the IEP. The district would need to provide support for the child on-the-job if it was indicated on

the child's IEP. The district could contract with another entity for the support needed by the child. The district would not be required to provide job support outside of its district if the job placement was made by individuals other than school personnel and it was not a part of the IEP team decision.

13. The law says that each child with an exceptionality must have an IEP in effect at the beginning of each school year. Does that mean that the child must begin to receive the special education and related services specified in the IEP on the very first day of school?

    It depends on the frequency, location, and duration of services documented in the child's IEP. The IEP team must make an individual determination regarding when special education and related services will begin and end for each child. Some services may not be provided to the child until the 2nd quarter or second semester of the school year. Some children with exceptionalities may benefit from having the first week of school in general education in order to acclimate to new general education teachers, classrooms, expectations, and routines. Other children, such as children with autism, may need services beginning the very first day of school. Decisions regarding when special education and related services will begin for a new school year are not to be based on convenience of school staff, but the individual needs of each child. If the IEP is silent regarding provision of services during the first and last weeks of a school year, parents often presume that services will be provided during that time. The IEP is to indicate when services begin and the frequency, location, and duration of the services. This is to be clear to the parents and the providers.

14. Do special education and related services missed due to events beyond the control of the school (e.g., school closure due to weather, mandatory emergency drills, or absence of the child) have to be made up at a later date?

    As discussed within this chapter, the IEP team must consider the services needed for the child to address IEP goals, access the general curriculum, and participate in extracurricular and nonacademic activities with children without disabilities. In this context, the team should also discuss what is to be done when services are missed. For example, if a child with learning disabilities needs help taking tests, that service isn't needed if the school is closed. However, if regular, ongoing physical therapy is needed to maintain mobility, the team must find a way for the service to be provided if school is closed.

    Another consideration for the IEP team is whether a number of missed services would constitute a denial of FAPE. Again, the team would create a plan for those circumstances.

15. What level of involvement is allowed of the special education teacher in the general education classroom?

    A certified special education teacher cannot be the teacher of a general education classroom and be considered a special education teacher for full categorical aid reimbursement just because there are children with exceptionalities in the classroom. Special education teachers and related services personnel may co-teach with a general education teacher, or be in the general education classroom working with children with exceptionalities. The other children in the general education classroom could receive benefit from the instruction of the special education teacher when provided to exceptional children. In addition, special education staff may provide direct instruction to nondisabled children if it is part of a general education intervention plan (GEI). Under this GEI provision, special education or other related service personnel may be reimbursed for providing intensive direct instruction for up to but not more than 180 cumulative hours, per school year, per

position. When using special education staff to provide general education interventions, there are additional documentation requirements for auditing purposes. See Special Education Reimbursement Guide State Categorical Aid, https://www.ksde.gov/policy-and-funding/special-education/categorial-aid-reimbursement.

16. What if the IEP team determines that a student is eligible for ESY services and the parent indicates the student will not be participating due to other summer commitments?

    If ESY is in the child's IEP and the parent refuses the services, then the parent may be in violation of the State's special education compulsory attendance statute. (K.S.A. 72-3421) A parent who wishes to revoke consent for the particular ESY services may only do so in accordance with the procedures outlined in K.A.R. 91-40-27, which requires the IEP team to certify in writing that the revocation of the particular service would not prevent the student from receiving FAPE.

17. What are the district's obligations for ESY if the student moves into the district when school is not in session?

    Because ESY is to be decided individually, the school should be prepared to review IEPs of students transferring into the district when school is not in session. See Chapter 4, Section G.TRANSFER WITHIN THE STATE AND FROM OUT OF STATE for more information about a school's options when a student moves into the district with an IEP. The school should review the current IEP to be confident that ESY was considered. If the school chooses to adopt the current IEP, they will be responsible for ensuring the adequacy of the special education and related services and for providing those services.

    If the parent requests ESY the school has an obligation to either schedule an IEP team meeting to discuss ESY or to send a prior written notice as to why the school is refusing the parents request. The basis of the PWN should not merely be that school is not in session.

18. Could related services include supports or interventions for mental health?

    Yes. Related services are developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. While the IDEA and state special education laws include a list of specific related services, that list is illustrative and does not represent all of the possible services that could be related services. If the IEP Team determines that a particular supportive service, which may include mental health supports, is necessary to assist an eligible child with a disability to benefit from special education and has included that service in the child's IEP, then the school must provide that services. Note that services which must be performed only by a licensed physician are medical services, and schools are only required to provide medical services when the IEP Team determines they are necessary for diagnostic or evaluation purposes – not as ongoing services to assist the child to benefit from special education.

19. Could "medical services required for diagnostic or evaluation purposes" include medical services related to mental health?

    Yes. Schools are required to provide medical services (services that must be performed only by a licensed physician) when the IEP Team determines that medical services are required to determine a child's medically related disability that results in the child's need for special education and related services (diagnostic and evaluation purposes). Medical services could include mental health services if those services require the training, knowledge and judgment of a licensed physician and are needed for diagnostic and evaluation purposes.

CHAPTER 6: EDUCATIONAL PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT (LRE)

INTRODUCTION

Educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school (K.A.R. 91-40-1(t)). A group of people, including the parent and other persons knowledgeable about the child, meaning of evaluation data, and placement options (which can be, but does not have to be, the IEP team), makes the decision about the child's educational placement. For children with disabilities, the special education and related services must be provided in the environment that is least restrictive, with the general education classroom as the initial consideration. The decision must be based on the child's needs, goals to be achieved, and the least restrictive environment for services to be provided. Least restrictive environment (LRE) means the child is provided special education and related services with peers who are not disabled, to the maximum extent appropriate (K.A.R. 91-40-1(ll)). The group of persons determining placement must consider how the child with a disability can be educated with peers without disabilities to the maximum extent appropriate, and how he/she will participate with children without disabilities in other activities such as extracurricular and nonacademic activities.

Placement decisions for all children with disabilities, including preschool children with disabilities, must be determined annually, be based on the child's IEP. Current regulation also state that children be placed as close as possible to the child's home, and that each child with a disability is to be educated in the school the child would attend if the child did not have a disability, unless the child's IEP requires some other arrangement (K.A.R. 91-40-21(e)(f)). However, interpretation of this regulation has weakened its impact. For more information regarding a child's right to be placed in the school the child would attend if the child did not have a disability, see the Questions and Answers section of this chapter.

LRE does not require that every child with a disability be placed in the general education classroom regardless of the child's individual abilities and needs. The law recognizes that full time general education classroom placement may not be appropriate for every child with a disability. School districts are to make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of children with disabilities. This requirement for a continuum reinforces the importance of the individualized inquiry, not a "one size fits all" approach, in determining what placement is the LRE for each child with a disability. The continuum of alternative educational placements include instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions (K.A.R. 91-40-21(b); 34 C.F.R. 300.115(b)(1)).

This chapter includes Federal and State requirements for determining educational placement and the following topics are discussed:

A. Parent Participation
B. Determining Educational Placement
C. Least Restrictive Environment
D. Early Childhood Least Restrictive Environment
E. Recent Case Law

A. PARENT PARTICIPATION

Parents have the right to be part of the decision-making team for determining their child's educational placement and have input into that decision. Placement decisions must be made by a group of people, including the parent and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options (K.A.R. 91-40-21(c)(1)(A) and 34 C.F.R. 300.116(a)(1)). This group of people can be, but does not have to be, the IEP Team. The parent must be provided notice of any meeting with respect to educational placement at least 10 calendar days prior to the meeting to ensure that parents have the opportunity to participate. When conducting IEP meetings addressing placement, if neither parent can participate, the parents and the school may agree to use alternative means of participation in the meeting, such as video conferences and conference calls. Schools must ensure that parents understand and are able to participate in any discussions concerning the educational placement of their child. The school must provide an interpreter if parents have a hearing impairment, or whose native language is other than English (K.A.R. 91-40-21(d); 34 C.F.R. 300.501(b)(c)(1)(2)(3)).

The team may hold the meeting to determine placement without the parents if the school has made multiple attempts to contact them and the parents did not respond, or the school is unable to convince them to participate. The school district is required to have documentation of the attempts made to contact the parents to provide them notice of the meeting and to secure their participation. The record must have at least two of the following methods: telephone calls, visits to parents' home, copies of correspondence sent to the parents, and detailed records of other methods. (K.A.R. 91-40-17(e); 34 C.F.R. 300.501(c)(4)).

Once the group of persons determining placement has made the decision on the initial placement of a child with an exceptionality, the parents must be provided Prior Written Notice about the placement decision and requested to provide consent before initial provision of special education and related services in the proposed placement. Within the notice requirements, parents must be informed about the placement options that were considered and the reasons why those options were rejected. Additionally, for subsequent changes in the IEP, parents must provide consent for any substantial change in placement (more than 25% of the child's school day) or material change in services (increase or decrease of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or a service) (K.S.A. 72-3430(b)(6)). (Chapter 1 of this Handbook includes additional information about Prior Written Notice requirements.)

K.S.A. 72-3404. Definitions.

(aa) "Substantial change in placement" means the movement of an exceptional child, for more than 25% of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

(bb) "Material change in services" means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or a service specified on the IEP of an exceptional child."

K.S.A. 72-3430. Parental Rights.

(b)The parents of exceptional children shall have the right to:

(6) consent, or refuse to consent, to the evaluation, reevaluation or the initial placement of their child and to any substantial change in placement of, or a material change in services for, their child, unless a change in placement of their child is ordered pursuant to the provisions of section 17, and amendments thereto, or the agency can demonstrate that it has taken reasonable measures to obtain parental consent to a change in placement or services, and the child's parent has failed to respond. If the parent fails to respond to the request for parental consent to a substantial change in placement or a material change in services, the agency must maintain detailed records of written and verbal contacts with the parent and the response, if any, received from the parent;

K.A.R. 91-40-21. Educational placement.

(d)(1) Each agency shall give notice to the parent of any meeting to discuss the educational placement of the child. The notice shall meet the requirements of K.A.R. 91-40-17.

(2) If a parent cannot participate in person at a meeting relating to the educational placement of the child, the agency shall offer to use other methods to allow the parent to participate, including conference calls and video conferencing.

(3) An agency may conduct a meeting to determine the appropriate educational placement of a child with a disability without participation of the child's parent if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.
(4) If an agency conducts a meeting to determine the appropriate educational placement of a child without the participation of the child's parent, the agency shall have a record, as prescribed in K.A.R. 91-40-17(e)(2), of the attempts that the agency made to contact the parent.
(5) An agency shall take action to ensure that parents understand and are able to participate in, any discussions concerning the educational placement of their children, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

K.A.R. 91-40-17. IEP team meetings and participants.

(e)(1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parents or to convince the parents that they should participate.
(2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parents to provide them notice of the meeting and to secure the parents' participation. The record shall include at least two of the following:
(A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;
(B) detailed records of visits made to the parents' home or homes, including the date, time, and person making the visit and the results of the visit;
(C) copies of correspondence sent to the parents and any responses received; and
(D) detailed records of any other method attempted to contact the parents and the results of that attempt.

B. DETERMINING EDUCATIONAL PLACEMENT

In determining the educational placement of a child with an exceptionality (including gifted and preschool children with disabilities), each school district must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.The group of persons determining placement, including the parents, must make each child's educational placement decisions on an individual basis for each child with exceptionalities (K.A.R. 91-40-21(c)). Placement decisions must be based on the child's IEP and must be determined at least annually. For children with disabilities, the placement should be as close to the child's home as possible, and be in the school the student would normally attend, unless the child's IEP requires some other arrangement. (K.A.R. 91-40-21(e) and (f)). See Question and Answer section of this chapter.

The group of persons determining placement must consider each child's unique educational needs and circumstances, rather than the child's category of disability. Placement decisions should allow the child with a disability to be educated with nondisabled children to the maximum extent appropriate. The first placement option considered for each child with a disability is the general education classroom in the school that the child would attend if not disabled, with appropriate supplementary aids and services to facilitate this placement. Therefore, before a child with a disability can be placed outside of the general education environment, the full range of supplementary aids and services that could be provided to facilitate the child's placement in the general education classroom setting must be considered. Following that consideration, if a determination is made that the child with a disability cannot be educated satisfactorily in the general educational environment, even with the provision of appropriate supplementary aids and services, that child could be placed in a setting other than the general education classroom (K.S.A. 72-3420(a)). (See Section D of this chapter for how these requirements apply to preschool-aged children.)

Federal and state regulations also preclude removing a child from a general education class for the single reason that the general curriculum must be modified to meet his or her individual needs (K.A.R. 91-40-21(h); 34 C.F.R. 300.116(e)). If an entirely different curriculum is needed for the child's alternate goals, it needs to be determined if appropriate special education supports (for both the child and teacher) can be appropriately provided within the context of the general education classroom. It is not

the intent to have the general education teacher devote all or most of that teacher's time to the child with a disability or to modify the general education curriculum beyond recognition. A child's removal from the general education environment cannot be based solely on the category of disability, configuration of the delivery system, availability of special education and related services, availability of space or administrative convenience. (See LRE Decision Tree at the end of this chapter.)

1. Continuum of Placement Options

Schools are required to ensure that a continuum of placement options is available to meet the needs of children with disabilities for special education and related services in the least restrictive environment (LRE). Although, each school is not required to establish or maintain all options on the continuum, it must make an option available if the individual needs of a child require a specific placement option. The continuum includes various educational settings, such as general education class, special classes, special schools, home instruction, instruction in hospitals, and instruction in institutions (K.A.R. 91-40-21(b); 34 C.F.R. 300.115(b)(1)). This continuum of various types of classrooms and settings in which special education is provided is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully with other children without disabilities to the maximum extent appropriate.

In addition, although each school building is not required to be able to provide all the special education and related services for all types and severities of disabilities at the school, the school district has an obligation to make available a full continuum of alternative placement options that maximize opportunities for its children with disabilities to be educated with nondisabled peers to the extent appropriate. In all cases, placement decisions must be individually determined on the basis of the child's abilities and needs and on each child's IEP; and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. (Federal Register, August 14, 2006, p. 46588.) To help schools make the full continuum available, K.S.A. 72-3411 identifies and authorizes the options that districts have for meeting the LRE requirement by providing services within its schools; in the home, hospital, or other facilities; through a contract with another district; through a cooperative agreement with one or more districts; or through a contract with a private nonprofit or a public or private institution. Facilities where special education services are provided must be equivalent to those where general education classes are held.

2. Harmful Effects

The group of persons determining placement must also consider possible harmful effects in determining the educational placement, both in terms of the general education setting and a more restrictive setting. The language in 34 C.F.R. 300.116(d) and K.A.R. 91-40-21(g) mentions "possible harmful effects on the child or on the quality of services that he or she needs." For example, the group must consider the distance that the child would need to be transported to another school, if not in the home school (e.g., length of bus ride, importance of neighborhood friendships, and other such considerations). In addition, potential disadvantages of being removed from the general education setting must be assessed (such as, what curriculum content will the child miss when out of the classroom, etc.). Parents and other team members, including the child's general education teacher, should discuss openly the possibility of supplementary aids and services, and other supports, that would allow the child to remain in the general education setting. A part of this discussion must include what is needed for the child to be able to participate and progress in the general education curriculum.

The group determining placement must also consider other harmful effects such as those that may exist when it may be inappropriate to place a child in a general education classroom. For example, the group may consider the well-being of the other children in the general classroom (e.g., would being in the classroom impede the child's or the ability of other children to learn). Courts have generally concluded that, if a child with a disability has behavioral problems that are so disruptive in a general education classroom that the education of other children is significantly impaired, that is one factor indicating that the needs of the child with a disability generally cannot be met in that environment. However, before making such a determination, schools must ensure that consideration has been given to the full range of supplementary aids and services that could be provided to the child in the general education educational environment to accommodate the unique needs of the child with a disability. If the group making the placement decision determines, that even with the provision of supplementary aids and services, the child's IEP could not be implemented satisfactorily in the general education environment, that placement would not be the LRE placement for that child at that particular time, because her or his unique educational needs could not be met in that setting. See Section E. in this chapter for an explanation of the full legal standard used by the United States Circuit Court of Appeals for the Tenth Circuit, for determining the least restrictive environment for a particular child.

K.S.A. 72-3411. Methods of compliance with requirements of act; powers and duties of boards of education.

(a) Each board, in order to comply with the requirements of this act shall have the authority to:

(1) Provide appropriate special education and related services for exceptional children within its schools.

(2) Provide for appropriate special education and related services in the home, in a hospital or in other facilities.

(3) Contract with another school district for special education and related services. Any such contract may provide for the payment of tuition and other costs by the school district in which the child is enrolled.

(4) Enter into cooperative agreements with one or more other school districts for special education and related services.

(5) Contract with any private nonprofit corporation or any public or private institution, within or outside the state, which has proper special education or related services for exceptional children. Whenever an exceptional child is educated by a private nonprofit corporation or a public or private institution as provided under this paragraph, such child shall be considered a pupil of the school district contracting for such education to the same extent as other pupils of such school district for the purpose of determining entitlements and participation in all state, federal and other financial assistance or payments to such school district.

(6) Furnish transportation for exceptional children, whether such children are residents or nonresidents of such school district, for the provision of special education or related services. In lieu of paying for transportation, the board of the school district in which an exceptional child resides may pay all or part of the cost of room and board for such exceptional child at the place where the special education or related services are provided.

(b) Special education and related services which are provided for exceptional children shall meet standards and criteria set by the state board and shall be subject to approval by the state board.

(c) Any contract entered into by a board under the provisions of this section shall be subject to change or termination by the legislature.

K.S.A. 72-3420. Requirements for education of children with disabilities in regular classes, exception; admission to state institutions.

(a) Each school district shall be required, to the maximum extent appropriate, to educate children with disabilities with children who are not disabled, and to provide special classes, separate schooling or for the removal of children with disabilities from the regular education environment only when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

K.A.R. 91-40-1. Definitions.

(t) "Educational placement" and "placement" mean the instructional environment in which special education services are provided.

K.A.R. 91-40-21. Educational placement.

(a) Each agency shall ensure that the children with disabilities served by the agency are educated in the LRE.

(b) Each agency shall ensure that a continuum of alternative educational placements is available to meet the needs of children with disabilities. These alternative educational placements shall meet the following criteria:

(1) Include instruction in regular classes, special classes, and special schools; instruction in a child's home; and instruction in hospitals and other institutions; and

(2) make provision for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular class placement.

(c) (1) In determining the educational placement of a child with a disability, including a preschool child with a disability, each agency shall ensure that the placement decision meets the following requirements:

(A) The decision shall be made by a group of persons, including the child's parent or parents and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

(B) The decision shall be made in conformity with the requirement of providing services in the LRE.

(2) In determining the educational placement of a gifted child, each agency shall ensure that the placement decision is made by a group of persons, including the child's parent or parents and other persons who are knowledgeable about the child, the meaning of the evaluation data, and appropriate placement options for gifted children.

34 C.F.R. 300.116. Placements In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that--

(a) The placement decision--

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including Secs. 300.550-300.554;

(3) Is as close as possible to the child's home;

(b) The child's placement--

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

C. LEAST RESTRICTIVE ENVIRONMENT (LRE)

The process for determining the least restrictive environment (LRE) must be individualized for each child with a disability, including preschool age children, children in public schools, private schools, or other care facilities. The IEP team must ensure that children with disabilities are educated with children who do not have disabilities, to the maximum extent appropriate. Removing a child from the general education classroom must not occur unless the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily (K.S.A. 72-3420(a)). The IEP must include an explanation of the extent, if any, that the child will NOT participate with children without disabilities in general education classes AND in extracurricular and other nonacademic activities (K.S.A. 72-3429(c)(5)). The general education environment encompasses general education classrooms, and other settings in schools such as lunchrooms and playgrounds in which children without disabilities participate.

When determining the least restrictive environment, groups of persons determining placement must consider:

- Whether the child's IEP can be implemented in the regular educational environment with the use of supplementary aids and services (34 C.F.R. 300.114(a)(2)(ii)).
- Whether placement in the regular classroom will result in any potential harmful effect on the child or on the quality of services that he needs (34 C.F.R. 300.116(d)).
- Whether placement in the regular classroom, even with appropriate behavioral interventions, will significantly impair the learning of classmates (34 C.F.R. 300.324(a)(2)(i)).

The group of persons determining placement must discuss what program modifications or supports for teachers and staff may need to be provided to enable the child: (1) to advance appropriately in attaining the annual goals listed on the IEP, (2) be involved in and make progress in the general curriculum and participate in extracurricular and nonacademic activities, and (3) be educated and participate with other children with and without disabilities in these activities, as appropriate (K.S.A. 72-3429(c)(4)).

LRE requirements do NOT apply to children who are identified as gifted (K.A.R. 91-40-21(c)(2)). Children who are gifted must have an educational placement determined by a group of persons, including parents and others who are knowledgeable about the child, meaning of evaluation data, and placement

options for gifted children. The determination must be based on the child's individual needs and to ensure that the child receives FAPE.

K.S.A. 72-3420. Requirements for education of children with disabilities in regular classes, exception; admission to state institutions.

(a) Each school district shall be required, to the maximum extent appropriate, to educate children with disabilities with children who are not disabled, and to provide special classes, separate schooling or for the removal of children with disabilities from the regular education environment only when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

K.S.A. 72-3429. Individualized education program or family service plan; contents; development; duties of IEP team; IEP meetings; postsecondary goals; transfer of child during school year.

(c) The IEP for each exceptional child shall include:

(4) a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) to be involved in and make progress in the general education curriculum in accordance with provision (1) and to participate in extracurricular and other nonacademic activities; and

(C) to be educated and participate with other exceptional and nonexceptional children in the activities described in this paragraph;

(5) an explanation of the extent, if any, to which the child will not participate with nonexceptional children in the regular class and in the activities described in provision (4);

K.A.R. 91-40-1. Definitions.

(ll) "Least restrictive environment" and "LRE" mean the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled, with this placement meeting the requirements of K.S.A. 72-976, and amendments thereto, and the following criteria:

(1) Determined at least annually;

(2) based upon the student's individualized education program; and

(3) provided as close as possible to the child's home.

K.A.R. 91-40-21. Educational placement

(f) Unless the IEP of a child with a disability requires some other arrangement, the agency shall ensure that the child is educated in the school that the child would attend if nondisabled.

1. Supplementary Aids and Services

IEP Teams must consider the supplementary aids and services, and other supports, that may be needed for the child to be in the general education class, other education-related settings, and in extracurricular and nonacademic settings which will enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate (K.A.R. 91-40-1(ttt); 34 C.F.R. 300.42). Examples of supplementary aids and services may include paraeducator or interpreter services, assistive technology devices and services, resource room and itinerant services to be provided in conjunction with regular class placement (K.A.R. 91-40-21(b)(2)). (See also Chapter 5, Special Education and Related Services.)

In the case of a child who is deaf or hard-of-hearing, a sign language interpreter may be needed to enable the child to participate in the general education classroom. The sign language interpreter would sign what the teacher and children say, and if necessary voice what the child who is deaf or hard-of-hearing signs. The teacher and children may need training about communicating through an interpreter, how best to communicate with the child, and the interpreter's role on the educational team. Assistive technology needs of the child may also require training and ongoing technical assistance for teachers and other staff members (K.A.R. 91-40-1(d); 34 C.F.R. 300.9). For example, if a communication device is used, school personnel and parents may need training to be able to use the system initially and thereafter when the device is updated with new vocabulary. The IEP team should identify these needs for teacher training under supports for school personnel.

2. Nonacademic and Extracurricular Services and Activities

In order to receive FAPE, children are to be included in more than just classroom activities. The school must ensure that each child with a disability has the supplementary aids and services determined by

the child's IEP team to be appropriate and necessary for the child to participate in school sponsored nonacademic and extracurricular settings. Children with disabilities are to participate with children without disabilities in nonacademic settings and extracurricular activities, to the maximum extent appropriate. Again, these services or activities must be considered based on the child's individual needs. This requirement also applies to children who are being educated solely with others who have disabilities, including those in public schools, private institutions or other care facilities (K.A.R. 91-40-3(b); 34 C.F.R. 300.107; 34 C.F.R. 300.117).

The IEP Team is responsible for considering how the child with a disability can participate with children who do not have a disability in a wide range of possible nonacademic and extracurricular services and activities to the maximum extent appropriate. Parents and others close to the child should consider what would benefit the child and promote the achievement of IEP goals and objectives as well as the provision of access to other children without disabilities. It is difficult to make general statements about such activities as senior trips, activities sponsored by the Student Council (technically not school-sponsored), and other such nonacademic activities. Again, such decisions would need to be made individually by the IEP Team. (See Chapter 5, Special Education and Related Services.)

K.A.R. 91-40-1. Definitions.

(d) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include the following:
(1) Evaluating the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
(2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
(3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
(4) coordinating and using other therapies, interventions, or services with assistive technology devices, including those associated with existing education and rehabilitation plans and programs;
(5) providing training or technical assistance for a child with a disability or, if appropriate, that child's family; and
(6) providing training or technical assistance for professionals including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child.

(ttt) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, or other education-related settings, and extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

K.A.R. 91-40-3. Ancillary FAPE requirements.

(b) (1) Each agency shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, including the provision of supplementary aids and services as determined to be necessary by the child's IEP team.
(2) Nonacademic and extracurricular services and activities shall include the following:
(A) Counseling services;
(B) athletics;
(C) transportation;
(D) health services;
(E) recreational activities;
(F) special interest groups or clubs sponsored by the agency;
(G) referrals to agencies that provide assistance to individuals with disabilities; and
(H) employment of students, including both employment by the agency and assistance in making outside employment available.

(d) (1) Each agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education or related services, or the child's supplementary aids and services.
(2) Each agency, on a case-by-case basis, shall allow the use of school-purchased assistive technology devices in a child's home or in other settings if the child's IEP team determines that the child needs access to those devices at home or in other settings in order to receive FAPE.

34 C.F.R. 300.117. Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

3. Kansas State Schools for the Deaf and Blind

According to K.A.R. 91-40-4, when a student is to be placed at one of the State schools, the local district AND the parents are jointly responsible for applying for admission to the school. The steps preceding the admissions application require the local district and parents to:

1. Complete the initial evaluation or reevaluation;
2. Conduct an IEP meeting;
3. Determine the educational placement: considering less restrictive placement options;
4. If a representative from the State school was not in attendance, hold a placement meeting with the representative(s) from the State school to finalize the IEP;
5. Obtain informed parent consent for services and placement; and
6. Initiate the admissions application with the parents.

In developing the IEP, the team must also plan opportunities for access to educational programs in local school districts near the State school, either part- or full-time. If a state school determines that its program is not appropriate for a student and it can no longer maintain the student in its program, the state school must give the district of residence of the student at least 15-days' notice of the determination.

K.A.R. 91-40-4. FAPE for exceptional children housed and maintained in certain state institutions.

(a) Subject to K.S.A. 72-3122 and amendments thereto, each state agency shall provide FAPE to exceptional children housed and maintained at any facility operated by the agency. All educational programs shall comply with the requirements of state special education laws and regulations.

(b) State schools.

(1) The procedures for placing Kansas residents into the Kansas state school for the blind and the Kansas state school for the deaf shall meet the following requirements:

(A) Admission procedures shall be initiated by the child's home school district and by the child's parent or parents.

(B) Placement of any child in a state school shall be made only after the local school district and the child's parent or parents have considered less restrictive placement options.

(C) Placement shall be based on a child's IEP, which shall indicate a need for educational services provided at the state school.

(D) Any agency may refer a child to a state school for a portion or all of the child's evaluation. In such a case, a representative or representatives from the agency shall be included in any meeting at which the child's eligibility for services or placement is determined.

(E) If the initial evaluation and staffing are conducted by any local school district and if one of the state schools is proposed as a placement for the child, a representative or representatives from the state school shall be included in the meeting at which placement for the child is determined.

(2) Personnel from the child's home school district, as well as personnel from the state school and the child's parent or parents, shall be afforded an opportunity to participate in any IEP meeting for the child. Placement of the child in the home school district shall be considered at each annual IEP meeting.

(3) Each state school shall attempt to make arrangements so that each child enrolled in the state school has access to the educational programs in the local school districts near the location of the school, on either a part-time or full-time basis.

(4) If a state school determines that its program is not appropriate for a student and it can no longer maintain the student in its program, the state school shall give the district of residence of the student at least 15-day notice of this determination.

4. Children in Other Educational Placements

Schools are responsible to ensure that LRE requirements are being applied to children who have been placed by the public school in private institutions or other care facilities. As IEP teams make educational placement decisions about children for whom they do not have an appropriate program at the public school, they must consider all LRE requirements carefully. (See Chapter 14 in this Handbook, Children in Private Schools.)

The LRE requirement may be modified for students who are incarcerated in local detention facilities, a state juvenile correctional facility or an adult correctional institution (K.A.R. 91-40-5).

K.A.R. 91-40-5. FAPE for detained or incarcerated children with disabilities.

(b) State juvenile correctional facilities.

(1) The commissioner of the juvenile justice authority shall make provision for FAPE for each child with a disability detained or incarcerated in any state juvenile correctional facility or other facility at the direction of the commissioner.
(2) The requirements in this article concerning parental rights, placement, and LRE may be modified in accordance with state and federal laws and the child's conditions of detention or incarceration.

K.A.R. 91-40-21 Educational placement.

(a) Each agency shall ensure that the children with disabilities served by the agency are educated in the LRE.
(b) Each agency shall ensure that a continuum of alternative educational placements is available to meet the needs of children with disabilities. These alternative educational placements shall meet the following criteria:
(1) Include instruction in regular classes, special classes, and special schools; instruction in a child's home; and instruction in hospitals and other institutions; and
(2) make provision for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular class placement.

K.A.R. 91-40-22. Agency placement in private schools or facilities.

(a) If an agency places a child with a disability in a private school or facility as a means of providing FAPE to the child, the agency shall remain responsible for ensuring that the child is provided the special education and related services specified in the child's IEP and is afforded all the rights granted by the law.
(b) (1) Before an agency places a child with a disability in a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child.
(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
(c) (1) After a child with a disability enters a private school or facility, the agency responsible for providing FAPE to the child may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility.
(2) If the private school or facility initiates and conducts these meetings, the agency shall ensure that the parent and an agency representative are involved in any decision about the child's IEP and shall agree to any proposed changes in the IEP before those changes are implemented.

5. Support for Staff

Schools must ensure that all teachers and administrators know their responsibilities in ensuring LRE, and that they are provided with the needed technical assistance and training. Considerations might include: providing written information to staff; offering ongoing in-service training, professional development, results-based staff development; individual technical assistance; or mentoring by experienced teachers and administrators.

Schools must consider the supports that all general and special education teachers and related services personnel need to maintain a child in the LRE. Such support might include training for the general education teacher, paraeducators and other personnel. Special educators or related services personnel might provide this training regarding supports that are required. Other examples would be the supports that staff need to implement a child's behavioral intervention plan, such as training regarding modeling, providing positive feedback, and offering peer interactions as appropriate. (34 C.F.R. 300.119 and 300.320(a)(4))

34 C.F.R. 300.119. Technical assistance and training activities. Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies--
(a) Are fully informed about their responsibilities for implementing Sec. 300.550; and
(b) Are provided with technical assistance and training necessary to assist them in this effort.

34 C.F.R. 300.320. Definition of individualized education program.

(a)(4) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--
(i) To advance appropriately toward attaining the annual goals;
(ii) To be involved and progress in the general curriculum in accordance with paragraph (a)(1) of this section and to participate in extracurricular and other nonacademic activities; and
(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

D. EARLY CHILDHOOD LEAST RESTRICTIVE ENVIRONMENT (LRE)

For preschool children ages 3-5 with disabilities, placement and LRE requirements are the same as for school-aged children (K.A.R. 91-40-21(b)(c)). This means that preschool children with disabilities are to

have a continuum of placement options available and have the right to be educated with their peers without disabilities to the maximum extent appropriate. As with school-aged children, the needs of preschoolers are to be considered individually. The individual needs of the child would determine the most appropriate setting for services to be provided. Most preschoolers benefit from placement in a preschool program with typically developing peers.

School districts that do not operate programs for preschool children without disabilities are not required to initiate general education programs solely to satisfy the LRE requirements. However, various educational placement options are possible, both within the community and at the school. School districts that do not operate early childhood programs for children without disabilities may seek alternative means to provide inclusive options for young children through collaborative relationships with private preschool programs or other community-based settings. The key question for the IEP Team to consider is where this child would be if the child did not have a disability. The full continuum of placement options at K.A.R. 91-40-21(b), including integrated placement options with typically developing peers, must be available to preschool children with disabilities. Examples include Head Start, community-based preschools (may be in churches, whether or not religiously affiliated), child care centers or family child care homes, mothers'-day-out programs, Title I programs, at-risk 4-year-old preschools, migrant or bilingual programs, Even Start, play groups, and other such early childhood programs. If a preschool child with a disability is already attending a general education preschool program, the IEP team should consider whether special education and related services can be provided in that setting with the use of supplementary aids and services, or supports for school personnel (Federal Register, August 14, 2006, p. 46589).

For children who are age 5 by August 31, kindergarten would be the least restrictive environment, to the extent appropriate. Note that children with IEPs cannot be counted for general fund reimbursement in the 4-year-old at-risk preschool program, but they may participate in the program.

The regulations allow school districts to choose an appropriate option to meet the LRE requirements. Schools are encouraged to explore and use community resources to provide comprehensive services. Paying for the placement of preschool children with disabilities in a private preschool with children without disabilities is one, but not the only, option available to school districts to meet the LRE requirements. However, if a school district determines that placement in a private preschool program is necessary as a means of providing special education and related services to a child with a disability, the program must be at no cost to the parent of the child.

E. RECENT CASE LAW

For the first time, the United States Circuit Court of Appeals for the 10th Circuit, adopted a legal standard (the "Daniel R.R." test) for determining least restrictive environment in L.B. and J.B v. Nebo Sch. Dist., 379 F3d 966, 41 IDELR 206 (10th Cir. 2004). Subsequently, in T.W. v. United Sch. Dist. No 259, Wichita, Kansas, 136 Fed. Appx. 122, 43 IDELR 187, (10th Cir. 2005), the 10th Circuit affirmed that the "Daniel R.R." test would continue to be the legal standard for determining the least restrictive environment for children with disabilities in the 10th Circuit—which includes Kansas. The Daniel R.R. test has two parts:

Part 1: In determining whether a particular placement is the least restrictive environment for a particular child, the court first determines whether education in a regular education classroom, with the use of supplemental aids and services, can be achieved satisfactorily. If the court determines that a child can be satisfactorily educated in a regular education classroom

with the use of supplemental aids and services, then the regular education classroom is the least restrictive environment for that child and there is no further analysis.

Part 2: However, if the court determines that the child cannot be satisfactorily educated in the regular education classroom, even with the use of supplemental aids and services, the court then proceeds to the second part of the test by determining whether the school district has mainstreamed the child to the maximum extent appropriate. In other words, the court looks to see if the placement selected by the IEP team enables the child to have contact with nondisabled students to the maximum extent appropriate. If the placement selected by the IEP team does mainstream the child to the maximum extent appropriate, then the placement is the least restrictive environment for that child.

In applying these two parts of the Daniel R.R. test to a particular placement, the court considers the following non-exhaustive factors:

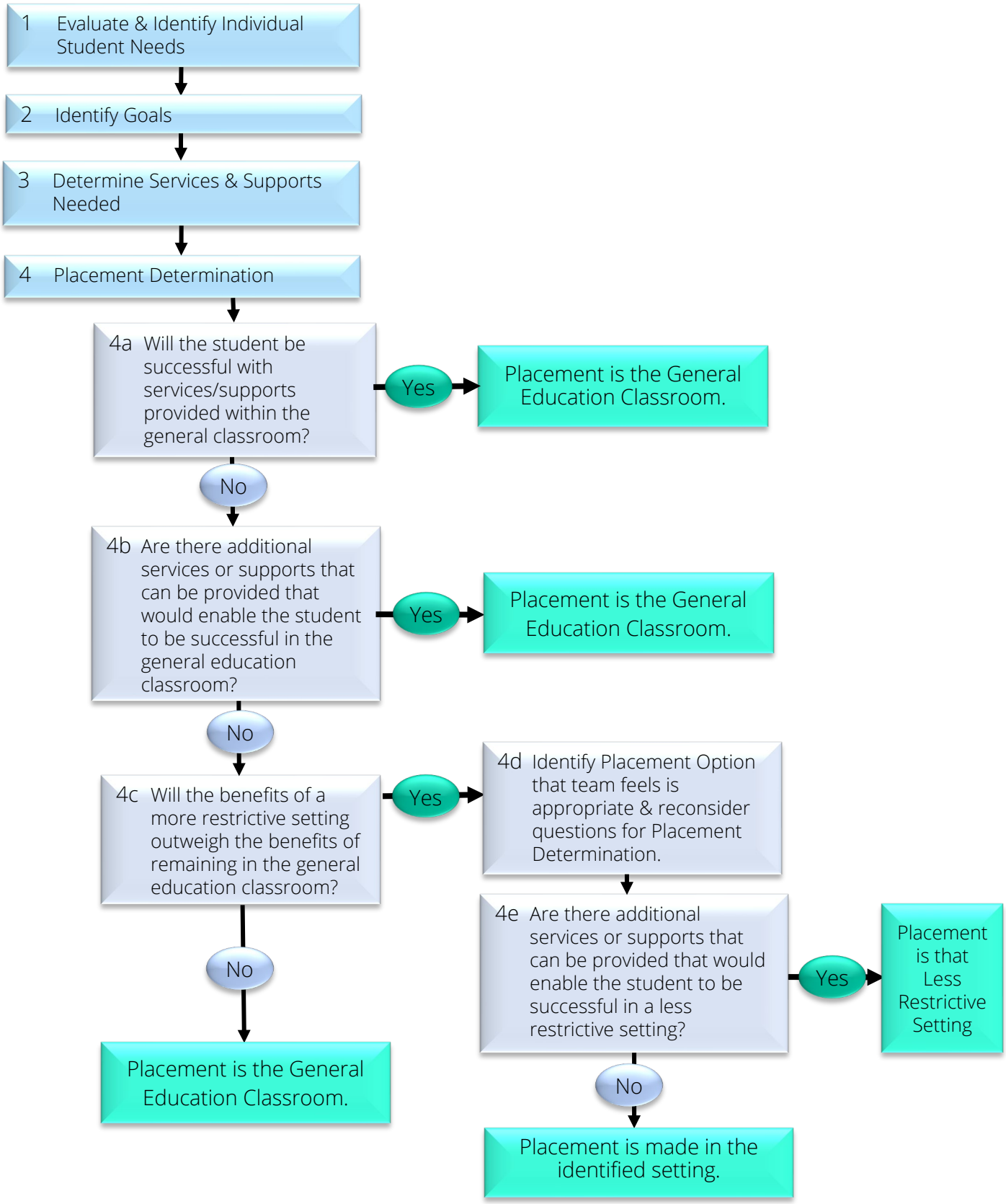
1. Steps the school district has taken to accommodate the child in the regular education classroom, including the consideration of a continuum of placement and support services;
2. Comparison of the academic benefits the child will receive in the regular classroom with those he/she will receive in the special education classroom;
3. The child's overall educational experience in regular education, including nonacademic benefits; and
4. The effect on the regular classroom of the disabled child's presence in that classroom.

The 10th Circuit has instructed that this list of considerations is not exhaustive, and that other considerations may also be appropriate in a particular case. For example, some courts have considered the cost of mainstreaming a child in the analysis. The 10th Circuit did not consider the cost of mainstreaming the child in either of the cases in which it used the Daniel R.R. standard because costs were not presented as an issue in either case. However, the 10th Circuit did not rule out consideration of the costs of a particular placement if it was presented as an issue in a case regarding least restrictive environment.

1	Evaluate & Identify Needs – For the IEP Team to be able to make any decisions for a student they must clearly understand the student's needs. Think beyond academics and consider function as well. • Does the team understand how the disability manifests itself within the general education classroom? • Does the team understand what it is about the student's disability that prevents the student from being successful in the general education classroom?
2	Identify Goals – After the team completely understands the student's needs they can then prioritize the needs and identify the goals for the student (both post-school and annual goals). Using their understanding of the two questions above the team can determine what the student needs to become more independent and successful within the general education classroom.
3	Determine Services & Supports Needed to Achieve Goals & Meet Other Needs – After the goals for the student have been identified that team then moves to determining what services and supports need to be provided to enable the child to achieve those goals and to address the other needs identified in the present levels but do not have goals written for them. The services that the team needs to consider are special education, related services, program modifications, supplementary aids & services and supports for school personnel. When making these decisions the team needs to keep in mind how much support the student needs to be successful. Too much support can build dependence in a child but providing the wrong type of services can prevent the student from being able to function in more independent ways. In addition to all of these considerations it's important to remember, by law, a child with a disability cannot be removed from age-appropriate general classrooms solely because of needed modifications in the general education curriculum. Some questions to keep in mind when making service decisions include:

	• Are there skills that could be taught to the student in order to reduce the amount of support she/he needs? • Is the focus every year on making the student as independent as possible? Note: The following are placement decisions not service decisions, they are not considered at this point: Resource Room, Pull-Out, Self-Contained, Inclusion, Center Based, BD/ED Program.
4	Determine Placement – Once the team has determined the services that the student needs then the discussion can move to placement, where services will be provided. To assist with this decision process the following questions lead the team through the placement discussion.
4a	Can the services determined necessary be provided within the general education classroom? – When having this conversation try to focus on whether services could be provided in the general education classroom and not how we typically provide services. The discussion of whether the services can be provided in the general education classroom must be done for each individual student based on their specific needs. If the team determines it is possible to provide the services in the general education classroom then the least restrictive environment for the student is the general education classroom.
4b	If not, are there additional services or supports that can be provided that would enable the student to be successful within the general education classroom? – If the team determines that the services as originally identified as necessary are unable to be provided in the general education classroom the next discussion should be whether additional supports or services could be provided that would allow the student to remain within the general education classroom. When making the decisions the team should consider the same issues of student independence as was considered in Step 3.
4c	If not, will the benefits of a more restrictive setting outweigh the benefits of remaining in the general education classroom? – If the team determines that it is not possible to provide additional services and supports in the general education classroom to meet the needs of the student then the consideration of placement options outside of the general education classroom are then considered. The team should move in small incremental steps away from the general education classroom and at each movement in the continuum the team should readdress questions in 4a and 4b for that placement. It is not until this point in the placement determination does the team consider placement options such as pull-out, resource room, etc. In making this decision, the team should consider (a) whether reasonable efforts have been made to accommodate the student, (b) the educational benefits, both academic and social that are available in each setting, (c) the possible negative effect of the inclusion of the student on the education of other students, and (d) the harmful effects of a more restrictive environment on the student.
4d	Identify Placement Option that team feels is appropriate & reconsider questions for Placement Determination – If it is determined that the general education classroom is not appropriate, based on the student's needs and the services to be provided, the team identifies a reasonable and appropriate placement.
4e	Are there additional services or supports that can be provided that would enable the student to be served in a less restrictive setting? – The team needs to consider whether program modifications could occur or additional services could be provided which would enable the student to be appropriately served in a less restrictive setting. Even if these program modifications have never before been provided in the less restrictive setting, it should still be considered. When making the decision the team should consider the same issues of student independence as described in Step 3. Placement in the less restrictive setting should occur if additional modifications or supports would make that setting appropriate for the student. KSDE & Project SPOT June 2007

LRE DECISION TREE



QUESTIONS AND ANSWERS ABOUT EDUCATIONAL PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT (LRE)

1. Does the school have to provide aids and services to assist the child to be in a general education classroom? What if the school says that providing those aids and services is too expensive?

The district must provide supplementary aids and services to accommodate the special educational needs of children with disabilities in the general curriculum in the least restrictive environment. In a Federal appellate court decision, Roncker v. Walter, 700 F. 2d 1058 (6th Cir.), cert. denied, 464 U.S. 864 (1983), the court made the following statements about LRE:

The Roncker Court also noted that:

> *"Cost is a proper factor to consider since excessive spending on one child with a disability deprives other students with disabilities. Cost is no defense, however, if the school district has failed to use its funds to provide a proper continuum of placement options for students with disabilities. The provision of such placement options benefits all children with disabilities."*

In other words, the law, regulations, and court decisions all presume in favor of maximum appropriate contact with children without disabilities.

2. What if the school says the child cannot be included because the child cannot benefit academically from instruction in the general education class?

The school should not make such an assertion. The Federal District Court in Sacramento City Unified School District v. Holland (1992), said the law requires educating a child with disabilities in a general education classroom if the child can receive a satisfactory education there, even if it is not the best academic setting for the child. The court looked at whether the child's IEP goals and objectives could be met in the classroom by adapting the curriculum, or by providing supplementary aids and services. The school district in Holland argued that a general education classroom would not be appropriate for a student if that would require significant changes to the general curriculum for the child. However, the court rejected the school's view. It said that students with disabilities may require and be entitled to substantial curriculum changes to be sure they benefit from being in the general education class. The court stated that "modification of the curriculum for a student with a disability, even dramatic modification, has no significance in and of itself. The IDEA, in its provision for the IEP process, contemplates that the academic curriculum may be modified to accommodate the individual needs of students with disabilities."

> *"[IDEA] does not require states to offer the same educational experience to a student with disabilities as is generally provided for students without disabilities.... To the contrary, states must address the unique needs of a child with disabilities, recognizing that the student may benefit differently from education in the regular classroom than other students.... In short, the fact that a child with disabilities will learn differently from his or her education within the regular classroom does not justify exclusion from that environment" Oberti v. Board of Education of the Borough of Clementon School District (3rd Cir. 1993).*

If an entirely different curriculum is needed for the child's alternate goals, it needs to be determined if appropriate special education supports (for both the child and teacher) can be most

appropriately provided within the context of the general education classroom. It is not the intent to have the general education teacher devote all or most of that teacher's time to the child with a disability nor to modify the general education curriculum beyond recognition. It is also important to note that federal regulations, at 34 C.F.R. 300.116(e), state that school must ensure that "a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

3. What are supplementary aids and services that would help the child in the general education classroom?

   The law is very broad and includes: "aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate…" Supplementary aids and services might include paraeducator services, assistive technology devices and services, and other accommodations, as appropriate.

4. If the child is not placed in a general education classroom, does the district have any other LRE responsibilities?

   Even if the child is not placed in a general education classroom, the school district must still find ways for the child to be with children without disabilities in noneducational and extracurricular activities as much as is appropriate to the child's needs. Where the district suggests a placement other than a general education classroom, the Prior Written Notice form for informed written consent must list other placement ideas that were considered and the reasons they were rejected. Also, according to 34 C.F.R. 300.320(a)(5), the IEP Team must document in the IEP the extent to which the child will not participate with nondisabled children in the regular class and in other school activities. The IEP Team may also address the potential for moving to a less restrictive environment in the future. The LRE for each child must be considered annually to determine whether the current placement is appropriate.

5. Is there anything that the district may not consider in deciding LRE?

   The district may not make placement decisions based only on such things as the category or severity of the child's disability, convenience of staff, the choices for placement options currently available, the availability of educational or related services, space availability, availability of staff, bus routes, or administrative convenience. See, Federal Register, Aug. 14, 2006, p. 46588.

6. If a child is not placed in the general education classroom, can the child participate in other school activities or services?

   Yes. The law is clear that children with disabilities have the right to participate in nonacademic and extracurricular services and activities with children who do not have disabilities to the maximum extent appropriate to their needs (34 C.F.R. 300.117). Also, school districts must provide these activities in a way that gives children with disabilities an equal opportunity to participate (34 C.F.R. 300.107). Such services and activities include:

   - lunch
   - recess
   - athletics
   - health services
   - employment opportunities
   - counseling services
   - transportation
   - recreational activities
   - special interest groups or clubs

7. May the nature or severity of a child's disability be used to justify a segregated educational setting?

All children with disabilities have the right to an education in the least restrictive environment based on their individual educational needs, not the "label" that describes their disability. Schools must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.

Special classes, separate schooling, or other removal of children with disabilities from the general education environment occurs only if the nature of severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 C.F.R. 300.114(2)).

8. What responsibility does the general education staff have in serving children in the least restrictive environment?

Both general and special educators are required to be members of IEP Teams who make decisions about services needed by eligible children and where they should be provided. This is a mutual responsibility for general and special education staff. The IEP Team is required to consider the supplementary aids and services needed for a child to be successfully educated in the general education classroom. Some examples are:

- Aids to assist the child
- Adaptive equipment
- Co-teaching staff
- Assistive technology
- Class/environmental accommodations
- Adapted/modified/enriched curriculum
- Classroom tests modified or accommodated
- Training or supports for the teacher

These strategies can be used in any class, including classes like physical education, art, music, and vocational education. Teacher-made tests can include any accommodations the child needs; with regard to State and district-wide assessments, however, IEP teams should be careful to avoid specifying accommodations that would invalidate the tests.

The IEP Team must include at least one of the child's general education teachers, if the child is or may be participating in general education classes. The general education teacher must, as much as is appropriate, help develop the IEP. This includes helping to decide things like appropriate positive behavioral interventions and strategies, supplementary aids and services, program modifications, and support for school staff in providing the supplementary aids and services and program modifications. After the initial IEP has been developed, the general education teacher must also help review and revise the IEP. The IEP Team must also have a school person who is knowledgeable about the general curriculum and what resources are available in the district. The school is responsible for providing the services on the IEP. That means both special and general education teachers must assist in determining the services and ensuring that appropriate services are provided.

9. What if the school district has a policy that related services are available only within certain alternative educational placements?

A policy of this nature is inconsistent with law. The school cannot legally have a policy that predetermines placement for related services. The district must provide the needed related services to meet individual needs of the child in the least restrictive environment. Decisions about

placement in the LRE on the continuum of placement options are determined by a group of people, including the parent and others with knowledge of the child, evaluations and placement options. Decisions about location (building or classroom) can be determined by school administrators provided the decision is consistent with the placement specified in the child's IEP (see question 15 for more on this).

The Office of Special Education Programs says:

> *"Although the Act does not require that each school building in an LEA be able to provide all the special education and related services for all types and severities of disabilities, the LEA has an obligation to make available a full continuum of alternative placement options that maximize opportunities for its children with disabilities to be educated with nondisabled peers to the extent appropriate. In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs and each child's IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. (Federal Register, Aug. 14, 2006, p. 46588) "*

10. Does LRE apply to preschool?

Yes, LRE requirements apply to children who are ages 3 through 5. Some settings for LRE for preschool to serve children where they would be if not disabled include:

- Public school preschools
- Head Start
- Play groups
- Community preschool
- Child care
- Kindergarten for 5 year old

11. Does LRE apply to children who are gifted, or just to those with disabilities?

According to K.A.R. 91-40-21, LRE and the continuum of services do not apply to children who are gifted. However, individual placement decisions for children who are gifted must still be made according to the unique needs of each child and to ensure that the child receives FAPE.

12. If services are needed during an extracurricular activity, do we need a goal that addresses it?

No. The IEP Team is required to address how children will participate with others who do not have disabilities during nonacademic and extracurricular activities. Services may be listed to meet those needs, without having a specific goal.

13. Is parent consent required when moving a child from placement in a neighboring district back to the home district?

No, if the placement in both districts is the same place on the continuum and the child has the same opportunity to participate with peers without disabilities. If the IEP specifies a certain classroom in a certain school, then consent would be required. Placement is not determined by the name of the building, rather it is the place on the continuum of service environments. For example, if the IEP reads "services will be provided in Mrs. Jones' 4th grade class at Eisenhower Elementary School," then parent permission would be needed to move the student from Mrs. Jones's classroom. However, if the IEP reads "services will be provided in a regular 4th grade classroom," then parent permission would not be needed, if everything else stayed the same. Placement is not the same as location.

14. Is moving a child from a regular bus to a special education bus a change of placement?

Yes, since a special education bus is a more restrictive setting than a regular education bus (34 C.F.R. 300.107). Nonacademic services, lists transportation as a service (34 C.F.R. 300.117). Nonacademic settings, ties transportation to ensuring a child with disabilities participates with children without disabilities. If the change is made, the IEP Team would need to provide Prior Written Notice, and if it is a material change in services the district would need to obtain consent prom the parent.

15. Does a child with a disability have a right to attend the child's neighborhood school?

As noted in this chapter, federal regulations state that a child with a disability must be placed as close as possible to the child's home and in the school that the child would attend if he or she did not have a disability, unless the IEP of the child requires some other arrangement. Although these provisions remain in the regulations, their impact has been diminished over time. The United States Circuit Court of Appeals for the Tenth Circuit, and Kansas is in the Tenth Circuit, looked at these regulations and said they do not create a presumption of neighborhood schooling. Instead, the court said "There is at most a preference for education in the neighborhood school." See Murray v. Montrose County School District, 51 F.3d 921 (10th Cir. 1995). Other Circuits, including the 4th, 5th, and 6th Circuits have agreed. The Office of Special Education Programs (OSEP), in the United States Department of Education, issued a guidance letter on this topic in Letter to Trigg, 50 IDELR 48 (OSEP 2007) In that letter, OSEP emphasized the difference between “placement” and “location”, explaining that “placement” refers to the environmental points along the continuum of placement options and “location” is the physical surrounding, such as the classroom or building, in which a child with a disability receives special education and related services. In other words, placement is the degree to which the educational environment where educational services are provided to children with disabilities provides access to children without disabilities, and location is the physical structure or space (classroom or building). Accordingly, OSEP said a school may have two or more equally appropriate “locations” (physical surroundings) that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom (location), provided that determination is consistent with the “placement” (educational environment) specified in the IEP. Some school districts, Interlocals, and Cooperatives cluster specialized services in designated buildings so that these services are not duplicated in every building. It is that practice of clustering services in specified buildings that the Tenth Circuit approved in Murray v. Montrose County School District.

CHAPTER 7: REEVALUATION

INTRODUCTION

An evaluation that is conducted for a child currently identified with an exceptionality, is considered a reevaluation. Schools must ensure that a reevaluation of each child with an exceptionality is conducted if conditions warrant a reevaluation, or if the child's parents or teacher requests a reevaluation, but at least once every three years. Reevaluations may not occur more than once a year, unless the parent and the school agree otherwise. New requirements also allow the parent and the school to agree that a three year reevaluation is not necessary (K.S.A. 72-3428(h)(2)(B); 34 C.F.R. 300.303(b)(2)).

Most components of the reevaluation process are identical to those required for initial evaluation. See Chapter 3, Initial Evaluation and Eligibility, for a complete explanation of the evaluation process. However, there may also be some differences from the initial evaluation. The specific individuals on the reevaluation team may be different than they were for the initial evaluation. The roles are the same, but the people themselves may be different. A report of the reevaluation must be written and provided to the parents. Under certain circumstances the reevaluation may be conducted without parent consent. This chapter includes a discussion of the following topics:

A. Purpose of the Reevaluation
B. Need for the Reevaluation
C. Prior Written Notice and Request for Consent
D. Members of the Reevaluation Team
E. Conducting the Reevaluation
F. Determining Continued Eligibility
G. Reevaluation for a Child Identified as Developmentally Delayed

A. PURPOSE OF THE REEVALUATION

The reevaluation process is required every three years, or more often, if needed, to determine:

1. If the child continues to be a child with an exceptionality;
2. whether the child continues to need special education and related services;
3. the educational needs of the child;
4. the present levels of academic achievement and functional performance (related developmental needs) of the child;
5. and
6. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

The information gathered as a result of the reevaluation provides valuable information about child progress and needs. In addition to using the information to determine whether the child continues to be eligible for special education and related services, this information should be used to review the IEP, revising it if necessary, in accordance with K.S.A. 72-3428(h)-(l), as well as 34 C.F.R. 300.301 through 300.311:

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties.
(h) (1) Each agency shall ensure that a reevaluation of each exceptional child is conducted:

(A) If the agency determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a reevaluation; or
(B) if the child's parent or teacher requests a reevaluation.
(2) An agency shall conduct a reevaluation of a child:
(A) Not more frequently than once a year, unless the parent and the agency agree otherwise; and
(B) at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.
(i) As part of an initial evaluation, if appropriate, and as part of any reevaluation under this section, the IEP team and other qualified professionals, as appropriate, shall:
(1) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and
(2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
(A) Whether the child is an exceptional child and the educational needs of the child, or in the case of a reevaluation of a child, whether the child continues to be an exceptional child and the current educational needs of the child;
(B) the present levels of academic and related needs of the child;
(C) whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
(D) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
(j) Each agency shall obtain informed parental consent prior to conducting any reevaluation of an exceptional child, except that such informed consent need not be obtained if the agency can demonstrate that it took reasonable measures to obtain such consent and the child's parent failed to respond.
(k) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be an exceptional child and the child's educational needs, the agency:
(1) Shall notify the child's parents of:
(A) That determination and the reasons for it; and
(B) the rights of such parents to request an assessment to determine whether the child continues to be an exceptional child and the child's educational needs; and
(2) shall not be required to conduct such an assessment unless requested by the child's parents.
(l) (1) Except as provided in paragraph (2), an agency shall reevaluate a child in accordance with this section before determining that the child is no longer an exceptional child.
(2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.

B. NEED FOR THE REEVALUATION

A reevaluation must be conducted if the school determines that the education or related services needs, including improved academic achievement and functional performance of the child, warrant a reevaluation, or, if the child's parent or teacher requests a reevaluation. A reevaluation must be conducted before a school determines a child is no longer a child with an exceptionality. However, a reevaluation shall not occur more than once a year, unless the parent and the school agree otherwise (K.S.A. 72-3428(h)(1)(2)(A); 34 C.F.R. 300.303(b)(1)).

If a parent requests a reevaluation, or more than one reevaluation per year, and the school disagrees that a reevaluation is needed, the school must provide Prior Written Notice to the parent that explains, among other things, why the school refuses to do the reevaluation and the parent's right to pursue the reevaluation through mediation or due process.

A reevaluation is to occur at least once every three years, unless the parent and the school agree that a reevaluation is unnecessary (K.S.A. 72-3428(h)(2)(B); 34 C.F.R. 300.303(b)(2)). Prior to conducting a reevaluation the parent and the school shall determine whether a reevaluation is needed. They must consider the child's educational needs, which may include whether the child is participating in the general education curriculum and being assessed appropriately. The parent and the school will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program (Federal Register, August 14, 2006, p. 46640, 46641). Documentation of this agreement must be maintained (See sample Re-evaluation Not Needed

Agreement Form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms.).

There are circumstances when a reevaluation is not required:

1. Before the termination of a child's eligibility due to graduation with a regular diploma, however, Prior Written Notice is required for the change of placement; or
2. due to exceeding the age of eligibility for FAPE, which would be the end of the school year in which the student becomes 21 years of age. Prior Written Notice is required. (K.S.A. 72-3428(l)(2); 34 C.F.R. 300-305(e)(2))
3. when the school and parent agree that a reevaluation is not needed.

C. PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

Whenever a school proposes to conduct a reevaluation, the school must provide Prior Written Notice to the parents of the child that describes any evaluation procedures the school proposes to conduct (K.S.A. 72-3428(b); K.S.A. 72-3430; 34 C.F.R. 300.304(a)). In addition, there are standard components of content the notice must also contain. The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct a reevaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include:

1. A description of the action proposed by the agency, which must include a description of any evaluation procedures that the school proposes to conduct (K.S.A. 72-3428(b); 34 C.F.R. 300.304(a)(1)).
2. An explanation of why the agency proposes the action.
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action.
4. A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained.
5. Sources for parents to contact to obtain assistance in understanding their procedural safeguards.
6. A description of other options considered and the reasons why those options were rejected.
7. A description of other factors that are relevant to the agency's proposal. (K.S.A. 72-3432; 34 C.F.R. 300.503(b))

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the LEA must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, that the parent understands the content of the notice and that there is written evidence that this has been done (K.A.R. 91-40-26(a)(b)(c); 34 C.F.R. 300.503(c)).

1. Preparing the Prior Written Notice

The team must plan to administer the assessments and other evaluation measures as may be needed to produce the data required to meet the requirements of the continuation of eligibility (K.A.R. 91-40-8(e)(1); 34 CFR 300.305(c)). Every reevaluation should be approached and designed individually based on the specific concerns of the child to be evaluated. Thoughtful planning is required to insure that the team will use appropriate tools to collect the data needed, while eliminating time spent collecting

information that is either unnecessary or overly time consuming for no clear purpose. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct an evaluation.

The first activity the reevaluation team is to conduct is a review of existing data. The reevaluation team needs to consider all data that is currently available including evaluations and information provided by the parents, current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented. The review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents (K.A.R. 91-40-8(c)(d); K.A.R. 91-40-27(e); 34 C.F.R. 300.305(b); 34 C.F.R. 300.300(d)(1)).

The purpose of reviewing existing data is to identify what additional data, if any, are needed to determine:

- If the child continues to be a child with an exceptionality and needs special education;
- whether the child continues to need special education and related services;
- the educational needs of the child;
- the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (K.S.A. 72-3428(i)(2); 34 C.F.R. 300.305(a)(2))

After the team has reviewed the existing data, there must be a determination of what data, if any, will be collected during the reevaluation, with the Prior Written Notice completed to reflect that determination.

a. Requirements if No Additional Data is Needed

   If the team has determined that no additional data are needed to determine whether the child continues to be a child with an exceptionality, and to determine the child's educational needs, the school must notify the parents

   i. of that determination and the reasons for it; and
   ii. the right of the parents to request an assessment to determine whether the child continues to be a child with an exceptionality, and to determine the educational needs of the child (K.A.R. 91-40-8(c); 34 C.F.R. 300.305(d)).

   The school district is not required to conduct the assessment described in (ii) above unless requested to do so by the child's parents. In addition, if the parents request an assessment of their child, the school district may refuse to do so, but it must provide the parents with Prior Written Notice of the refusal to conduct the assessment and the reasons for the refusal. The parents may request mediation or due process if they want the assessment conducted. (See Prior Written Notice form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice.)

b. Requirements if Additional Data Are Needed

   If the team has determined that additional data are needed, the team should plan who will collect it and plan to insure all data will be collected within the evaluation timeline. The procedures to be used to collect the data should be described on the Prior Written Notice for the reevaluation and provided to the parents for their consent.

2. Request for Consent

The school must obtain informed consent from the parent of the child before conducting any reevaluation (K.A.R. 91-40-27(a)(1); 34 C.F.R. 300.300(c)). In determining that informed consent is obtained, the following must be insured (K.A.R. 91-40-1(l); 34 C.F.R. 300.9):

a. The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
d. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

3. Failure to Respond or Refusal to Consent

The school must make reasonable attempts to obtain consent from the parents to conduct the reevaluation. Reasonable attempts are defined as at least two contacts by two different methods (phone calls, letters, visits, email, etc.) and such attempts should be documented, including detailed records of telephone calls made or attempted and the results, copies of written correspondence sent to the parents and their response if any, and visits made to the parents' home or place of employment, and the response, if any, from the parents (K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)).

If the school can demonstrate that it has made reasonable efforts (i.e. minimum two contacts by two different methods) and parents have failed to respond, the school may proceed with the reevaluation without informed parental consent.

If the parent refuses consent for the reevaluation the school may, but is not required to, pursue the reevaluation of the child by utilizing the procedural safeguards, including mediation. The school does not violate its obligation for child find or to conduct a reevaluation of the child if it declines to pursue the reevaluation (K.A.R. 91-40-27(f)(1)(3); 34 C.F.R. 300.300(c)(1)).

If a parent of a child who is home schooled or voluntarily placed in a private school by the parents does not provide consent for the reevaluation, or the parent fails to respond, the school may not use mediation or request a due process hearing (K.A.R. 91-40-27(f)(2); 34 C.F.R. 300.300(d)(4)).

During reevaluation, like initial evaluation, the school is required to inform parents of their right to an independent educational evaluation, according to 34 C.F.R. 300.502. Chapter 3 includes a full discussion of independent educational evaluations.

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties.

(b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;

(2) not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child;

(3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(4) in determining whether a child has a specific learning disability, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.

(h) (1) Each agency shall ensure that a reevaluation of each exceptional child is conducted:

(A) If the agency determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a reevaluation; or

(B) if the child's parent or teacher requests a reevaluation.

(2) An agency shall conduct a reevaluation of a child:

(A) Not more frequently than once a year, unless the parent and the agency agree otherwise; and

(B) at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

(i) As part of an initial evaluation, if appropriate, and as part of any reevaluation under this section, the IEP team and other qualified professionals, as appropriate, shall:

(1) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and

(2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(A) Whether the child is an exceptional child and the educational needs of the child, or in the case of a reevaluation of a child, whether the child continues to be an exceptional child and the current educational needs of the child;

(B) the present levels of academic and related needs of the child; (C) whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and (D) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(i) As part of an initial evaluation, if appropriate, and as part of any reevaluation under this section, the IEP team and other qualified professionals, as appropriate, shall:

(1) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and

(2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(A) Whether the child is an exceptional child and the educational needs of the child, or in the case of a reevaluation of a child, whether the child continues to be an exceptional child and the current educational needs of the child;

(B) the present levels of academic and related needs of the child;

(C) whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(D) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(l) (1) Except as provided in paragraph (2), an agency shall reevaluate a child in accordance with this section before determining that the child is no longer an exceptional child.

(2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.

72-3430. Parental rights.

(a) The rights of parents of exceptional children shall include, but not be limited to, the rights specified in this section.

(b) The parents of exceptional children shall have the right to:

(2) written prior notice in accordance with K.S.A. 72-990, and amendments thereto, whenever an agency:

(A) Proposes to initiate or change; or

(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

72-3432. Notice of parental rights; contents. The notice required by subsection (b)(2) of K.S.A. 72-988, and amendments thereto, shall include:

(a) A description of the action proposed or refused by the agency;

(b) an explanation of why the agency proposes or refuses to take the action;

(c) a description of other options that the agency or IEP team considered and the reasons those options were rejected;

(d) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(e) a description of any other factors that are relevant to the agency's proposal or refusal;

(f) a statement that the parents have protection under the procedural safeguards of this act and, if the notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and

(g) sources for parents to contact to obtain assistance in understanding the provisions of the federal law and this act.

K.A.R. 91-40-1. Definitions

(l) "Consent" means that all of the following conditions are met:

(1) A parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.

(2) A parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom.

(3) A parent understands the following:

(A) The granting of consent is voluntary on the part of the parent and may be revoked at any time.

(B) If the parent revokes consent, the revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked

(C) The parent may revoke consent in writing for the continued provision of a particular service or placement only if the child's IEP team certifies in writing that the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

K.A.R. 91-40-17. IEP team meetings and participants.

(e) (1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.

(2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parent to provide notice of the meeting and to secure the parent's participation. The record shall include at least two of the following:

(A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;

(B) detailed records of visits made to the parent's home or homes, including the date, time, and person making the visit and the results of the visit;

(C) copies of correspondence sent to the parent and any responses received; and

(D) detailed records of any other method attempted to contact the parent and the results of that attempt.

K.A.R. 91-40-26. Notice requirements.

(a) In providing any notice to the parents of an exceptional child in accordance with K.S.A. 72-990 and amendments thereto, regarding action proposed or refused by an agency, the agency shall ensure that the notice includes the following descriptions:

(1) a description of other options the agency considered and the reasons why those options were rejected; and

(2) a description of other factors that are relevant to the agency's proposal or refusal.

(b) The notice shall be is written in a language understandable to the general public and is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of a parent is not a written language, the agency shall take steps to ensure all of the following:

(1) The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication.

(2) The parent understands the content of the notice.

(3) There is written evidence that the requirements of paragraphs (1) and (2) of this subsection have been met.

K.A.R. 91-40-27. Parental consent.

(a) Except as otherwise provided in this regulation, an agency shall obtain written parental consent before taking any of the following actions:

(1) Conducting an initial evaluation or any reevaluation of an exceptional child;

(2) initially providing special education and related services to an exceptional child; or

(3) making a material change in services to, or a substantial change in the placement of, an exceptional child, unless the change is made under the provisions of K.A.R. 91-40-33 through 91-40-38, or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.

(e) An agency shall not be required to obtain parental consent before taking either of the following actions:

(1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or

(2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.

(f) (1) If the parent of an exceptional child who is enrolled or is seeking to enroll in a public school does not provide consent for an initial evaluation or any reevaluation, or for a proposed material change in services or a substantial change in the placement of the parent's child, an agency may, but is not required to, pursue the evaluation or proposed change by initiating due process or mediation procedures.

(2) If the parent of an exceptional child who is being home schooled or has been placed in a private school by the parent does not provide consent for an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, an agency may not pursue the evaluation or reevaluation by initiating mediation or due process procedures.

(3) An agency shall not be in violation of its obligations for identification, evaluation or reevaluation if the agency declines to pursue an evaluation or reevaluation, because a parent has failed to provide consent for the proposed action.

(4) Each agency shall document its attempts to obtain parental consent for action proposed under this regulation.

(g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parents have failed to respond.

(h) An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities or services offered by the agency.

D. MEMBERS OF THE REEVALUATION TEAM

The membership of the team that conducts the reevaluation and determines continued eligibility is the same as the IEP Team with the addition of other qualified professionals if a child is suspected of having a specific learning disability, as appropriate. The additional professionals that would participate are based on the identified concerns to be addressed in the reevaluation process. The actual team

members on each reevaluation team may differ; however, there are specific members and skills that must be represented on the team. The makeup of this team would include:

- The parents of the child.
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment).
    - If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or if the child is less than school age, an individual qualified to teach a child of his or her age;
- Not less than one special education teacher of the child, or where appropriate, not less than one special education service provider of the child.
- A representative of the local education agency who:
    - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of child with disabilities,
    - Is knowledgeable about the general education curriculum, and
    - Is knowledgeable about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of reevaluation results.
- At least one person qualified to conduct individual diagnostic examinations of children.
- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (K.S.A. 72-3404(u); K.A.R. 91-40-11(a); 34 C.F.R. 300.321; 34 C.F.R. 300.308)

E. CONDUCTING THE REEVALUATION

The reevaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child continues to be an exceptional child, the educational needs of the child, and the content of the child's IEP, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities (K.S.A. 72-3428(b)(1)). In addition, the procedures must also lead to the determination of the present levels of academic achievement and functional performance of the child. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data to determine:

1. If the child continues to be a child with an exceptionality;
2. whether the child continues to need special education and related services
3. the educational needs of the child;
4. the present levels of academic achievement and functional performance (related developmental needs) of the child; and
5. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (K.S.A. 72-3428(i)(2); 34 C.F.R. 300.305(a)(2))

As stated previously, the data collected is critical not only for the purpose of determining whether a child continues to be eligible for special education services, but also to assist in the development of present levels of academic achievement and functional performance. Regulations clearly state that the reevaluation must result in determining the content of the child's IEP (if still eligible) including information related to enabling the child to be involved in and progress in the general curriculum (or for

a preschool child, to participate in appropriate activities) (K.S.A. 72-3428(b)(1); 34 C.F.R. 300.304(b)(ii)). However, the reevaluation should also assist in the development of an instructional plan for the child if the child is not found to be eligible.

Every reevaluation should be approached and designed individually based on the specific concerns of the child being evaluated. Thoughtful planning is required to insure that the team will use appropriate tools to collect the data needed, while eliminating time spent collecting information that is unnecessary or for no clear purpose. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct a reevaluation.

Procedures for Conducting the Reevaluation

The school shall ensure that a reevaluation meets all of the same requirements for an initial evaluation as described in Section E, of Chapter 3, in this Handbook. The reevaluation team members must utilize a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information from the parents, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities). The tools and strategies must yield relevant information that directly assists in determining the educational needs of the child.

Collecting relevant functional, developmental and academic information related to enabling the child to be involved in, and progress in, the general curriculum (or for a preschool child, to participate in appropriate activities) requires that data be collected not only about the child, but about the curriculum, instruction, and environment as well. Every evaluation should be approached and designed individually based on the specific concerns for the child and the selection of assessment tools based on the information needed to answer the eligibility questions. It would be inappropriate to use the exact same battery of assessments for all children or to rely on any single tool to conduct an evaluation. (K.S.A. 72-3428(b)(c); K.A.R. 91-40-9)

Data should be collected from the five sources referred to in Kansas as GRIOT. GRIOT represents five sources of data that teams need to collect and use as appropriate. The following is a discussion of each of the five sources of data:

G – General Education Curriculum Progress: During the reevaluation, the team should thoroughly examine the child's progress in the general education curriculum. The team needs to understand how the child is progressing in general education curriculum across settings with the available supports. To do this they must understand the outcomes of the general education curriculum and how the skills represented in those outcomes relate to the needs of each child. Are the skills needed for this child's progress different than the skills that general education children need? Is the instruction required for the child to learn those skills different? The general education curriculum outcomes and the supports available through general education are unique to each school. Gaining an understanding of what support is available and the level of support needed by the child is one of the most important parts of the reevaluation.

R – Record Review: The evaluation team should also include as part of the reevaluation a review of records. These records would include such things as information provided by the parents, current classroom-based assessments, State assessments, information from previous services providers, screenings, previous evaluations, reports from other agencies, portfolios, discipline records, cumulative file, and other records.

I – Interview: It is important to understand the perceptions of significant adults in the child's life and of the child himself. Parents, teachers, and the child can all typically provide insight into areas of strengths and needs. Interviews can also provide information about significant historical events in the child's life as well as about his performance in the classroom and other settings.

O – Observation: A district must ensure the child is observed in the child's learning environment (including the regular education classroom setting) to document the child's academic performance and behavior in the areas of difficulty (K.A.R. 91-40-11(c); 34 C.F.R. 300.310). In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. If the child is already in an educational setting the observation should be done in that setting as opposed to bringing them into a different setting just for observation. These observations could include structured observations, rating scales, ecological instruments (e.g., EBASS, TIES-II), behavioral interventions, functional analysis of behavior and instruction, anecdotal, and other observations (conducted by parents, teachers, related services personnel, and others). The purpose of the observation is to help the evaluation team understand the extent to which the child's skills are impacting their ability to participate and progress in a variety of settings. Observations allow you to see firsthand how a child is functioning in naturally occurring settings. Observation data can also allow you to compare the child's behavior to that of peers in the same setting. Observation data helps us to understand not only the child's current functional performance but also the level of independence demonstrated which can help determine necessary supports.

T – Test: A wide range of tests or assessments may be useful in determining an individual child's skills, abilities, interests, and aptitudes. Typically, a test is regarded as an individual measure of a specific skill or ability, while assessment is regarded as broader way of collecting information that may include tests and other approaches to data collection. Standardized norm-referenced tests are helpful if the information being sought is to determine how a child compares to a national group of children of the same age or grade. Criterion-reference tests are helpful in determining if the child has mastered skills expected of a certain age or grade level. Tests typically provide specific information but are never adequate as a single source of data to determine eligibility for special education. Because tests require a controlled testing environment, the result is that children are removed from their learning environments to participate. This is a very intrusive way of gathering data and the value of the data obtained should always be weighed carefully against the cost of missed class time. For this reason, tests should be thoughtfully selected and be used for specific purposes when data cannot be obtained through other sources. Some test information may already have been collected, especially if the child attends a school that uses school-wide benchmark assessment. However, additional information may need to be collected during the reevaluation. This might include curriculum-based assessments (e.g., CBA, CBM, or CBE), performance-based assessments (i.e., rubric scoring), or other skill measures such as individual reading inventories. The testing that needs to be done will vary depending on what information already has been collected and the needs of the individual child. Diagnostic testing might include measures of reading, math, written language, or other academic skills, or tests of motor functioning, speech/language skills, adaptive behavior, self-concept, or any domain of concern. As with all types of data collection, the information from testing needs to be useful for both diagnostic and programmatic decision-making.

GRIOT offers a framework in which to organize and structure data collection. It is not that any data source or assessment procedure is inherently good or bad. All procedures and tools are appropriate as long as they are selected thoughtfully and for the appropriate purposes. A team will not necessarily use all data sources every time an evaluation is conducted, but it does mean that thoughtful planning will

need to be given for each child to ensure that the team is collecting the appropriate data using the appropriate tools to ensure the correct information to make the continued eligibility determination.

The instruments utilized in the reevaluation must meet all of the requirements as described in Section E. of Chapter 3 in this Handbook. Federal and State laws and regulations specify requirements for evaluation and reevaluation (K.A.R. 91-40-8(e)(f)(g); 34 C.F.R. 300.304)

K.A.R. 91-40-8. Evaluation.

(c) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements:

(1) The evaluation team shall review existing evaluation data on the child, including the following information:

(A) Evaluations and information provided by the parents of the child;

(B) current classroom-based, local, and state assessments and classroom-based observations; and

(C) observations by teachers and related services providers.

(2) On the basis of that review and input from the child's parents, the evaluation team shall identify what additional data, if any, is needed to determine the following matters:

(A) Whether the child has a particular category of exceptionality or, in the case of a reevaluation of a child, whether the child continues to have such an exceptionality;

(B) what the present levels of academic performance and educational and related developmental needs of the child are;

(C) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(D) whether, in the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

(d) The team described in subsection (e) of this regulation may conduct its review without a meeting.

(e) (1) If the team described in subsection (c) of this regulation determines that additional data is required to make any of the determinations specified in paragraph (2) of subsection (c), the agency, after giving proper written notice to the parent and obtaining parental consent, shall administer those tests and evaluations that are appropriate to produce the needed data.

(2) If the team described in subsection (c) of this regulation determines that no additional data is needed to make any of the determinations specified in paragraph (2) of subsection (c), the agency shall give written notice to the child's parent of the following information:

(A) The determination that no additional data is needed and the reasons for this determination; and

(B) the right of the parent to request an assessment.

(3) The agency shall not be required to conduct any additional assessments unless requested to do so by the child's parent.

(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:

(1) Conduct the evaluation of the child;

(2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the parent as required by K.A.R. 91-40-17(a); and

(3) implement the child's IEP in accordance with K.A.R. 91-40-16.

(g) An agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met:

(1) The parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation.

(2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.

(h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services.

K.A.R. 91-40-9. Evaluation procedures.

(a) If assessment instruments are used as a part of the evaluation or reevaluation of an exceptional child, the agency shall ensure that the following requirements are met:

(1) The assessment instruments or materials shall meet the following criteria:

(A) Be selected and administered so as not to be racially or culturally discriminatory; and

(B) be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless this is clearly not feasible.

(2) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has an exceptionality and needs special education, rather than measuring the child's English language skills.

(3) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved and progress in the general curriculum or, for a preschool child, to participate in appropriate activities that could assist in determining whether the child is an exceptional child and what the content of the child's IEP should be.

(4) Any standardized tests that are given to a child shall meet the following criteria:

(A) Have been validated for the specific purpose for which they are used; and

(B) be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment.

(5) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

(6) Assessments and other evaluation materials shall include those that are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(7) Assessments shall be selected and administered to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the assessment purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the assessment purports to measure.

(8) A single procedure shall not be used as the sole criterion for determining whether a child is an exceptional child and for determining an appropriate educational program for the child.

(9) Each agency shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(b) (1) Each child shall be assessed in all areas related to a suspected exceptionality, including, if appropriate, the following:

(A) Health;

(B) vision;

(C) hearing;

(D) social and emotional status;

(E) general intelligence;

(F) academic performance;

(G) communicative status; and

(H) motor abilities.

(2) Each evaluation shall be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(c) If a child is suspected of having a specific learning disability, the agency also shall follow the procedures prescribed in K.A.R. 91-40-11 in conducting the evaluation of the child.

K.A.R. 91-40-11. Evaluation for specific learning disability; use of response to intervention process.

(b) (1) A group evaluating a child for a specific learning disability may determine that the child has that disability only if the following conditions are met:

(A) The child does not achieve adequately for the child's age or meet state-approved grade-level standards, if any, in one or more of the following areas, when the child is provided with learning experiences and instruction appropriate for the child's age and grade level:

(i) Oral expression;

(ii) listening comprehension;

(iii) written expression;

(iv) basic reading skill;

(v) reading fluency skills;

(vi) reading comprehension;

(vii) mathematics calculation; and

(viii) mathematics problem solving; and

(B) (i) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in paragraph (b)(1)(A) when using a process based on the child's response to scientific, research-based intervention; or

(ii) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development that is determined by the group conducting the evaluation to be relevant to the identification of a specific learning disability, using appropriate assessments.

(2) A child shall not be determined to be a child with a specific learning disability unless the group evaluating the child determines that its findings under paragraphs (b)(1))(A) and (B) are not primarily the result of any of the following:

(i) A visual, hearing, or motor disability;

(ii) mental retardation;

(iii) emotional disturbance;

(iv) cultural factors;

(v) environmental or economic disadvantage; or

(vi) limited English proficiency.

(c) (1) The group evaluating the child shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(2) In conducting the observation, the group may employ either of the following procedures:

(A) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(B) have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

F. DETERMINING CONTINUED ELIGIBILITY

Upon completion of the reevaluation, the team should compile all data (that which previously existed and/or was collected as part of the reevaluation) into a format that will be useful when the team convenes to make the continued eligibility determination. It is important that all the information be in an understandable format that allows the team, including the parent, to understand the child's strengths and weaknesses and how the child is progressing in the general curriculum in addition to information about the child's exceptionality and needs for special education.

At the time the reevaluation is completed, the team should schedule a time to convene in order to make the determination of continued eligibility. Parents are to be provided an opportunity to participate in the eligibility meeting, which can be conducted at the same time as the IEP team meeting. The school must provide a notice of the meeting at least 10 calendar days prior to the meeting date that includes the requirements in K.A.R. 91-40-17(b)(1).

When the meeting is convened, the reevaluation team, including the parents, reviews the results of the reevaluation to determine:

- If the child continues to be a child with an exceptionality;
- whether the child continues to need special education and related services;
- the educational needs of the child;
- the present levels of academic achievement and the functional performance (related developmental needs) of the child; and
- whether any additions of modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate in the general education curriculum.

As is the case in all reevaluations, when making the determination of whether the child continues to be a child with an exceptionality and whether the child continues to need special education and related services, teams must take into account that the child has made progress since the time he/she was initially evaluated and determined to be eligible for services. The fact that the child's performance gap may be less than at the time of the initial evaluation would not necessarily mean that the child is no longer a child with an exceptionality and no longer in need of special education services.

The data collected at the time of the reevaluation should assist the team in decision making. Teams should thoroughly discuss the child's present levels of educational performance and consider the child's rate of progress. Teams should also consider what level of support is needed in order for the child to access and progress in the general curriculum and whether that level of support would continue to require specially designed instruction. If at the time of reevaluation, a student needs only general accommodations, then the student is no longer eligible for special education, but should be referred for consideration of eligibility for a 504 plan. These careful considerations should drive the determination of continued eligibility.

Documenting Continued Eligibility

After completion of appropriate reevaluation procedures, the team of qualified professionals and the parent of the child shall prepare a written reevaluation report. A copy of the reevaluation report and documentation of whether or not the child continues to be a child with an exceptionality must be given to the parents. See Section F, of Chapter 3, in this Handbook for a complete discussion of the requirements for determination of continuing eligibility and a description of the reevaluation and

continued eligibility report. (See Evaluation/Eligibility Report Checklist at https://www.ksde.gov/student-success/special-education/special-education-resources-for-families-and-educators/eligibility).

G. REEVALUATIONS FOR A CHILD IDENTIFIED AS DEVELOPMENTALLY DELAYED

Special considerations impacting reevaluation are needed for children who have been determined eligible for special education services under the category of developmental delay (DD). These considerations must be made in accordance with regulations regarding a child's continuing eligibility for services.

State statute and regulations (K.S.A. 72-3404(z)(2); K.A.R. 91-40-1(k)) allow schools to identify children ages three through nine as a child with a developmental delay(DD). Federal regulations clarify that the use of the category of developmental delay is optional for the LEA. If the LEA chooses to use the category of developmental delay, the LEA must conform to both the State's definition of developmental delay and to the age range that has been adopted by the State (3 through 9). See 34 C.F.R. 300.111(b)(2) and (3).

Reevaluation of a child is not required before termination of a child's eligibility for services due to exceeding the age for eligibility (K.S.A. 72-3428(l)(2)). If a child ages 3-9 was determined eligible as a child with only DD and no additional exceptionality, eligibility ends on the student's 10th birthday. For such a child, the school does not need parental consent to end services upon exceeding the age for DD eligibility (K.A.R. 91-40-27(a)(3)). However, the child find requirement remains. Therefore, if prior to the student's 10th birthday, there is reason to suspect that the child has another exceptionality under any other category, a reevaluation must be completed prior to the child's 10th birthday to make that determination.

K.A.R. 91-40-1. Definitions.

(k) "Child with a disability" means the following:

(1) A child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, need special education and related services; and

(2) for children from ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services.

(q) "Developmental delay" means such a deviation from average development in one or more of the following developmental areas that special education and related services are required:

(A) Physical;

(B) cognitive;

(C) adaptive behavior;

(D) communication; or

(E) social or emotional development. The deviation from average development shall be documented and measured by appropriate diagnostic instruments and procedures.

K.A.R. 91-40-2. FAPE

(c) (1) Each agency shall make FAPE available to any child with a disability even though the child is advancing from grade to grade.

(2) The determination of whether a child who is advancing from grade to grade is a child with a disability shall be made on an individual basis in accordance with child find activities and evaluation procedures required by this article.

K.A.R. 91-40-10. Eligibility determination.

(i) With regard to children ages three through nine who are determined to need special education and related services, an agency shall use one or more of the categories of disabilities described in the definition of the term "child with a disability" or the term "developmental delay."

QUESTIONS AND ANSWERS ABOUT REEVALUATION

1. What if the school and parents agree that a reevaluation isn't necessary?

Prior to conducting a reevaluation the parent and the school shall determine whether a reevaluation is needed. A reevaluation is to occur at least once every three years, unless the parent and the school agree that a reevaluation is unnecessary (K.S.A. 72-3428(h)(2)(B); 34 C.F.R. 300.303(b)(2)).

(Federal Register, August 14, 2006, p. 46640, 46641). Documentation of this agreement must be maintained (See sample Re-evaluation Not Needed Agreement Form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms.).

The agreement extends the date for the next three-year evaluation to three years from the date when the last signature is placed on the agreement, whether that is the district's signature or the parent's signature.

2. What does the school do if parents refuse consent for a reevaluation?

The school must try to obtain consent from the parents. The school may, but is not required to seek to mediate the dispute or file for a due process hearing to pursue the reevaluation. The school would not violate the requirement to conduct a reevaluation if it declines to pursue the reevaluation when the parent refuses to provide consent. The school would continue to serve the child according to the IEP.

3. What does the school do to document reasonable measures were taken to obtain consent, if parents do not respond to the request to reevaluate?

If the parent does not respond the school must keep detailed records of its attempts to obtain parental consent including written correspondence sent to the parents, phone calls made or attempted and visits made to the parent's home or place of employment, and the response, if any, from the parent. At minimum, schools must make two attempts, using at least two different methods. If the school is not successful after repeated reasonable attempts, then the school may continue with the reevaluation procedures. (K.A.R. 91-40-17(e)(2)(A); 34 C.F.R. 300.303(d)(5); 34 C.F.R. 300.300(d))

4. What does the school do if parents want a specific test conducted, but the rest of the reevaluation team believes no additional data are needed? Must the school conduct the test?

The school would have the option of conducting the test, or providing Prior Written Notice to the parents of refusal to test and the reason they do not think the testing is necessary. If the parents do not agree, they may request mediation or due process.

In this situation, the parents do not have a right to an independent educational evaluation (IEE) at public expense. The IEE right at public expense is only triggered by disagreeing with the evaluation itself, not the decision to refuse a particular test as a part of the evaluation.

5. If no additional data are needed, does the reevaluation team need to write a report just to determine continued eligibility and need?

Yes. Upon the completion of the reevaluation (which may include only existing data) and determination of continued eligibility, the team develops a reevaluation and eligibility report as described in Chapter 3. The report includes what data were examined and their reasons for

determining continued eligibility for special education and related services. The parents are to receive a copy of this report.

6. May staff discuss information related to a child's instruction without the parents?

   Yes, Kansas regulations clarify that, "a meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting." (K.A.R. 91-40-25(e)).

7. Once a child has been exited from special education services, must you complete an initial evaluation upon a referral to determine need for special education?

   Yes. Once a child who has been identified as a child with an exceptionality has been exited, either through revocation of consent or a reevaluation resulting in a determination that the child is no longer eligible, a subsequent evaluation would be an initial evaluation. A reevaluation is used to determine continued eligibility and continued need for special education and related services. As such, a reevaluation only applies to a child currently identified as a child with an exceptionality. However, this does not necessarily mean the initial evaluation must include new assessments. If appropriate as a part of the initial evaluation, the team must conduct a review of existing data. If there is enough current data available, the team may determine there does not need to be any further assessments conducted.

8. When a student with an exceptionality is graduating and exiting from special education services, must the school conduct a reevaluation to determine post-school program eligibility?

   Schools are not required to conduct a reevaluation for a child to meet the entrance or eligibility requirements of a post-school institution or agency because to do so would impose a significant cost on the school that is not required by the law (Federal Register, August 14, 2006, p. 46644).
   It is important to note, that though a reevaluation isn't required, a Summary of Performance (SOP) is required for a child with a disability whose eligibility under special education terminates due to graduation with a regular diploma, or due to exceeding the age of eligibility. The local education agency must provide the child with a summary of the child's academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals (K.S.A. 72-3428(m); 34 C.F.R. 300.305(e)(3). This requirement applies only to children with disabilities, therefore, an SOP does not need to be completed for students identified as gifted. See Section F., Chapter 8 of this handbook for more information on the SOP.

CHAPTER 8: DISCONTINUING SPECIAL EDUCATION SERVICES

INTRODUCTION

There are times when a child's eligibility for special education and related services ends or when the parent or student chooses to end the provision of special education services. This chapter discusses several instances in which students currently receiving special education services "discontinue" or exit from their special education program. Such circumstances include the following:

A. No Longer Eligible for Services
B. Graduation
C. Student Reaches the End of the School Year in Which They Turn Age 21
D. Revocation of Consent for Special Education Services
E. Student Drops Out of School
F. Summary of Performance
G. Prior Written Notice and Request for Consent

A. NO LONGER ELIGIBLE FOR SERVICES

When a parent or school personnel suspect that a child is no longer eligible for special education and related services, a reevaluation must be conducted to determine if the child is no longer a child with an exceptionality (K.S.A. 72-3428(l)(1)). As part of the reevaluation, the IEP team will review existing data and determine whether they need to conduct any additional assessments (See Chapter 7, Reevaluation.).

If it is determined by the IEP team through a reevaluation that the child is no longer a child with an exceptionality (no longer has a disability or is gifted and/or no longer needs special education and related services), the district will provide the parents with Prior Written Notice of this decision and obtain parent consent before discontinuing services (See the Prior Written Notice-Identification form at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice). Typically, if the IEP Team determines that a child is no longer eligible, the reason is that the child no longer has a need for special education and related services. For example, a child who was identified with speech and language delays as a young child has benefited from speech/language services, met the exit criteria determined by the IEP Team, and no longer needs such services. Services may be discontinued, with parent consent, if the IEP team determines that the data support that the child no longer has a need for special education services.

B. GRADUATION

All students receiving special education services will receive a regular high school diploma at the completion of their secondary program if they meet graduation requirements of the state and school district. IEP teams do not have the authority to award credits or issue diplomas under special education laws and regulations unless a school district has delegated such decisions to the IEP team in writing. A regular high school diploma does not include an alternative diploma that is not fully aligned with the State's academic standards, such as a certificate or GED (Federal Register, August 14, 2006, p. 46580). A modified or differentiated diploma or certificate may be used for students receiving special education services; however, such diplomas or certificates do not end eligibility for special education services.

When the student enters high school, progress toward graduation must be monitored annually and recorded on an official transcript of credits. If the student has completed the required courses for graduation, but the IEP team determines the student still needs additional special education and related services to meet IEP goals, graduation would be delayed and the student can continue to receive the needed special education services on the IEP through the school year in which the student turns 21. The district's obligation to provide special education services ends (a) when the student meets graduation requirements and receives a regular high school diploma; (b) at the end of the school year in which the child reaches age 21; or (c) an evaluation shows that the child is no longer eligible for special education services (K.A.R. 91-40-2(f)).

Students with exceptionalities who meet graduation criteria must be afforded the same opportunity to participate in graduation ceremonies as students without exceptionalities, even if the IEP team determines that services will continue after the student has met all of the required credits (but an official diploma has not been awarded). A student may require services through age 21 to meet IEP goals, or because he or she has not obtained all of the required credits for graduation. In either case, the student may be allowed to participate in graduation ceremonies with the student's classmates. Schools may have a policy regarding participation in graduation ceremonies; but it must apply equally to all students in the district, not just for students with exceptionalities.

No reevaluation is required prior to exiting a student due to graduation (K.S.A. 72-3428(l)(2); 34 C.F.R. 300.305(e)(2)). However, before the student completes the last semester of high school in which the student is expected to graduate, the district must provide the student (if over age 18) and the parents with Prior Written Notice of the discontinuation of services at the end of the school year. The Prior Written Notice will clearly state that the student will no longer be entitled to receive special education services from the district after graduation. Parental consent for discontinuing services is not required when a child graduates with a regular diploma (K.A.R. 91-40-27(a)(3); 34 C.F.R. 300.102(a)(3)(iii)).

Letter to Runkel, 25 IDELR 387, is a letter from the federal Office of Civil Rights (OCR) that provides additional guidance about criteria for grading, graduation, and diplomas for students with disabilities.

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties.

(l) (2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.

K.A.R. 91-40-2. FAPE.

(f) (1) An agency shall not be required to provide FAPE to any exceptional child who has graduated from high school with a regular high school diploma.

(2) Each exceptional child shall be eligible for graduation from high school upon successful completion of state and local board requirements and shall receive the same graduation recognition and diploma that a nonexceptional child receives.

(3) The IEP of an exceptional child may designate goals other than high school graduation.

(4) When an exceptional child enters high school, progress toward graduation shall be monitored annually and recorded on an official transcript of credits.

(5) As used in this subsection, the term "regular high school diploma" means the same diploma as is awarded to nonexceptional students and shall not include certificates of completion or other certificates, or a general educational development credential (GED).

C. SERVICES THROUGH AGE 21

The district must make a free appropriate public education (FAPE) available to any student who has not graduated with a regular high school diploma until the end of the school year in which the student turns 21 (the school year ends on June 30). The IEP team may determine that the student needs extended school year services, which would be available through June 30 of the school year in which the student turns 21. The school must provide the student age 18 and over, and the parents with Prior

Written Notice that the services will be discontinued at the end of the school year, however, parental consent is not required. A reevaluation is also not required when a student graduates or ages out of eligibility for services upon turning age 21 (K.S.A. 72-986(l)(2); (K.A.R. 91-40-10(s)(2); (K.A.R. 91-40-27(a)(3); 34 C.F.R. 300.305(e)(2).

34 C.F.R. 300.101. Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 300.530(d).

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties.

(l) (1) Except as provided in paragraph (2), an agency shall reevaluate a child in accordance with this section before determining that the child is no longer an exceptional child.

(2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.

D. REVOCATION OF CONSENT FOR ALL SPECIAL EDUCATION SERVICES

Parent consent is voluntary, and may be revoked by the parents at any time. Revocation of consent must be in writing. If a parent revokes consent in writing for all existing services, the LEA may meet with the parent to attempt to resolve the difficulty. If the parent cannot be convinced to continue the services, the LEA must honor the parent's revocation, provide Prior Written Notice a reasonable time before ceasing provision of the services and may not attempt to override the parent's revocation through mediation or due process. Further, the LEA is not required to hold an IEP team meeting or develop an IEP and will not be considered to be in violation of FAPE for the failure to provide further provision of special education and related services. The LEA is not required to amend a child's records to remove references to special education and related services. (K.A.R. 91-40-27(i) – (l)).

When parents revoke their consent the revocation is not retroactive but becomes effective on the date that it was revoked (K.A.R. 91-40-1(l)(3); 34 C.F.R. 300.9). Therefore, the revoking of consent does not negate any action that has occurred after the previous consent was given and before the consent was revoked. If a parent who revoked consent for all special education and related services later wishes his or her child to be reenrolled in special education, the agency must first conduct an initial evaluation to determine whether the child qualifies for special education (K.A.R. 91-40-27(l)).

K.A.R. 91-40-1. Definitions.

(l) (3) A parent understands the following:

(A) The granting of consent is voluntary on the part of the parent and may be revoked at any time.

(B) If the parent revokes consent, the revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked.

(C) The parent may revoke consent in writing for the continued provision of a particular service or placement only if the child's IEP team certifies in writing that the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

K.A.R. 91-40-27. Parental consent.

(i) If, at any time after the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of all special education, related services, and supplementary aids and services, the following shall apply:

(1) The agency shall not continue to provide special education, related services, and supplementary aids and services to the child but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of those services.

(2) The agency shall not use the procedures in K.S.A. 72-3415 or K.S.A. 72-3438, and amendments thereto, or K.A.R. 91-40-28, including the mediation procedures and the due process procedures, in order to obtain an agreement or a ruling that the services may be provided to the child.

(3) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids and services.

(4) The agency shall not be required to convene an IEP team meeting or develop an IEP under K.S.A. 72-3429, and amendments thereto, or K.A.R. 91-40-16 through K.A.R. 91-40-19 for the child for further provision of special education, related services, and supplementary aids and services.

(j) If a parent revokes consent in writing for the child's receipt of all special education and related services after the child is initially provided special education and related services, the agency shall not be required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

E. STUDENT DROPS OUT OF SCHOOL

Under K.S.A. 72-3120, students without disabilities are, under specified circumstances, allowed to drop out of school at age 16. However, K.S.A. 72-3421 gives parents of a child with a disability the responsibility to provide for the special education services for their child, either within the public school or through private means, for the entire period of their child's eligibility. If for some reason a student with a disability drops out of school, documentation that the parents were informed of the requirements of the compulsory attendance statute for special education students (K.S.A. 72-3421) should be placed in the student's confidential file. The school is obligated to consider the student's FAPE entitlement and the school's obligation to report truancy to the District or County Attorney for students with disabilities younger than age 18. The school may want to consult with the school's attorney if they believe the parents of a student with a disability will not provide the special education services for the child.

The school must inform the parents that special education services continue to be available to the student. KSDE recommends that the school send a letter to the parents, stating that the school remains ready to provide special education services to their child if or when the child reenrolls in school. If the student reenrolls, the previous IEP must be implemented until a new IEP is developed.

Revoking consent for all special education and related services prior to dropping out of school. If a parent revokes consent for all special education and related services, and the parent's child is 16 years of age or older, the student should be treated as a general education student and permitted to use the procedures in K.S.A. 72-3120 to drop out of school. If a parent who revoked consent for all special education and related services later wishes his or her child to be reenrolled in special education, the agency must first conduct an initial evaluation to determine whether the child qualifies for special education (K.A.R. 91-40-27(l)).

K.S.A. 72-3120. Compulsory school attendance; exemptions.

(b) If the child is 16 or 17 years of age, the child shall be exempt from the compulsory attendance requirements of this section if: (1) The child is regularly enrolled in and attending a program recognized by the local board of education as an approved alternative educational program; (2) the child and the parent or person acting as parent attend a final counseling session conducted by the school during which a disclaimer to encourage the child to remain in school or to pursue educational alternatives is presented to and signed by the child and the parent or person acting as parent. The disclaimer shall include information regarding the academic skills that the child has not yet achieved, the difference in future earning power between a high school graduate and a high school drop out, and a listing of educational alternatives that are available for the child; or (3) the child is regularly enrolled in a school as required by subsection (a) and is concurrently enrolled in a postsecondary educational institution, as defined by K.S.A. 74-3201b, and amendments thereto. The provisions of this clause (3) shall be applicable to children from and after July 1, 1997, and shall relate back to such date. (d) Any child who is determined to be an exceptional child, except for an exceptional child who is determined to be a gifted child, under the provisions of the special education for exceptional children act is subject to the compulsory attendance requirements of such act and is exempt from the compulsory attendance requirements of this section.

K.S.A. 72-3421. Compulsory attendance of exceptional children at school for receipt of services; provision of services privately; nonapplicability to gifted children.

(a) Except as otherwise provided in this section, it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately.

(b) The provisions of subsection (a) do not apply to gifted children or to parents of gifted children.

K.A.R. 91-40-27. Parental consent.

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

F. SUMMARY OF PERFORMANCE (SOP)

A Summary of Performance (SOP) is required for a child with a disability whose eligibility under special education terminates due to graduation with a regular diploma, or due to exceeding the age of eligibility. The local education agency must provide the child with a summary of the child's academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals (K.S.A. 72-3428(m); 34 C.F.R. 300.305(e)(3). This requirement applies only to children with disabilities, therefore, an SOP does not need to be completed for students identified as gifted.

The purpose of the SOP is to transfer critical information that leads to the student's successful participation in postsecondary settings. It includes a summary of the achievements of the student with current academic, personal and career/vocational levels of performance. Information may be included as part of the summary based on assessment findings and team input. Assessment data and accommodations included in the summary should be written in functional terms easily understood by the student. Any supporting documents should be appropriately referenced and included with the summary. Signatures by the student and IEP team members are encouraged as verification that the contents of the summary have been explained, but are not required.

The SOP must, at a minimum, address the following:

- Academic achievement: Information on reading, math, and language grade levels, standardized scores, or strengths.
- Functional performance: Information on learning styles, social skills, independent living skills, self-determination, and career/vocational skills.
- Recommendations: Team suggestions for accommodations, assistive services, compensatory strategies for post-secondary education, employment, independent living, and community participation.

The Summary of Performance is intended to assist the student in transition from high school to higher education, training and/or employment. This information is helpful under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) in establishing a student's eligibility for reasonable accommodations and supports in postsecondary settings. It is also useful for the Vocational Rehabilitation Comprehensive Assessment process. However, recommendations in a student's SOP do not assure that an individual who qualified for special education in high school will automatically qualify for accommodations in a postsecondary education or employment setting. Post-secondary settings will continue to make ADA and Section 504 eligibility decisions on a case-by-case basis based on their criteria.

Since the SOP must be provided to the student with a disability whose eligibility terminates due to graduation or age, it is reasonable to conclude that the SOP must be completed and provided to the student by the end of the final year of a student's high school education. That does not mean that it cannot be completed and provided to the student prior to graduation. The timing of completion of the

SOP may vary depending on the student's postsecondary goals. If a student is transitioning to higher education, the SOP may be necessary as the student applies to a college or university. Likewise, this information may be necessary as a student applies for services from state agencies such as vocational rehabilitation. In some instances, it may be most appropriate to wait until the spring of a student's final year to provide an agency or employer the most updated information on the performance of the student.

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties.

(m) For a child whose eligibility for services under this act terminates under either of the circumstances described in subsection (l), the agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

G. PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

For some situations discussed within this chapter, parents must receive Prior Written Notice, and for some situations the school must obtain informed parent consent. (See sample Prior Written Notice and Consent forms at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice.)

The following chart may be useful to districts in determining when a reevaluation, Prior Written Notice and parent consent, as well as a Summary of Performance (SOP) are needed:

Reason for Discontinuing Services	Reevaluation Required	Prior Written Notice Required	Parent or Adult Student Consent Required	SOP Required
No longer eligible for special education and related services	Yes	Yes	Yes	No
Graduation	No	Yes	No	Yes
End of school year in which student reached age 21	No	Yes	No	Yes
Revokes consent for special education services	No	Yes	No	No

QUESTIONS AND ANSWERS ABOUT DISCONTINUING SPECIAL EDUCATION SERVICES

1. What if the student no longer requires special education services?

The IEP Team must determine whether the student no longer requires special education services based on data from a reevaluation. If, after a reevaluation, the team determines that the student is no longer eligible for special education it must give parents Prior Written Notice of that determination and that the team is proposing to end services. The school must also request that the parent give written consent for the end of services. The IEP Team may also determine that the student qualifies as a student with a disability under Section 504 and refer the student to the Section 504 team, which would write a Section 504 plan for the student.

2. What is required when the student graduates from high school?

The school must provide the parents, and the student, if age 18, with Prior Written Notice of exiting special education. The Prior Written Notice will clearly state that the student will no longer be entitled to receive special education services from the district after graduation. Informed parent or adult student consent is not required. Additionally, the school must provide the student with a Summary of Performance.

3. May a student participate in graduation exercises with his or her classmates, if the student is not actually graduating?

Yes, the student may participate in graduation exercises unless a local policy would not allow it. However, if there is such a policy, it must apply to all students and not just students receiving special education services. Some students may require services until age 21 to meet IEP goals, which should be addressed within the student's transition plan. The student could participate in graduation exercises with the student's class, but not actually receive a diploma at that time.

4. If a child with a disability is 18 years of age or older and is still eligible for special education and related services, can a school district require that child to participate in an "18-to-21 program", or must the child's IEP Team individually determine the educational placement, services and supports that are appropriate for that particular child?

As long as a child remains eligible for special education, they continue to be a "child with a disability" as that term is defined in special education statutes and regulations, and, as such, continue to have all of the rights of a child with a disability, including the right to be educated in the least restrictive environment and to continue to participate in the general curriculum.

The special education and related services within the IEP of a child with a disability must be individually determined and designed to enable that particular child to make appropriate progress (in light of his or her circumstances) towards attaining the IEP goals and in the general education curriculum. That requirement does not change when a child turns 18. The term "18-to-21 program" implies that all students in a certain age category receive the same services and LRE placement, which is inconsistent with the requirement to develop and implement an individualized education program (IEP) for each child with a disability who qualifies for services.

Further, a child's participation in an "18-to-21 program" that consists of a set of predetermined services and that does not enable interaction with non-disabled peers could constitute a material change in services and a substantial change in placement, depending on the content of the child's IEP. Before a school district can make a material change in services or a substantial change in placement, the parent or adult student must provide written consent (see K.S.A. 72-3430(b)(6)). A material change in services is defined as "an increase or decrease of 25% or more of the duration

or frequency of a special education service, a related service or a supplementary aid or service specified in the IEP of an exceptional child" K.S.A. 72-3404(bb). A substantial change in placement is defined as "the movement of an exceptional child, for more than 25% of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment" K.S.A. 72-3403(aa).

5. Are students who drop out of school and later begin working on a General Education Diploma (GED) eligible for special education and related services?

   The student must be enrolled in the public school in order to receive special education and related services. A student who drops out of school and later enrolls in a program to obtain a General Education Diploma (GED) would not be entitled to special education services under IDEA. However, if the student reenrolls in the public school, the student is entitled to receive services until June 30 following the student's 21st birthday or graduation with a regular education diploma. Obtaining a GED does not end a student's eligibility for special education services (34 C.F.R. 300.102(a)(3)(iv).

6. What if the team decides that the child is no longer eligible for special education services, but the parents refuse to consent to the child exiting from services?

   Services must continue. However, the team could continue to try to reach consensus with the parent. If parents continue to refuse to provide consent, then the school could request mediation and/or a due process hearing.

7. What if a parent who revoked consent for all special education services subsequently requests his or her child be provided special education services again?

   The agency must conduct an initial evaluation to determine whether the child qualifies for special education before providing the child special education and related services.

8. What is the school's responsibility if the parents of a child want the child dismissed from special education, but the school representatives on the team feel this is inappropriate?

   Parents always have the right to revoke their written informed consent to the provision of special education and related services for their child. The school representatives may meet with the parent to attempt to resolve the difficulty, but if the parent cannot be convinced to continue the services, the school must honor the parent's revocation, provide prior written notice a reasonable time before ceasing provision of the services and may not attempt to override the parent's revocation through mediation or due process. The school district will not be considered in violation of the requirement to make a free, appropriate public education available to the student because of the failure to provide the child with further services.

CHAPTER 9: CONFIDENTIALITY

INTRODUCTION

Confidentiality of education records is a basic right shared by all students in public schools and their parents. These fundamental rights are described in the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended. The federal regulations relating to FERPA are available at https://studentprivacy.ed.gov/ferpa. In addition, Kansas Special Education Regulations at K.A.R. 91-40-50 have adopted by reference provisions in 34 C.F.R. 300.612 through 300.624, regarding parental access to education records and confidentiality of those records.

Confidentiality regulations apply to the State, to all public schools and private schools that accept federal funds. In addition, all school personnel (including contracted employees) are governed by confidentiality requirements of FERPA and the Individuals with Disabilities Education Act (IDEA), which both apply to students with disabilities. Confidentiality is one of the rights afforded to parents of children with disabilities under IDEA regulations, and is included in the Parent Rights document (https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/parents-rights). Chapter 1 in this Handbook includes additional information about parent rights. All people involved in special education should be aware of the laws and regulations ensuring that information in education records will be kept secure and remain confidential.

This chapter provides specific information about confidentiality requirements for schools:

A. Federal and State Requirements
B. Access to Records
C. Transfer of Records
D. Release of Information
E. Amendment of Records
F. Destruction of Records
G. Age of Majority
H. Test Protocols
I. Discipline Records
J. Child in Need of Care

A. FEDERAL AND STATE REQUIREMENTS

Each school must annually notify parents of their rights under FERPA. The notice must inform parents or adult students that they have the right to:

1. Inspect and review the student's education records;
2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
3. Consent or refuse to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA, 34 C.F.R. 99.31, authorizes disclosure without consent; and
4. File a complaint under 34 C.F.R. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of FERPA.

Additionally, the notice must include all of the following:

- The procedure for exercising the right to inspect and review education records.
- The procedure for requesting amendment of records.

The school district may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. The school shall effectively notify parents who have a primary or home language other than English. (34 C.F.R. 99.7) This notice should adequately inform parents prior to any identification, location, or evaluation activity taking place. A sample of an annual notice regarding FERPA requirements may be found at https://studentprivacy.ed.gov/annual-notices.

Definitions of terms used are as follows (K.A.R. 91-40-50; 34 C.F.R. 300.32):

- Personally identifiable means information includes information such as the name of the child, child's parents, or other family member; address; personal identifier such as the child's social security number or student number; or list of personal characteristics or other information that would make it possible to identify the child.
- Destruction means physically destroying the medium on which information is recorded or removing all personal identifiers from the information so no one can be identified.
- Educational records means any document or medium on which information directly related to one or more students is maintained by a participating agency.
- Participating agency means any educational agency or institution that collects maintains or uses personally identifiable student information to provide special education and related services to children with disabilities.

In addition to these Federal requirements, the Kansas State Department of Education (KSDE) is obligated to establish policies and procedures to ensure that confidentiality requirements are in place at every participating agency. KSDE does this by having each public agency accessing funds sign assurances and adopt or establish local policies and procedures consistent with confidentiality requirements.

34 C.F.R. 300.32 Personally identifiable means that information includes--

(i) The name of the child, the child's parent, or other family member;
(ii) The address of the child;
(iii) A personal identifier, such as the child's social security number or student number; or
(iv) a list of personal characteristics,
(v) or other information that would make it possible to identify the child with reasonable certainty.

34 C.F.R. 300.612. Notice to parents

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of Sec. 300.123, including--
(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 C.F.R. part 99.
(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

K.A.R. 91-40-50. Parental access to student records; confidentiality.

(a) As used in this regulation, the following terms shall have the meanings specified in this subsection:
(1) "Destruction" means physically destroying the medium on which information is recorded or removing all personal identifiers from the information so that no one can be identified.
(2) "Education records" means any document or medium on which information directly related to one or more students is maintained by a participating agency in accordance with K.S.A. 72-6214 and amendments thereto.
(3) "Participating agency" means any educational agency or institution that collects, maintains, or uses personally identifiable student information to provide special education and related services to children with disabilities.

(b) The provisions in 34 C.F.R. §§ 300.612 through 300.624, as in effect on August 14, 2006, and published in 71 fed. reg. 46802-46804 (2006), which concern parental access to education records and confidentiality of those records, are hereby adopted by reference.

B. ACCESS TO RECORDS

FERPA and Federal and State special education laws and regulations require schools to have reasonable policies in place to allow parents to review and inspect their child's education records. An education record means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. Education records may include, but not limited to:

- academic work completed and level of achievement
- attendance data
- scores and test protocols of standardized intelligence, aptitude, and psychological tests
- interest inventory results
- health data
- family background information
- information from teachers or counselors
- observations and verified reports of serious or recurrent behavior patterns
- IEPs
- documentation of notice and consent

Under certain circumstances, a teacher's working file would not be considered to be part of the child's record. FERPA regulation 34 C.F.R. 99.3, states that the term "education records" does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record."

Unless it has parent consent, or a FERPA exception applies, a district must prevent the disclosure to any unauthorized person of personally identifiable information from student records. Disclosure is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

FERPA allows parents to inspect and review all education records of their children maintained by an education agency that receives Federal funds. This includes all public schools and private schools that accept federal funds. The IDEA regulations provide this same right for parents of a child with a disability who receives educational services from a public school. The school must comply with a request to inspect education records without unnecessary delay. Even if a delay is necessary, a school must make education records available for inspection and review within 45 days after the parents request to review the records. In addition, a school must comply with a parent's request to review education records before any IEP meeting, due process hearing, or resolution session takes place.

FERPA regulations allow some exceptions to the requirement to obtain parent consent before releasing records. All of these exceptions also apply to the confidentiality requirements in the federal special education regulations (34 C.F.R. 300.622(a)). For example, FERPA allows the school to release records to authorized individuals, such as:

- Other school officials, including teachers at the school where the student attends, who have a legitimate educational interest (34 C.F.R. 99.31(a)(1));
- officials of another school, school district, or postsecondary educational institution where the student is enrolled or seeks or intends to enroll, IF (a) the district's annual notice included a

notice that the district forwards education records to other agencies that request records and in which the student seeks or intends to enroll; or (b) the district makes a reasonable attempt to notify the parents or the student of the disclosure at the last known address (34 C.F.R. 99.31(a)(2)), however no notice is required if the disclosure is initiated by the parent or adult student;

- authorized representatives of the US Comptroller General, US Secretary of Education, and State Educational Agencies in connection with an audit or evaluation of Federal or State supported programs, or for the enforcement or compliance with Federal legal requirements related to those programs (34 C.F.R. 99.31(a)(3));
- disclosure in connection with financial aid for which the student has applied or received to determine eligibility, amount, or conditions of the aid or to enforce the terms and conditions of the aid (34 C.F.R. 99.31(a)(4));
- disclosure to State and local officials to whom the information is specifically allowed to be reported pursuant to State statute (34 C.F.R. 99.31(a)(5));
- disclosure to organizations conducting studies for educational agencies to develop, validate or administer predictive tests; administer student aid programs; or improve instruction, but only if the study does not allow personal identification of parents and students to anyone other than representatives of the organization conducting the study, and if the information is destroyed when no longer needed for the purposes for which the study was conducted (34 C.F.R. 99.31(a)(6));
- disclosure to accrediting organizations to carry out their functions (34 C.F.R. 99.31(a)(7));
- disclosure to a parent of a student who qualifies as a dependent under section 152 of the Internal Revenue Service Code (34 C.F.R. 99.31(a)(8));
- disclosure of relevant educational records to a court in a legal action initiated by the district against a parent. Also, disclosure to comply with a judicial order or subpoena. However, these disclosures may be made only if the district makes a reasonable effort to notify the parents or eligible student of the order or subpoena in advance of compliance with the order or subpoena, unless the order or subpoena states that the existence or contents of the order or subpoena not be disclosed (34 C.F.R. 99.31(a)(9));
- disclosure in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 C.F.R. 99.31(a)(10));
- disclosure of directory information. This is information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most previous educational agency or institution attended (34 C.F.R. 99.31(a)(11));
- disclosure to the adult student or student of any age if attending a postsecondary school, or to the parents of a student who has not reached 18 years of age and is not attending an institution of postsecondary education (34 C.F.R. 99.31 (a)(12)); and
- disclosure of the results of any disciplinary proceeding conducted by an institution of postsecondary education against an alleged perpetrator to an alleged victim of any crime of violence, as defined by section 16 of title 18, United States Code (34 C.F.R. 99.31 (a)(13)); or
- disclosure to a parent of a student attending an institution of postsecondary education regarding the illegal use of alcohol (34 C.F.R. 300.622(a)).

To ensure protection of education records, the school district must:

1. Obtain written consent before disclosing personally identifiable information to unauthorized individuals. A parent must provide consent if the child is under 18 years of age (unless one of the exceptions listed above applies).
2. Designate and train a records manager to assure security of confidential records for students with exceptionalities.
3. Keep a record or log of all parties obtaining access to education records, including the name of the party, the date access took place, and the purpose of the authorized use.
4. Maintain for public inspection a current listing of names and positions of employees who may have access to personally identifiable information.
5. Ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
6. Ensure that, if any education record includes information on more than one student, a parent of a child must have the right to inspect and review only the information relating to his or her child, or to be informed of that specific information.
7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality of personally identifiable information. The district must maintain a record of the training provided, the person or persons providing the training, dates of the training, those attending, and subjects covered.
8. Provide a parent, upon request, a list of the types and locations of records collected, maintained, or used by the district.
9. Respond to any reasonable request made by a parent for an explanation and interpretation of a record.
10. Provide a parent, upon request, access to the child's records, and under certain circumstances, a copy of the records (34 C.F.R. 300.613). Most districts copy records for parents without charge. However, the law does allow for fees for copies of records made for a parent if the fee does not prevent a parent from exercising the right to inspect and review those records. A fee may not be charged to search for or retrieve information.

34 C.F.R. 300.613. Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Secs. 300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes--

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

C. TRANSFER OF RECORDS

Education records include personally identifiable information, and may not be released to another agency or organization without parent consent. However, when a student transfers to another Kansas school district or nonpublic school, education records may be forwarded without student or parent consent if the annual FERPA notice to parents includes a statement that these records will be forwarded to the receiving school. (see sample notice at https://studentprivacy.ed.gov/annual-notices).

Immunization records are included in the educational records (under the annual notification exception) that may also be shared with a receiving school without student or parent consent. By sharing such information between schools, the unnecessary immunization of children can be avoided.

Children in foster care who move from one community to another should be admitted to the receiving school without delay. The receiving school may access the education record (including the immunization portion of the record) without parent consent, if proper public notice has been provided to the parent (K.S.A. 72-6262(d)).

Kansas schools may NOT withhold records because of fines or other such reasons. The sending district is to transfer the original school record to the requesting district (K.S.A. 72-6310). The sending district should maintain a copy of the education record that is sent. In addition, Kansas special education regulations require the sending district to immediately transfer the IEP, and any additional educationally relevant information regarding a child with an exceptionality, to the receiving district (K.A.R. 91-40-4(c)). If the school's annual FERPA notification does not contain a statement that the school sends education records to a receiving school, it must make a reasonable attempt to notify the parent at the last known address of the parent.

K.S.A. 72-6262. Same; certification of completion required, alternatives; duties of school boards.

(d) If a pupil transfers from one school to another, the school from which the student is transferring shall forward the pupil's immunization certification to the new school.

K.S.A. 72-6310. School records of pupils, withholding prohibited; school district property, return or payment for, exception.

(a) This section shall apply to all school districts and to every pupil of any school district. As used in this section, the term "school records" means transcripts, grade cards, the results of tests, assessments or evaluations, and all other personally identifiable records, files and data directly related to a pupil.

(b) All school district property in the possession of any pupil shall be returned to the proper school district authority or paid for by the pupil upon transfer of the pupil from the school district. The school records of any such pupil shall not be withheld for any reason. A school district authority, upon request, shall provide a fully itemized list of the school district property in the possession of the pupil. In the event that such school district authority receives an affidavit stating that the pupil's parents are unable to return the school district property which is lost or missing, such school district authority shall note in the school records of the pupil that the pupil has complied with the provisions of this section. In the event that a school district authority receives an affidavit from the board of education of another school district or from the governing authority of a nonpublic school stating that a pupil's records are being requested as proof of identity of the pupil pursuant to the provisions of K.S.A. 72-53,106, and amendments thereto, such school district authority shall forward a certified copy of that part of the pupil's records which provides information regarding the identity of the pupil.

(c) The school records of each pupil are the property of the pupil and shall not be withheld by any school district. Upon request of a pupil or the parent of a pupil, the school records of the pupil shall be given to such pupil or parent, or, upon transfer of the pupil to another school district or to a nonpublic school, shall be forwarded to such school district or nonpublic school. A pupil's records forwarded to another school district due to transfer will include original copies of all the student's records, including transcripts, grade cards, results of tests, assessments or evaluations, and all other personally identifiable records, files and data directly related to the pupil.

K.A.R. 91-40-4. Eligibility determination.

(c) Unless otherwise expressly authorized by state law, when a student transfers from a state school to a school district or from one school district to another, the most recent individualized education program, as well as any additional educationally relevant information concerning the child, shall be forwarded immediately to the receiving school district.

D. RELEASE OF INFORMATION

As discussed in previous sections, consent from the parent or adult student is required before information in education records or the education records themselves may be released (34 C.F.R. 300.622). Some examples of when parent consent is required include:

- If a child is enrolled, or is going to enroll in a private school that is not located in the parent's district of residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the public school district where the private school is located and officials in the public school district of the parent's residence (34 C.F.R. 300.622(a)(3)).

- Parental consent must also be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services according to an IEP.
- Additionally, notification and parent consent to release information and to access public benefits or insurance (Medicaid) is required prior to requesting reimbursement from Medicaid for special education services. Notification is required annually; parent consent is required only once – prior to accessing public benefits or insurance for the first time.To bill Medicaid, the school must release to the Medicaid billing agency personally identifiable information, such as the student's name, social security or other student number, category of exceptionality, and other pertinent information.

A 2013 amendment to the IDEA regulations (34 C.F.R. 300.154(d)(2)(iv) and (d)(2)(v)) states that schools must obtain parental consent prior to accessing public benefits or insurance for the first time; annual consent is no longer required. Written notification that complies with the requirements of 34 C.F.R. 300.154(d)(2)(v)(A) through (D) must be provided both prior to accessing public benefits or insurance for the first time and annually thereafter. This notification must specify (A) the personally identifiable information that may be disclosed to Medicaid for the purpose of billing for special education and related services under IDEA, (B) that the parent understands and agrees that the school may access Medicaid to pay for special education and related services under IDEA, (C) a statement of the "no cost" provisions of 34 C.F.R. 300.154(d)(2)(i) through (iii), and (D) that the parents' withdrawal of consent or refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents. (34 C.F.R. 300.154(d)(2)(v)(A) through (D))

When the 2013 amendment to the regulations was published, the Office of Special Education Programs (OSEP) provided informal guidance regarding how to transition from the previous annual consent requirement to the new one-time consent requirement when a school has already obtained consent to access a particular child's/parent's public benefits or insurance under the previous regulations:

> For children for whom the public agency already has consent under [the previous annual consent regulation], the first time after the effective date of these regulations [March 18, 2013] that there is a change in the type or amount of services to be provided, or the amount charged by the public agency or cost of services billed to the public benefits or insurance program, the public agency must provide the parents the written notification described in new § 300.154(d)(2)(v). The public agency must also obtain consent, consistent with new § 300.154(d)(2)(iv)(B), stating that the parent understands and agress to the public agency's accessing the child's or parent's public benefits or insurance to pay for services under part 300. Once the public agency obtains this one-time consent, the public agency will not be required to obtain any further parental consent in the future before it accesses the child's or parent's public benefits or insurance, regardless of whether there is any change in the type, amount, or cost of services to be billed to the public benefits or insurance program (e.g., Medicaid). However, the public agency will annually thereafter be required to provide parents with the written notification described in final § 300.154(d)(2)(v), to help ensure that parents understand their rights when a public agency uses their or their child's public benefits or insurance to pay for services under part 300. (Federal Register, Vol. 78, No. 31, February 14, 2013, p. 10527)

The 2013 amendment requiring one-time consent applies only to public benefits and insurance programs (e.g., Medicaid) and does not apply to private insurance programs. When an IEP team has identified special education and related services for a child who is covered by private insurance the

school may be able to access those benefits if it has obtained written parent consent consistent with 34 C.F.R. 300.9. This consent must be obtained each time the school proposes to access the parents' private insurance proceeds and the school must inform the parents that refusal to permit access to their insurance does not relieve the school of its responsibility to provide all required services at no cost to the parent (see 34 C.F.R. 300.154(e)).

Students in foster care.

The Uninterrupted Scholars Act, enacted in 2013, amended FERPA. This amendment permits, but does not require, a school district to disclose, without consent, student education records to a caseworker or other representative of a state or local child welfare agency or tribal organization authorized to access the student's case plan "when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student." This amendment does not permit disclosure of student education records to foster parents. It only permits disclosure of student information to case workers or other authorized representatives of the Kansas Department for Children and Families (DCF) who have the right to access the student's case plan.

The Kansas State Department of Education (KSDE) suggests that when districts receive a request for student education records from a caseworker or other representative of DCF or DCF's contracted providers without a release signed by the student's parent or education advocate, school district personnel obtain verification from DCF in writing on DCF letterhead of all of the following:

1. The person to whom the records are to be disclosed is a caseworker or other representative of the state child welfare agency (DCF) or tribal organization, such as KVC Inc., or Saint Francis Community Services;
2. the person to whom the records are to be disclosed has the right to access the student's case plan; and
3. DCF or the tribal organization is legally responsible for the care and protection of the student under state law, as evidenced by written verification on official agency letterhead or a copy of the court order that shows that DCF or the tribal organization is legally responsible for the care and protection of the student pursuant to state law.

Each request for records, including requests which are denied, should be permanently maintained in the student's educational file.

For additional guidance, two offices within the U.S. Department of Education released joint guidance on the amendments to FERPA by the Uninterrupted Scholars Act. The U.S. Department of Education's joint guidance from the Family Policy Compliance Office and the Office of Special Education and Rehabilitative Services can be found at https://studentprivacy.ed.gov/resources/uninterrupted-scholars-act-guidance.

34 C.F.R. 300.622 Consent.

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. part 99.

(b) (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §300.321(b)(3).
(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

34 C.F.R. 300.154 Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency--

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of pocket expense such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would--

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that—

(A) Meets the requirements of §99.30 of this title and §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with §300.503(c), to the child's parents, that includes—

(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;

(B) A statement of the "no cost" provisions in paragraphs (d)(2)(i) through (iii) of this section;

(C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with §300.9.

(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must--

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

E. AMENDMENT OF RECORDS

Parents have the right to request that their child's education records be changed if they believe something is inaccurate, misleading, or in violation of the student's rights of privacy. For example, if a child is evaluated and is identified with a disability or health condition that later is determined to be wrong, the parents may ask that the school amend the records to remove the inaccurate diagnosis.

If the school does not agree that the education records should be changed, staff must provide an opportunity for a hearing, following FERPA requirements. The hearing officer would be the school's hearing officer, not a special education due process hearing officer (34 C.F.R. 300.618).

34 C.F.R. 300.618. Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619.

F. DESTRUCTION OF SPECIAL EDUCATION RECORDS

Federal auditing requires the availability of education records for identified students for 5 years after they exit from special education services. After that period of time, schools may destroy records. However, before destroying special education records, the school must notify the parent (or the adult student) that the information is no longer needed to provide services to the student.

The requirement to notify the parent or the adult student when the information is no longer needed may be problematic, if the student moves from the address last known to the school. In such cases, the school is advised to send a certified letter to the student at the last known address. If that letter is returned to the school, that return becomes the documentation of the school's attempt to inform the student of the proposed destruction of records. In such cases, the school may publish a public notice to students who graduated or left school during a specified time period (for example, prior to 2005). The notice should be addressed to students and guardians, advising them of the proposed destruction of records and asking them to contact the school if they object to the destruction.

Many schools inform parents of when the special education records of their child will no longer be needed and will be destroyed with a statement in the child's IEP. The following statement has been approved for insertion into an IEP:

> *"NOTICE OF DESTRUCTION OF SPECIAL EDUCATION RECORDS: Special education records for each child with an exceptionality are maintained by the school district until no longer needed to provide educational services to the child. This notice is to inform you that the special education records for this student will be destroyed after five (5) years following program completion or graduation from high school, unless the student (or the student's legal guardian) has taken possession of the records prior to that time."*

A school must destroy information that is no longer needed at the request of the parents. However a permanent record of the following information may be maintained without time limitation:

- A student's name, address, and phone number;
- His or her grades;
- Attendance record;
- Classes attended;
- Grade level completed; and
- Year completed.

34 C.F.R. 300.624. Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

G. AGE OF MAJORITY

In Kansas, the age of majority is 18 (K.S.A. 38-101). Students who are 18 years or older, unless they have a guardian appointed under State law, have the right to grant or withhold consent, have access to

records, to request amendment of records, and to file a complaint, etc. (See Chapter 1, Parent Rights In Special Education, for additional information on age of majority.)

K.S.A. 38-101. Period of minority. The period of minority extends in all persons to the age of eighteen (18) years, except that every person sixteen (16) years of age or over who is or has been married shall be considered of the age of majority in all matters relating to contracts, property rights, liabilities and the capacity to sue and be sued.

34 C.F.R. 300.625. Children's rights

(a) The SEA shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 C.F.R. 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with Sec. 300.520, the rights regarding educational records in Secs. 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

H. TEST PROTOCOLS

Some individualized testing involves the use of test protocols. These documents usually include the test questions or stimuli and the student's answers or responses. They may also include the correct answers, norm tables (scoring tables), scoring sheets, and examiner's notes. When a test protocol contains personally identifiable information directly related to a particular student, that protocol is an education record and a parent has a right to inspect and review it. In most cases, however, a parent would not have a right to a copy of a test protocol.

Requests for test protocols occur in varying contexts. Sometimes, parents ask to inspect or photocopy protocols maintained by schools or their personnel. Occasionally, schools want to review or copy protocols of the parents' independent educational evaluators. The variables here are whether one seeks to inspect the protocols or to copy them.

When a student with an exceptionality is the subject of a court or administrative hearing, parents may have additional legal tools for accessing test protocols. These tools include pretrial discovery, subpoenas, and the right to question witnesses about their records. Also, the US Department of Education has advised that a parent's FERPA right to inspect test protocols may include a right to copy them if ordered by a special education due process hearing officer or a judge in a legal proceeding.

Clearly, concerns exist about violating the test publisher's copyright protections. Schools are advised that Federal regulation 34 C.F.R. 300.613(b) would allow parents to inspect and review the records. However, if parents want to copy such records, the school may want to consult with its attorney. However, if failure to provide a copy of a requested protocol would effectively prevent the parent from exercising the right to inspect and review their child's education records, the school may be required to provide a copy to the parent (Letter to Thomas, 211 IDELR 420 (FPCO 1986)).

34 C.F.R. 300.613. Access rights.

(b) The right to inspect and review education records under this section includes--

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records...

I. DISCIPLINE RECORDS

Schools reporting a crime are allowed to forward the student's special education and disciplinary records to the appropriate authorities only if they have parent consent or if one of the FERPA exceptions to the consent requirement applies (34 C.F.R. 300.535(b)). See Section A of this chapter, and also Chapter 13 for more information about release of discipline records to law enforcement.

In addition, other Federal and State requirements are as follows:

- When schools send records of students to other schools, they are also required to include the discipline records. (Note: K.S.A. 72-6310 defines school records to include ALL personally identifiable records, files and data.)
- If school employees are required to make a report to a law enforcement agency, pursuant to the Kansas School Safety and Security Act (K.S.A. 72-6141, et.seq.), they may be charged with failure to report if they do not comply.
- If school employees report a crime, the school may not impose sanctions on them.
- If school employees report a crime in good faith, they have immunity from civil liability.

34 C.F.R. 300.535. Referral to and action by law enforcement and judicial authorities.

(b)Transmittal of records. (1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

34 C.F.R. 300.229. Disciplinary information

(a) The State may require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

K.S.A. 72-6144. Penalties for failure to make reports, preventing or interfering with reports; sanctions for making reports prohibited; immunity from liability.

(a) Willful and knowing failure of a school employee to make a report required by subsection (b)(1) of K.S.A. 1998 Supp. 72-89b03, and amendments thereto, is a class B nonperson misdemeanor. Preventing or interfering with the intent to prevent, the making of a report required by subsection (b)(1) of K.S.A. 1998 Supp. 72-89b03, and amendments thereto is a class B nonperson misdemeanor.

(b) Willful and knowing failure of any employee designated by a board of education to transmit reports made by school employees to the appropriate state or local law enforcement agency as required by subsection (b)(1) of K.S.A. 1998 Supp 72-89b03, and amendments thereto, is a class B nonperson misdemeanor.

(c) No board of education shall terminate the employment of, or prevent or impair the profession of, or impose any other sanction on any school employee because the employee made an oral or written report relating to any criminal act that the employee knows has been committed or reasonably believes will be committed at school, on school property, or at a school supervised activity.

(d) Any board of education, and any member or employee thereof, participating without malice in the making of an oral or written report to a law enforcement agency relating to any criminal act that is known to have been committed or reasonably is believed will be committed at school, on school property, or at a school supervised activity shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceedings resulting from the report.

J. CHILD IN NEED OF CARE

As part of the Child in Need of Care case, a number of specified agencies and people may freely exchange information held by the Kansas Department for Children and Families (DCF).

These include educational institutions to the extent necessary to enable them to provide the safest possible environment for their students and employees. It also includes individual educators to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's students (K.S.A. 38-2212(c)).DCF Accordingly, educational agencies may "receive" information in DCF records, *but may not provide information in education records to these agencies except as provided by FERPA*.

K.S.A. 38-2212. Appropriate and necessary access; exchange of information; court ordered disclosure; limited public information.

(c) Necessary access. The following persons or entities shall have access to information from agency records. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged to be in need of care. Information authorized to be disclosed

pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.
(1) A child named in the report or records, a guardian ad litem appointed for the child and the child's attorney.
(2) A parent or other person responsible for the welfare of a child, or such person's legal representative.
(3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.
(4) A person licensed to practice the healing arts or mental health profession in order to diagnose, care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the child.
(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of social and rehabilitation services to care for, treat or supervise a child in need of care.
(6) A coroner or medical examiner when such person is determining the cause of death of a child.
(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.
(8) An attorney for a private party who files a petition pursuant to subsection (b) of K.S.A. 2017 Supp. 38-2233, and amendments thereto.
(9) A foster parent, prospective foster parent, permanent custodian, prospective permanent custodian, adoptive parent or prospective adoptive parent. In order to assist such persons in making an informed decision regarding acceptance of a particular child, to help the family anticipate problems which may occur during the child's placement, and to help the family meet the needs of the child in a constructive manner, the secretary shall seek and shall provide the following information to such person's as the information becomes available to the secretary:
(A) Strengths, needs and general behavior of the child;
(B) circumstances which necessitated placement;
(C) information about the child's family and the child's relationship to the family which may affect the placement;
(D) important life experiences and relationships which may affect the child's feelings, behavior, attitudes or adjustment;
(E) medical history of the child, including third-party coverage which may be available to the child; and
(F) education history, to include present grade placement, special strengths and weaknesses.
(10) The state protection and advocacy agency as provided by subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A. 74-5515, and amendments thereto.
(11) Any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees.
(12) Any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils.
(13) Any other federal, state or local government executive branch entity or any agent of such entity, having a need for such information in order to carry out such entity's responsibilities under the law to protect children from abuse and neglect.

QUESTIONS AND ANSWERS ABOUT CONFIDENTIALITY

1. What must a school do to provide parents reasonable access to their child's records?

Records should be in a location that: (a) parents can find; (b) is maintained during normal business hours; and (c) is not physically inaccessible (downstairs or upstairs, with no elevator available). Upon request, someone who can interpret or explain the records should be available to the parents. Parents may also request that copies of their child's education records be made for them. However, a school is required to provide copies of educational records only if failure to provide those copies would effectively prevent the parent from exercising the right to review and inspect the records. If, for example, a parent does not live within a reasonable driving distance from the school, the school may need to provide a copy of the requested records. If copies are provided schools may charge a reasonable fee and may take a reasonable time to provide the copies to the parents. In cases where failure to provide copies of records would effectively prevent a parent from exercising the right to inspect and review education records, and the parents are unable to pay the fee, the school must provide the records without charge.

2. Are school personnel required to provide parents access to their working files and anecdotal records?

FERPA and IDEA have included definitions of "education records." These definitions, while expansive, in most cases do not include the staff's working files and anecdotal records. However, there are some important requirements. FERPA regulation 34 C.F.R. 99.3 states that the term "education records" does not include "records that are kept in the sole possession of the maker of the record, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record."

3. If a district cannot determine which Kansas school a student transferred from, may the State's Management Information System (MIS) be accessed to determine this information?

   Yes. If the sending school district has included in an annual FERPA notification form a statement that it will transfer education records to another public school where the student is or will attend school, the Management Information System (MIS) data manager may inform the special education director of a receiving district of the student's previous district of attendance. The receiving district may then contact the sending district to request student records without parent consent. This exception to FERPA confidentiality requirements is in FERPA regulation 34 C.F.R. 99.31(a)(2).

4. Only a limited amount of information is needed to bill Medicaid (not the entire education record). May this limited information be released without parent consent to the Medicaid billing agency in order to access reimbursement for special education services?

   No. Parent consent is required by FERPA and IDEA, because the information being released is personally identifiable (student's name, social security or other student number, category of exceptionality, etc.). In addition, schools must obtain parental consent to access public insurance such as Medicaid, prior to accessing Medicaid for the first time. See Section D of this chapter for more information on this topic.

5. What is the school's obligation to provide special education when the student cannot be enrolled because the student does not have documentation of immunizations?

   K.S.A. 72-6262 requires documentation of immunization before admitting students enrolling for the first time in a Kansas school. This may include a student transferring from an out-of-state school, or a child enrolling, for the first time in Kansas, in a kindergarten or in a preschool or a day care program operated by a school. K.S.A. 72-6265 permits school districts to adopt policies, in conformance with K.S.A. 72-6262, to exclude from school any student, enrolling in Kansas for the first time, who has not presented documentation of immunization. The school district is not required to provide any educational services, including special education services, until the documentation is received.

   The school district should advise the student and parents that FAPE is available when the documentation for compliance with State health laws is received. K.S.A. 72-6265 specifies that the compulsory school attendance law does not apply to any student excluded from school for failure to document immunization records. Thus, such students should not be reported as truant. However, State law requires schools to include this information, when transferring education records to a new school.

6. When a student is in a private school and receives special education services from the public school, who keeps the student's educational record?

   If the student receives special education services through the public school, the public school is responsible for maintaining the student's special education records. The private school may also have records, or copies of the public school records, including the student's IEP, if appropriate.

7. What should the school do if during a due process hearing, the parents request a copy of their child's test protocol?

   According to the US Department of Education, under FERPA parents have the right to inspect test protocols, which may include a right to copy them if ordered by a special education due process hearing officer or a judge in a hearing. Due to concerns about violating the test publisher's copyright rules, the school may want to consult with their attorney. However, schools are required

to provide copies of the records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records (34 C.F.R. 300.613(b)(2)).

8. May a parent consent to disclosure of information in education records with a signature in electronic form?

Yes. Written consent may be given in an electronic form that: (a) identifies and authenticates a particular person as the source of the electronic consent; and (b) indicates such person's approval of the information contained in the electronic consent. (34 C.F.R. 99.30(d))

CHAPTER 10: MEDIATION

INTRODUCTION

Mediation is one of three formal methods for resolving disputes in special education at the local level. Other methods are formal complaint, which is discussed in Chapter 11, and due process hearing, which is discussed in Chapter 12. To begin the process of mediation, both parties must agree to mediate. Either the parents or a local education agency (LEA) representative may suggest this option initially by asking the other party if they are willing to mediate the disputed issues. The cost of mediation is borne by the State; there are no costs to either the parents or the LEA.

The use of mediation can have the following benefits over a formal complaint or due process hearing:

- Mediation uses the strengths of both participants to solve problems.
- Because it is voluntary throughout the process, and because a mediator has no authority to order any particular resolution, mediation is a safe way for both parties to offer and consider alternatives.
- Mediation can be less antagonistic.
- Mediation is less time consuming.
- Mediation is less costly for both parties.
- If an agreement is reached, it is written and committed to by the parties, themselves, rather than ordered by a hearing officer or the Kansas State Department of Education.
- A negotiated agreement may help with future positive relationships.

Forms to request mediation should be available in each LEA. The building administrator, special education director, or the mediation coordinator at Special Education Services (SETS), at the Kansas State Department of Education (KSDE) may be contacted for the forms. The forms can also be found at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/dispute-resolution. Each of the following topics in the State mediation process is discussed within this chapter:

A. Mediation Process
B. Mediation Requests
C. Mediation Participants
D. Special Education Mediators
E. Mediation Results

A. MEDIATION PROCESS

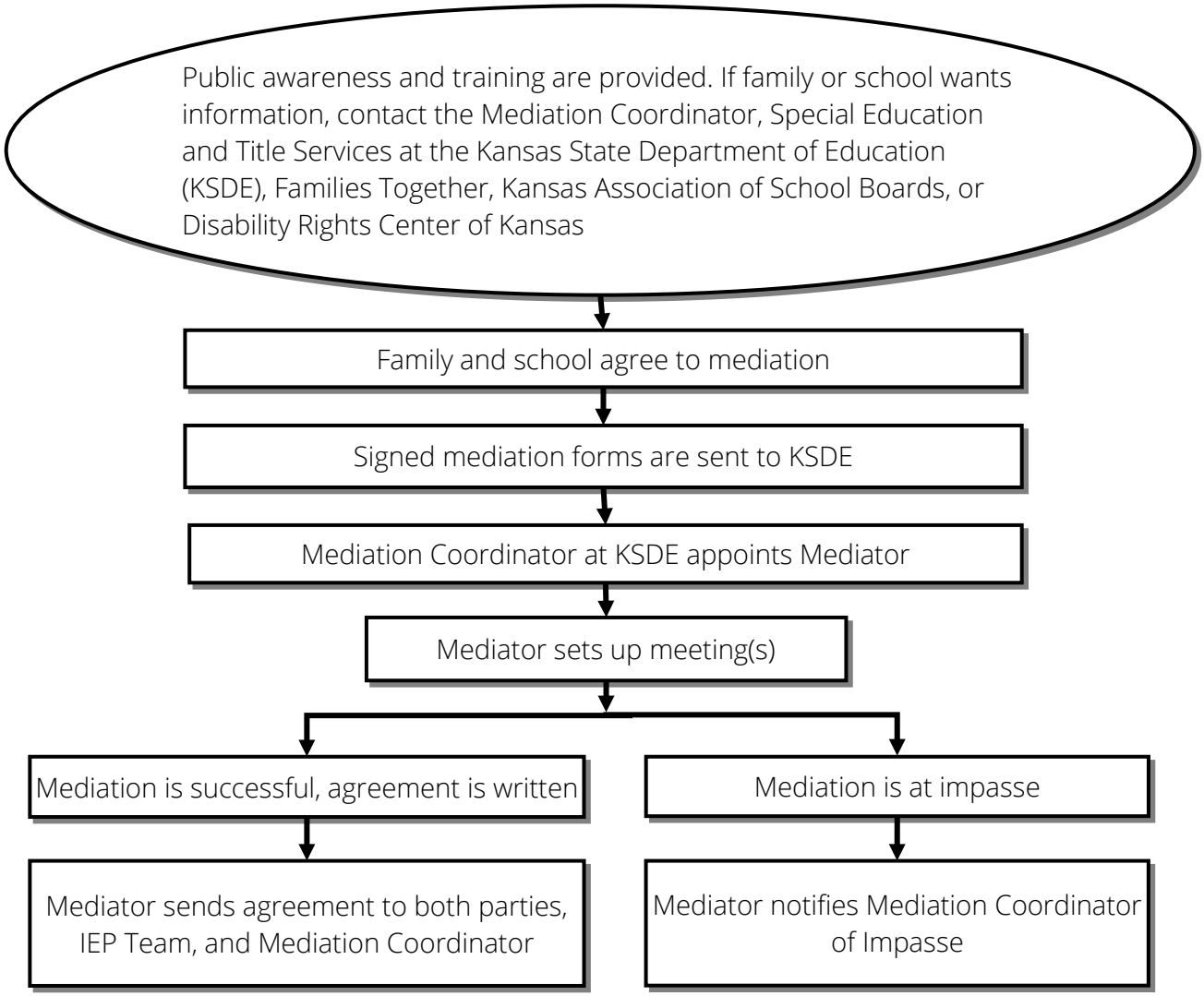
The Kansas State Department of Education (KSDE) has established mediation procedures to allow LEAs and parents to resolve any matter regarding special education, including matters arising prior to the filing of a due process complaint. State statute, at K.S.A. 72-3438, and State regulations at K.A.R. 91-40-28, and 91-40-29 set up the following provisions for special education mediation in Kansas:

- The mediation process is voluntary for both the parents and the LEA.
- Mediation may not be used to deny or delay a parent's right to a due process hearing, or any other parent right.
- Mediation is conducted by a qualified, impartial mediator who is trained in effective mediation techniques.
- KSDE maintains a list of qualified mediators and appoints the special education mediator.

- KSDE is responsible for the costs of mediation.
- Mediation must be provided in a timely manner and at a location that is convenient for both parties in the dispute.
- Agreements reached during mediation must be in writing and must include the resolution of each issue for which agreement was reached. Every mediation agreement must also include a statement that:
    - Discussions during mediation must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;
    - Each party understands that the agreement is legally binding upon them; and
    - The agreement may be enforced in state or federal court.

The goal of the parties in mediation is to reach an agreement that is workable for all. If an agreement is reached it is put in written form by the mediator and signed by both parties. If issues prove to be irresolvable, the mediator will declare that an impasse has been reached and the mediation will be terminated. Below is a flow chart showing the steps involved in the mediation process.

SPECIAL EDUCATION MEDIATION PROCESS



B. MEDIATION REQUESTS

When parents and LEA personnel disagree about a special education issue, either party may request mediation. However, both parties must agree to use this process. Therefore, the first step in initiating a special education mediation is to ask the other party if it is willing to mediate the disputed issue. Mediation may be requested even if a due process hearing has been filed. This is one reason that the timeline for mediation is short. Mediation must be completed within the due process timeline, and mediation may not be used to delay the parents' right to due process. However, the due process hearing timeline may be extended by the due process hearing officer for a specific period of time during the mediation process if requested by the parties (34 C.F.R. 300.515(c)). Mediation is often viewed as a win-win situation, a positive process that may often avoid potential litigation. At a minimum, mediation must be available to resolve disputes relating to special education, which may include issues such as:

1. Identification,
2. Evaluation,
3. Placement, and
4. Provision of a free appropriate public education to the child.

Once both parties agree to mediation, they must complete and sign the two required forms, which are mailed to the mediation coordinator at the Kansas State Department of Education (KSDE) Special Education Services, Landon State Office Building, 900 SW Jackson, Suite 620, Topeka, KS 66612). Alternatively, mediation forms may be emailed to formalcomplaints@ksde.gov.

(1) Agreement to Mediate: This one-page form indicates that both parties: (a) understand that mediation is voluntary; (b) agree to enter into mediation; (c) agree to abide by the procedures and guidelines for special education mediations; (d) agree not to record (electronically or otherwise) a mediation session; (e) agree that the mediator will not make decisions regarding the disputed issues; and (f) understand that agreements must be in writing and are legally binding and enforceable in a state or federal court. Each party must sign this agreement;

(2) Request for Mediation: This one-page form includes contact information for use by the mediator. The contact information consists of the name, address, and phone number of the parties, the name and birth date of the student and whether or not a due process hearing has also been requested. This form also asks the parties to agree on some preferred dates for which they are both available to mediate. If the parties list some preferred dates on this form, the KSDE will attempt to find a mediator who is available on one of those dates. The preferred dates should be at least seven to ten days after the date of the request for mediation so that the KSDE has time to appoint a mediator and allow the mediator to arrange for a mediation session. If a mediation session is needed more quickly, the parties may request an earlier date by telephone and send the mediation forms to the KSDE electronically. The KSDE will attempt to accommodate all requests.

When KSDE receives a request for a special education mediation, the mediation coordinator immediately appoints a mediator. The mediator notifies both parties and arranges for mediation. The location must be convenient to the parties and should be acceptable to everyone. A neutral location is preferred. If the mediator is not familiar with neutral locations in the area where the mediation will be, the mediator will usually ask the LEA representative for suggestions (such as a room in a county

courthouse or public library). In some cases where neutral sites are not readily available, mediations may be held on LEA property.

C. MEDIATION PARTICIPANTS

Mediation is an informal process that includes discussion of the issues and proposed resolutions. Generally, discussions include the mediator, the parents, and a LEA representative. The LEA representative is often not from the IEP Team, because this group has not been able to reach agreement. Mediation seems to be more successful if the LEA representative is someone else who is knowledgeable about the issues and has decision making authority.

Generally, the likelihood of reaching an agreement is enhanced by keeping the number of participants to a minimum. However, either the parents or the LEA representative may ask an outside person to attend. If the parents are not able to participate fully and need assistance (because of reasons such as not speaking English, having a disability themselves, or not fully understanding the issues or procedures), the parents may wish to have an advocate to assist them.

In Kansas, attorneys are allowed to participate in special education mediations. However, mediations generally prove to be more successful when the parties work on their own, without attorneys present. Ultimately, because mediation is a voluntary process, any party that objects to the presence of an attorney may withdraw from the mediation. If for some reason, attorneys or advocates become involved in a mediation session, the mediator will establish ground rules for the participation of advocates or attorneys, again in an effort to ensure that discussions are between the parties to the dispute.

D. SPECIAL EDUCATION MEDIATORS

In Kansas, in order to be considered trained and qualified, mediators must fulfill two requirements:

1. Demonstrate competency in special education law by successfully passing a written examination with at least 90 percent accuracy (a special education law class sponsored or approved by the state board is conducted periodically to help mediators with this requirement); and
2. Complete a program sponsored or approved by the state board concerning effective mediation techniques and procedures, and the role and responsibilities of a mediator (K.A.R. 91-40-29(a)).

After initially qualifying as a mediator, Kansas requires that to remain eligible, special education mediators must have continuing education program in special education law conducted or approved by KSDE (K.A.R. 91-40-29(b)(1)(C)).

Employees of KSDE, LEAs or other education agencies, or school boards may not serve as a mediator for special education disputes in the State of Kansas. Others who have a real or perceived conflict of interest may also not serve as special education mediators. Only the Kansas State Department of Education may appoint special education mediators.

E. MEDIATION RESULTS

During mediation, the mediator will work with both parties to reach an agreement. If mediation discussions result in both parties' reaching agreement, the mediator records the results in a written mediation agreement, which is signed by both parties. Although not necessary, the mediation agreement may become part of the student's IEP if agreed to by the parties. It is not necessary for the

IEP team to meet, or for the agreement to be added to the IEP because the decisions are enforceable and have been made during the mediation with the responsible parties involved (the parents and the LEA representative). The actions agreed upon in the mediation should be implemented immediately, unless the mediation agreement specifies otherwise.

If the IEP is changed by adding the mediation agreement, the IEP team may write a new IEP or amend the existing IEP to reflect the mediation agreement. The LEA is responsible for following up with the required notice and consent forms. The revised IEP is then implemented. If the mediation agreement is not part of the IEP the LEA must ensure that any person responsible for implementing the agreement is informed of their responsibilities.

If the mediation is not successful, the mediator may declare that the mediation is at impasse and suggest that both parties consider other methods for dispute resolution, such as Formal Complaint (Chapter 11) and/or Due Process (Chapter 12).

K.S.A. 72-3438. Dispute resolution through mediation; procedures; list of mediators; costs; time and location; agreements; confidentiality.

(a) The state board shall establish and implement procedures to allow agencies and parents to resolve disputes through a mediation process which, at a minimum, shall be available whenever a due process hearing is requested under this act.

(b) The procedures adopted shall ensure that the mediation process is:

(1) Voluntary on the part of the parties;

(2) Not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under this act; and

(3) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The state board shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services and shall establish procedures for the appointment of a mediator to help resolve disputes between the parties.

(d) The state board shall bear the cost of the mediation process described in subsection (c).

(e) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(f) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(g) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process

K.A.R. 91-40-28. Special education mediation and due process hearings.

(a) If a disagreement arises between a parent and an agency concerning the identification, evaluation, or educational placement of the parent's exceptional child, or the provision of FAPE to the child, the parent or the agency, or both, may request mediation or initiate a due process hearing.

(b) (1) If mediation is requested by either party, the provisions of K.S.A. 72-3438 and amendments thereto shall be followed, together with the requirement in paragraph (2) of this subsection.

(2) When agreement is reached to mediate, the agency shall immediately contact the state board or its designee. A mediator shall be appointed by the state board from its list of qualified mediators, based upon a random or other impartial basis.

(c) If a disagreement as described in subsection (a) arises, the parent or the agency, or both, may initiate a special education due process hearing by filing a due process complaint notice. Each due process hearing shall be provided for by the agency directly responsible for the education of the child.

(d) (1) If a special education due process complaint notice is filed, the provisions of K.S.A. 72-3415 through 72-3419 and amendments thereto shall be followed, together with the requirements in this subsection.

(2) Not more than five business days after a due process complaint notice is received, the agency providing for the hearing shall furnish to the parent the following information:

(A) The agency's list of qualified due process hearing officers;

(B) written notification that the parent has the right to disqualify any or all of the hearing officers on the agency's list and to request that the state board appoint the hearing officer; and

(C) written notification that the parent has the right, within five days after the parent receives the list, to advise the agency of any hearing officer or officers that the parent chooses to disqualify.

(3) (A) If a parent chooses to disqualify any or all of the agency's hearing officers, the parent, within five days of receiving the list, shall notify the agency of the officer or officers disqualified by the parent.

(B) An agency may appoint from its list any hearing officer who has not been disqualified by the parent.

(4) Not more than three business days after being notified that a parent has disqualified all of the hearing officers on its list, an agency shall contact the state board and request the state board to appoint a hearing officer. In making this request, the agency shall advise the state board of the following information:

(A) The name and address of the parent;

(B) the name and address of the attorney, if any, representing the parent, if known to the agency; and

(C) the names of the agency's hearing officers who were disqualified by the parent.

(5) Within three business days of receiving a request to appoint a hearing officer, the parent and agency shall be provided written notice by the state board of the hearing officer appointed by the state board.

(e) If a due process hearing is requested by a parent or an agency, the agency shall provide written notice to the state board of that action. The notice shall be provided within five business days of the date the due process hearing is requested.

(f) (1) Unless the agency and parent have agreed to waive a resolution meeting or to engage in mediation, the agency and parent shall participate in a resolution meeting as required by K.S.A. 72-3416 and amendments thereto. The parent and agency shall determine which members of the IEP team will attend the meeting.

(2) If a parent who files a due process complaint fails to participate in a resolution meeting for which the agency has made reasonable efforts to give the parent notice, the timelines to complete the resolution process and begin the due process hearing shall be delayed until the parent attends a resolution meeting or the agency, at the end of the 30-day resolution period, requests the hearing officer to dismiss the due process complaint.

(3) If an agency fails to hold a resolution meeting within 15 days of receiving a due process complaint or to participate in a meeting, the parent may request the hearing officer to begin the due process hearing and commence the 45-day timeline for its completion.

(g) The 45-day timeline for completion of a due process hearing shall start on the day after one of the following events occurs:

(1) Both parties to the due process proceedings agree, in writing, to waive the resolution meeting.

(2) The parties participate in a resolution meeting or in mediation but agree, in writing, that resolution of their dispute is not possible by the end of the 30-day resolution period.

(3) Both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30-day resolution period, but later one or both of the parties withdraw from the mediation process.

K.A.R. 91-40-29. Qualifications of special education mediators and due process hearing officers.

(a) To initially qualify as a special education mediator, a person shall meet the following requirements:

(1) Have passed a written examination prescribed by the state board concerning special education laws and regulations; and

(2) have completed a program sponsored or approved by the state board concerning effective mediation techniques and procedures, and the role and responsibilities of a mediator.

(b) (1) Except as otherwise provided in paragraph (2) of this subsection, to initially qualify as a special education due process hearing officer or review officer, a person shall meet the following requirements:

(A) Be a licensed attorney in good standing with the licensing agency in the state in which the person is licensed to practice law;

(B) have passed a written examination prescribed by the state board concerning special education laws and regulations;

(C) have completed a program sponsored or approved by the state board concerning due process hearing procedures and the role and responsibilities of a due process hearing officer; and

(D) have passed a written examination prescribed by the state board concerning due process proceedings.

(2) Each person who is on the list of qualified due process hearing officers maintained by the state board shall remain eligible to serve as a due process hearing officer or review officer, if the person the continuing education programs in special education law that are conducted or approved by the state board.

Suggested Mediation Process Timeline

Timeline (Calendar Days)	Responsible Party	Action
Day 1	Family and LEA Mediation Coordinator	Agree they want mediation, sign and forward required forms: *(Agreement to Mediate and Request for Mediation)* remembering to include the preferred dates available for both parties. Send forms to KSDE Mediation Coordinator KSDE Mediation Coordinator receives forms.
By day 4 (within 3 business days of request)	Mediation Coordinator	Randomly appoints a mediator and informs both parties of the appointment
By 7th business day (within 3 business days of appointment)	Mediator	Arrange mediation at a place and time acceptable to both parties
By day 17 (within 10 days of setting mediation meeting) This is suggested timeline. However, mediation should occur on one of the preferred dates of the parties.	Family, LEA, Mediator	Participate in and complete mediation process If successful, write agreement and fax or send to Mediation Coordinator and IEP team NOTE: Timeline may be extended, if needed.
By day 19 (within 2 days of mediation conclusion)	Mediator	Send Mediation Status to Mediation Coordinator

QUESTIONS AND ANSWERS ABOUT MEDIATION

1. How are mediators selected to conduct a special education mediation?

The mediation coordinator at the Kansas State Department of Education chooses a mediator on a random basis from a list of trained and qualified mediators. Mediators will have successfully completed a training program designed for special education mediators.

2. What are the qualifications of a special education mediator?

The mediator will:

- Have received formal training in the mediation process and in Federal and State laws and regulations regarding special education;
- Be on an approved list of qualified mediators at KSDE;
- Have no personal or professional interest that would conflict with the mediator's objectivity;
- Have no prior involvement in any decisions regarding the student's identification, evaluation, special education program, or educational placement;
- Be professional, impartial; and
- Be able to complete the required duties and responsibilities.

3. What is the role of the mediator?

The mediator helps the parents and LEA representative clarify issues in disagreement and find solutions that satisfy both parties. The mediator serves as:

- Convener--by contacting the parties to arrange for the mediation.
- Educator--by informing the parties about the mediation process and other conflict resolution procedures including due process hearings.
- Communicator and Facilitator--by using strategies to be certain that each party is fully heard in the mediation.
- Translator--by replacing or reframing communication so that both parties are understood and received.
- Questioner and Clarifier--by probing issues and confirming understandings.
- Process Advisor--by suggesting procedures for making progress in mediation including caucus meetings and consultations with others.
- Catalyst--by offering options for consideration, stimulating new perspectives, and offering ideas for consideration.
- Closer--by reducing the agreement to writing and obtaining signatures of both parties.

4. How long does mediation take?

Many mediation sessions have been successfully completed in half a day. The mediator will determine whether progress is being made or whether additional time is needed for resolution.

5. Is special education mediation binding?

If both parties sign the mediation agreement, it is binding on both parties, and is enforceable in a state or federal court.

6. When can mediation be requested?

Mediation can be requested when it is believed that an impasse has been reached at the local level on any special education matter, including issues involving the identification, evaluation, placement of the child, or the provision of a free appropriate public education to the child. Either the parents or the LEA representative should discuss with the other party if mediation is an option, and should ask for mediation as early as possible. Mediation can occur before or after a special education due process hearing has been requested or when a hearing concerning an interim alternative educational placement is being considered. Mediation cannot be used to deny or delay an impartial special education due process hearing once it has been requested.

7. Who should I call for information or to request mediation?

Information or forms may be requested from a building administrator, special education director, Families Together (800-264-6343), or The Disability Rights Center of Kansas (785-273-9661). You may also contact the mediation coordinator on the Special Education Services Team of the Kansas State Department of Education.

Address: Landon State Office Building, 900 SW Jackson, Suite 620, Topeka, KS 66612
Phone: 800-203-9462 or 785-296-5608

8. How soon is mediation scheduled after the parties request it?

A mediation conference should be scheduled as soon as possible after receiving a request for a mediation conference. Some flexibility is permitted to accommodate availability of both parties. The meeting must be in a place that is convenient for both parties. On the Mediation Request Form, the parties should request specific dates and times when both parties are available. This should allow a reasonable period of time for the selection of a mediator and for the mediator to set up a mediation session. Two weeks is usually enough time to accommodate such a request. One of the reasons time is so critical is that mediation may be requested even if a special education due process hearing has been filed, but the mediation process may not delay the parents' right to due process.

9. Who pays for mediation?

The fee and expenses for the mediator, if any, are paid by Special Education Services at the Kansas State Department of Education. Mediation is available at no cost to the LEA or the parents.

CHAPTER 11: FORMAL COMPLAINT

INTRODUCTION

Formal complaint is one of the methods parents of children with exceptionalities or others have to resolve special education disagreements with a public agency. Although most differences are successfully resolved at the local level, three state processes are available to parents, if they are at impasse with a public agency:

- Formal complaint,
- Mediation (Chapter 10), and
- Due process hearing (Chapter 12).

Formal complaint is one of the parent rights (procedural safeguards, see Chapter 1) afforded under federal and state regulations (K.A.R. 91-40-51; 34 C.F.R. 300.151). The Kansas State Department of Education (KSDE) is mandated to make available an opportunity for individuals or organizations to file formal complaints against a public agency. At the end of the chapter, a flow chart illustrates the steps in the process, and a timeline shows the times and responsible parties for the required steps.

For information about the formal complaint process, contact Families Together (800-264-6343), Kansas Disability Rights Center (877-776-1541), or Special Education Services at the KSDE (800-203-9462). The Formal Complaint form may be found at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/dispute-resolution.

This chapter outlines the steps involved in the formal complaint process:

A. Filing a Formal Complaint
B. Investigating the Complaint
C. Following Up on the Complaint
D. Appealing the Decision
E. Sanctions by the State Board of Education

A. FILING A FORMAL COMPLAINT

Any individual or organization may file a formal complaint if they believe that a public agency (e.g., Kansas State Department of Education (KSDE) or local education agency (cooperative, interlocal, or school district providing special education services) is not complying with federal or state laws or regulations relating to special education. The term "public agency" is broadly defined to have the same meaning as specified in Federal regulations at 34 C.F.R. 300.33, which includes: SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

The formal complaint must be for a situation that occurred during the past year. The formal complaint must be in writing and signed by the person or organization making the complaint. The complaint must state that the public agency is not complying with the requirements of the Individuals with Disabilities in Education Act (IDEA), the Kansas Special Education for Exceptional Children Act, or the corresponding federal or state regulations and give the facts upon which the statement is based. When the complaint involves a specific child, the complaint must also include the following:

- The child's name and address of residence, or other contact information if the child is a homeless child or youth;
- the name of the school the child is attending;
- a description of the problem involving the child; and
- a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

The party filing the complaint must forward a copy of the complaint to the public agency against which the allegations are made at the same time the complaint is filed with the commissioner of education.

The parent of any child with an exceptionality (disabilities and giftedness) including eligible students receiving services in public schools, private schools and other educational settings are entitled to file a formal complaint if they believe appropriate legal procedures have not been followed or implemented.

If a formal complaint is received that is part of a due process hearing, or the complaint contains multiple issues of which one or more are part of such a hearing, the state must set aside the complaint, or any part of the complaint that is being addressed in the due process hearing, until the hearing is over. Any issue in the complaint that is not a part of the due process hearing must be resolved through the formal complaint process.

Forms for filing a formal complaint may be found at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/dispute-resolution. The SEA model form is available to assist parents and other parties in filing a State complaint under 34 C.F.R. §§ 300.151 through 300.153 and is not required to be used in submitting a state complaint. Parents and other parties may use the model form, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in 34 C.F.R. § 300.153(b) for filing a State complaint. A complaint hand-delivered to the Kansas State Department of Education (KSDE), Special Education Services, Landon State Office Building, 900 SW Jackson, Suite 620, Topeka, KS 66612 is considered filed when received. Complaints that are mailed to the aforementioned address or e-mailed to formalcomplaints@ksde.gov are filed on the date received, if received on a day and time when the Department is open for business. Complaints that are received after business hours or on a day when the department is not open for business are filed effective the first business day following the date of delivery. The department is not open for business on weekends, state holidays, emergency situations, or officially declared inclement weather. Additionally, a copy of the complaint must be sent to the public agency against which the complaint is filed.

B. INVESTIGATING THE COMPLAINT

The Special Education Services Team at the Kansas State Department of Education must resolve a formal complaint within 30 calendar days from the date the complaint is received in the office, unless exceptional circumstances exist.

When a formal complaint is received a letter acknowledging receipt of the formal complaint is sent to the person making the complaint, the special education director, and the superintendent. A copy of the formal complaint is attached with the letter to the special education director and the superintendent.

The complaint investigator will contact the person making the complaint and the special education director to clarify the issue(s), review all relevant records and documents, and determine whether or not the facts stated in the complaint are correct and, if so, whether they substantiate a violation of the requirements of special education laws or regulations.

The investigator will contact the agency against which the complaint is filed to allow the agency to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint. Both parties can provide additional information to the investigator that is relevant to the issue. Generally, neither party can introduce a new issue during the investigation. However, the investigator may allow the complaining party to introduce a new issue during the investigation. The requirements in K.A.R. 91-40-51 apply to any new issue added to the complaint. If the investigator allows a new issue to be added to the investigation, the investigator will give the public agency timely notice of the new issue in order for the public agency to respond to the new issue. KSDE does not consider the addition of a new issue an exceptional circumstance justifying an extension of time to complete the investigation. Therefore, the addition of a new issue alone should not affect the 30-day timeline for resolution of the complaint. If the investigator does not allow a new issue to be added to the investigation, the complaining party may file a separate complaint.

KSDE's working definition for exceptional circumstance extensions of formal complaint timelines: An exceptional circumstance arises when an event or series of events, beyond the control of the agency or the investigator, reasonably justifies an extension of time in which to complete an investigation.

After the investigation, the complaint investigator writes a report of the findings addressing each of the allegations in the complaint and which contains: (a) findings of fact and conclusions; (b) the reasons for KSDE's final decision; and (c) any corrective action or actions that are required including the time period within which each action is to be taken. The report is to be sent to the parties within 30 days of the receipt of the complaint unless there are exceptional circumstances, or the parties agree to extend the 30 day timeline to engage in mediation. Each complaint report is dated. The date of the report coincides with the date the report is mailed. The person mailing the report obtains a post office receipt showing the date the report was mailed. This may be accomplished either by sending the report to the parties by certified mail or by obtaining a Certificate of Mailing. A copy of the receipts showing the date of mailing are forwarded to Special Education Services. If the report is sent to both parties by e-mail, the e-mail serves as the receipt.

C. FOLLOW UP ON THE COMPLAINT

If the report from the formal complaint requires corrective actions, the school shall, within 10 calendar days of the date of the report, submit one of the following to the KSDE Special Education Services Team:

1. Documentation to verify it accepts the corrective action(s) in the report, if any;
2. A written request for more time to complete the required action(s), with justification for this request; or
3. A written notice of appeal.

If the public agency asks for more time to complete one or more of the required corrective actions, a review committee of at least three people at KSDE are appointed to review the request and the justification for an extension. The committee shall make a decision regarding the request within five business days of the date that the request was received, and their decision is final. If the public agency fails to respond to a report within the time allowed sanctions may be invoked.

The KSDE monitors corrective actions to ensure they are completed. When the corrective actions are completed by the school, the Special Education Services Team sends a notice of completion to the school with a copy to the person making the complaint. At that point, the complaint file is closed.

D. APPEALING THE DECISION

After the person making the complaint and the school receive the written report of findings, each has 10 calendar days from the date of the report to file an appeal. The State Commissioner of Education has designated the KSDE Special Education Services Team (SETS) to receive appeals on the Commissioner's behalf. An appeal is filed on the day it is received in the SETS office. Each notice of appeal shall provide a detailed statement of the basis for alleging that the report is incorrect.

The following steps are followed for appeals:

1. An appeal committee of at least three KSDE members shall be appointed to review the report and to consider information provided by the school, the complainant, or others.
2. The hearing process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the appeal notice.
3. A decision shall be rendered within five days after the appeal process is completed, unless the appeal committee determines that exceptional circumstances exist. Then the decision shall be rendered as soon as possible.

If the person making the complaint or the school does not appeal the decision and no corrective actions are required, the complaint file is closed.

E. SANCTIONS BY THE STATE BOARD OF EDUCATION

The Kansas State Board of Education has sanctions available if corrective action required by a formal complaint investigation is not implemented. Additionally, if an appeal committee affirms a compliance report that requires corrective action by a school, that public agency must initiate the required corrective action immediately. If after five days, no required corrective action has been initiated, the public agency will be notified of the sanction(s) that will be taken to assure compliance as determined by the KSDE. Sanctions may include any of the following:

- the issuance of an accreditation deficiency advisement;
- the withholding of state or federal funds otherwise available to the agency;
- the award of monetary reimbursement to the complainant; or
- any combination of the above actions.

K.A.R. 91-40-51. Filing complaints with the state department of education.

(a) Any person or organization may file a written, signed complaint alleging that an agency has violated a state or federal special education law or regulation. Also, a prevailing party in a due process hearing may file a complaint alleging that the other party has failed to implement the hearing decision. The complaint shall include the following information:
(1) A statement that the agency has violated a requirement of state or federal special education laws or regulations;
(2) the facts on which the statement is based;
(3) the signature of and contact information for the complainant; and
(4) if the complaint involves a specific child, the following information:
(A) The child's name and address of residence, or other contact information if the child is a homeless child or youth;
(B) the name of the school the child is attending;
(C) a description of the problem involving the child; and
(D) a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

(b) (1) The complaint shall allege a violation that occurred not more than one year before the date the complaint is received and shall be filed with the commissioner of education.
(2) The party filing the complaint shall forward a copy of the complaint to the agency against which the allegations are made at the same time the complaint is filed with the commissioner of education.

(c) Upon receipt of a complaint, an investigation shall be initiated. At a minimum, each investigation shall include the following:
(1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded;

(2) contact with the agency against which the complaint is filed to allow the agency to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint; and

(3) a written report of findings of fact and conclusions, including reasons for the decision, and any corrective action or actions that are required, including the time period within which each action is to be taken. Unless the parent and the agency agree to engage in mediation, this report shall be sent to the parties within 30 days of the receipt of the complaint. If the parties mediate but fail to resolve the issues, the report shall be sent 30 days after the department received notice that mediation has failed.

(d) An on-site investigation may be conducted before issuing a report.

(e) (1) If a report requires corrective action by an agency, that agency, within 10 days of the date of the report, shall submit to the state director of special education one of the following:

(A) Documentation to verify acceptance of the corrective action or actions specified in the report;

(B) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report, together with justification for the request; or

(C) a written notice of appeal. Each appeal shall be made in accordance with subsection (f).

(2) If an agency files a request for an extension of time within which to complete one or more corrective actions required in a report, a review committee of at least three department of education members shall be appointed by the commissioner to review the request and the offered justification for the extension of time. A decision on the request shall be made by the committee within five business days of the date the request was received. The decision of the review committee shall be final.

(3) If a local education agency fails to respond to a report within the time allowed, the sanctions listed in paragraph (f) (2) may be invoked.

(f) Appeals.(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect. Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2).

(g) (1) If a complaint is received that is also the subject of a due process hearing or that contains multiple issues of which one or more are part of the due process hearing, the complaint or the issues that are part of the due process hearing shall be set aside until conclusion of the hearing.

(2) If an issue that has previously been decided in a due process hearing involving the same parties is raised in a complaint, the due process hearing decision shall be binding on that issue and the complainant informed of this fact.

FORMAL COMPLAINT PROCEDURE

Complaint

A complaint alleging a violation of special education laws or regulations is received by the Kansas State Department of Education (KSDE)

Acknowlegement

A courtesy letter acknowledging receipt is sent to complainant and local education agency (LEA)

Investigation by KSDE.

Interview with the complainant and LEA (may or may not include onsite visit)

Written Report of Findings Within 30 Days, unless exceptional circumstances

Contains corrective actions if a violation is substantiated and timelines for completion, mailed to complainant and LEA

IF Appealed

- Either party may file an appeal within 10 days from the date of the report
- Review completed by 3 KSDE staff within 15 days from the date the appeal is received
- Report issued in 5 days

No further appeal

IF Not Appealed

- Corrective actions are accepted and completed by the LEA and notice of completion is given to the LEA and the complainant

OR

- No appeal and no corrective actions

Report Complete
Complaint File Closed

FORMAL COMPLAINT TIMELINE

Timeline	Responsible Party	Action
1st Day	Complainant	Mail or personally deliver a written, signed complaint form requesting a formal complaint investigation to the Formal Complaint Investigator for the Special Education Services Team of the Kansas State Department of Education and to the public agency. Complaints may also be filed electronically via email at formalcomplaints@ksde.gov.
10th Day	KSDE	Contact the complainant and special education administrator acknowledging receipt of the complaint.
15th Day	KSDE	Contact complainant and special education administrator to clarify issues in complaint letter, to solicit relevant information and documents, and to schedule a date and time for the on-site investigation, if necessary.
20th Day	KSDE	Conduct investigation. Review and request copies of student records and IEPs. Interview complainant. Interview special education administrator and other school personnel.
30th Day	KSDE	Finalize and mail written report of findings and corrective action(s) to complainant and public agency special education administrator.
40th Day (unless Extension Granted)	KSDE	Review LEA documentation of implementation of corrective action(s) contained in written report; or Review LEA request for an extension of time within which to complete corrective action(s); or Review LEA written notice of appeal of written report.
40th Day	Complainant or LEA	Within 10 calendar days from the date of the written report– File a notice of appeal to the State Commissioner of Education ATTN: KSDE Special Education & Title Services (SETS) team (designee of Commissioner). An appeal is filed on the day it is received in the SETS office.
41st Day (unless Extension Granted)	KSDE	Pursue sanctions if LEA fails to respond to a written report within the time allowed

QUESTIONS AND ANSWERS ABOUT FORMAL COMPLAINT

1. Who is the contact to file a formal complaint?

Parents, individuals, or organizations who believe that the public agency has violated federal or state statutes or regulations relating to special education should contact the Kansas State Department of Education (KSDE), Special Education Services Team.

Contact information includes:

Phone: 785-296-5608, or 800-203-9462 Email: formalcomplaints@ksde.gov
Address: Kansas State Dept. of Education, Special Education Services, Landon State Office Building, 900 SW Jackson, Suite 620, Topeka, KS 66612
Homepage: https://www.ksde.gov/policy-and-funding/special-education

2. How long does the investigation of a complaint take?

Unless there are exceptional circumstances, the complaint must be investigated and a report written with the findings of the complaint investigator within 30 calendar days of the date the complaint was received at the KSDE. Upon completion of a written report, the school or the complainant has 10 calendar days from the date of the report to accept the decision or file an appeal. An appeal shall be considered filed on the date the notice of appeal is received in the KSDE Special Education Services office.

3. May parents of children in private schools, who are receiving special education services, file a formal complaint?

Yes. Formal complaint is available to parents (or another individual or organization), even if services provided in a private school are on a Services Plan, and not an IEP.

4. May parents of children who are gifted file a formal complaint?

Yes. The formal complaint process is available to parents of children who are disabled or gifted. In addition, another individual or organization may file a formal complaint.

5. May parents of young children file a formal complaint?

Yes. For young children from birth to age 3, who have a disability, formal complaint is available through the Kansas Department of Health and Environment, 785-296-6135 or 800-332-6262. For young children who have a disability and are eligible for special education services beginning at age 3, formal complaint is available to their parents through KSDE, 785-296-5608, or 800-203-9462. For children who are gifted, the age of eligibility is the age at which the local school district provides general education services to children who do not have a disability.

6. Who can file a formal complaint?

Anyone who suspects that the proper legal procedures were not followed or implemented may file a formal complaint with KSDE. This would include, but is not limited to, parents, parent advocates, the student if age 18, grandparents, foster parents, an individual, or an organization. In addition, it may be that in unusual circumstances, a member of the school team could file a formal complaint.

7. Does filing a formal complaint waive the parents' right to file for a due process hearing?

No. Parents may file a formal complaint before, at the same time, or after filing for a due process hearing. However, if the issue is the same, the formal complaint investigation will be suspended until due process is resolved.

8. Does a Kansas Complaint Investigator investigate the allegations as written in the complaint or do they rewrite the allegations aligned to KSDE and IDEA regulations that capture the Parent's ideas?

KAR 91-40-51(c)(1) requires that upon the initiation of a complaint investigation, the investigator, at a minimum, shall include "*(a) discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified…*". …". The goal of the investigator is to identify the intended issue(s) the complaint is filed about prior to conducting the investigation and sending the report so the complainant feels their actual issue was investigated. The worst thing that can happen is for an investigator to revise issues, conduct an investigation, send out a complainant report and have the complainant say, "That wasn't my issue."

KSDE recognizes the advent of AI generated complaints that may include more issues than historically alleged in Kansas; however, if a complaint lists issues that allege possible violations of special education laws, and the complainant desires to pursue them, the investigator shall include the issues.

34 C.F.R. 300.152 establishes "*Minimum State complaint procedures*," which includes to:

1. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
2. Provide the public agency with the opportunity to respond to the complaint,

When an investigator first or speaks communicates with a complainant, that is the opportunity for the complainant to submit additional information about the allegations as well as to clarify the issues being presented. When an investigator believes and suggests that some of the issue(s) could be better expressed differently, and the complainant agrees, the investigator should always provide the newly worded issue(s) to the complainant and request written confirmation from the complainant that the revised statement of issue(s) accurately reflects the issue(s) the complainant is alleging. Only then should an investigator go forward with newly worded issues.

The next step then is to notify the school district that the issue(s) have been modified and provide the modified issue(s) to the school district so that the school district will have an informed opportunity to respond to the complaint.

As to rewriting "allegations aligned to KSDE and IDEA regulations that capture the Parent's ideas," it is not necessary to state the applicable statute or regulation within each stated allegation. That information may be provided to the parties and in the investigation report separate from the statement of the allegations.

CHAPTER 12: DUE PROCESS HEARING

INTRODUCTION

Due process is a set of procedures that seeks to ensure fairness of educational decisions and accountability, both for parents and for educational professionals. Due process rights begin when educational professionals or the parents request an initial evaluation to determine whether or not a student is eligible and needs special education and related services. Every special education due process hearing and review must be provided for at no cost to the child or the parent of the child. The costs of the initial hearing must be provided for and paid for by the public agency except for attorney fees.

The due process hearing provides a forum where disagreements about the identification, evaluation, educational placement, and/or provision of a free appropriate public education for students with exceptionalities may be adjudicated. Although federal regulations refer to due process rights for educators and parents of students with disabilities, in Kansas those same rights are also afforded to students with giftedness.

Usually parents and public agency personnel exercise their responsibilities in regard to the education of children with exceptionalities and have little or no difficulty in reaching mutual agreement about the initiation, continuation, or termination of special education services. When disagreements arise, due process is available to bring in an impartial special education due process hearing officer to make a ruling.

Parents are encouraged to contact Families Together (800-264-6343), the Disability Rights Center of Kansas (877-776-1541) other parent advocacy groups, or the Kansas State Department of Education (800-203-9462) to seek assistance. Other avenues to resolve disagreements include mediation (Chapter 10) and formal complaint (Chapter 11). Only as a last resort should the legal method of a special education due process hearing and appeal procedure be used. The special education due process hearing procedures are somewhat complicated. This chapter describes these procedures, but it is not a substitute for competent legal advice. Parents or public agencies considering a request for a due process hearing are encouraged to consult with an attorney who practices special education law.

At the end of the chapter is a timeline showing the steps in special education due process, sample forms may be found at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/dispute-resolution. See also Chapter 1, Parent Rights (Procedural Safeguards), for additional information about other rights of parents.

Topics addressed within this chapter are:

A. Filing for Due Process
B. Assigning A Special education due process hearing officer
C. Resolution Meeting
D. Pre-hearing Requirements
E. Conducting A Due Process Hearing
F. Reaching A Decision
G. Appealing the Due Process Decision
H. Stay-Put
I. Civil Actions
J. Attorney Fees

A. FILING FOR DUE PROCESS

Either the public agency or the parents of an exceptional child may initiate a special education due process hearing to resolve differences about a child's identification, evaluation, educational placement, or provision of a free appropriate public education. 34 C.F.R. § 300.33 defines public agency as, "the SEA (state education agency), LEAs (local education agencies), ESAs (educational service agencies), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities."

The problem about which the complaint is made must have occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint.

There are some exceptions to this timeline, including when a public agency has misrepresented that it has resolved the problem or the public agency has withheld information that it was legally required to give to the parent (K.S.A. 72-3415(b)(1); 34 C.F.R. 300.507(a)(2)).

If the student is age 18, the student has the right to file for a due process hearing, unless a court has determined otherwise. To make their request, the party filing the complaint, or the attorney for that party, sends a copy of the Due Process Complaint Notice to the other party and to the Kansas State Department of Education (KSDE), Special Education Services. This notice is confidential and must contain the following information:

- Name of the child;
- address of the child's residence (or in the case of a homeless child or youth, available contact information for the child);
- name of the school the child is attending;
- description of the nature of the problem and the facts that form the basis of the complaint; and
- a proposed resolution of the problem. (K.S.A. 72-3415(a)(1)(B))

When the public agency receives this request for a due process hearing, public agency personnel are required to:

- inform parents about mediation;
- inform parents of free or low-cost legal services (34 C.F.R. 300.507); and
- provide a copy of the Parent Rights document for the first due process complaint in the school year (34 C.F.R. 300.504).

B. ASSIGNING A SPECIAL EDUCATION DUE PROCESS HEARING OFFICER

The public agency against which the due process complaint is filed is responsible for due process hearings, including assigning special education due process hearing officers (K.S.A. 72-3416; K.S.A. 72-3417). After May 20, 2000, any newly appointed special education due process hearing officer must be an attorney. A special education due process hearing officer can have no personal or professional interest that would conflict with the hearing officer's objectivity. The special education due process hearing officer may not be an employee of the Kansas State Department of Education (KSDE) or the LEA that is responsible for the child's education. The Due Process Timeline at the end of this chapter shows how special education due process hearing officers are appointed.

Kansas regulations also provide for a system of choice for parents in selecting and approving potential special education due process hearing officers. The public agency's responsibility is to maintain a current list of trained, qualified special education due process hearing officers (not more than 3). This list must include the names and qualifications of the special education due process hearing officers who are available. It is good practice for the public agency to contact potential special education due process hearing officers before placing their names on the list to ensure that they would be available for the hearing.

Not more than 5 business days after a due process complaint is received the public agency must furnish the parents a list of qualified special education due process hearing officers (not more than 3) and a description of the process for selecting a special education due process hearing officer. Generally, the public agency provides a list of two to three names of special education due process hearing officers and their qualifications to the parents. After the parents receive the list, the parent has five days to strike any or all special education due process hearing officers from the list. If the parent does NOT strike all names from the list, the public agency may select any special education due process hearing officer not stricken.

If the parents notify the public agency that they are striking all names on the list, the public agency contacts Special Education Services (800-203-9462) within 3 business days of receiving the parents' notice. Special Education Services then must appoint a special education due process hearing officer within 3 business days of receiving the public agency's request to appoint a special education due process hearing officer. The complete list of qualified special education due process hearing officers is maintained by KSDE. (K.S.A. 72-3416(a); K.A.R. 91-40-28(d))

The public agency will also have hearing officers to resolve other matters not related to special education, such as a school's disciplinary hearing officer. For special education due process hearings, however, a special education due process hearing officer is required. This person is trained and qualified to conduct special education due process hearings. To differentiate between hearing officers, the complete term "special education due process hearing officer" will be used in this chapter.

C. RESOLUTION MEETING

When the parent has requested a due process hearing, the public agency must hold a resolution meeting within 15 days of receiving the complaint notice. The public agency must convene a resolution meeting with the parent and the member or members of the IEP team who have specific knowledge of the facts identified in the complaint and a representative of the public agency who has the authority to make binding decisions on behalf of the public agency. The parent and the public agency determine which members of the IEP team will attend the meeting. The public agency may not include their attorney unless the parents bring their attorney.

The purpose of this meeting is for the parent of the child to discuss and explain the complaint, including the facts that form the basis of the complaint. The public agency then has an opportunity to resolve the complaint. If the meeting results in a resolution of the complaint, the parties develop a legally binding written agreement that both the parent and the representative of the public agency signs. The agreement is, by law, enforceable in any state or federal court. However, the law also permits either party to void the agreement within 3 business days of the date the agreement was signed.

If a resolution of the complaint is not reached at the meeting and the public agency has not resolved the complaint to the satisfaction of the parent within 30 days of the public agency's receipt of the

complaint, the due process hearing procedures will be implemented and all of the applicable timelines for a due process hearing will commence.

Failure of the parent to participate in a resolution meeting when the parent has not waived the resolution process or requested to use mediation will delay the timelines for the resolution process and due process until the meeting is held (K.A.R. 91-40-28(f); 34 C.F.R. 300.510(b)(3)). In addition, if the public agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented the public agency may, at the conclusion of the 30 day resolution period, request that the special education due process hearing officer dismiss the parents due process complaint (K.A.R. 91-40-28(f)(2); 34 C.F.R. 300.510(b)(4)).

If an education agency fails to hold or to participate in a resolution meeting within 15 days of receiving a due process complaint, the parent may request the special education due process hearing officer to begin the due process hearing and commence the 45 day timeline for its completion (K.A.R. 91-40-28(f)(3); 34 C.F.R. 300.510(b)(5)).

A resolution meeting, however, is not required if the parent and the public agency agree, in writing, to waive the resolution meeting, or they agree to use mediation to attempt to resolve the complaint. (K.S.A. 72-3416(a)(5))

D. PREHEARING REQUIREMENTS

The party receiving a due process hearing notice must send to the party filing the notice, a response that specifically addresses the issues raised in the complaint within 10 days of receiving the complaint (K.S.A. 72-3415(d)).

If either the public agency or the parent believes that a notice of due process it has received does not meet the legal notice requirements (see Section A of this chapter), they may submit to the special education due process hearing officer a notice of insufficiency of the due process notice. A notice of insufficiency must be submitted within 15 days of the date of the party's receipt of the due process notice. The special education due process hearing officer has an additional 5 days to determine whether or not the original complaint notice is sufficient. The special education due process hearing officer shall immediately notify the parents and the public agency in writing of the special education due process hearing officer's decision (K.S.A. 72-3415(b)).

If the public agency has not sent a prior written notice to the parent regarding the problem described in the parent's due process complaint notice, the public agency, within 10 days of receiving the complaint, must send to the parent a response that includes: (1) an explanation of why the agency proposed or refused to take the action raised in the complaint; (2) a description of other options that the IEP team considered and the reasons why those options were rejected; (3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (4) a description of the other factors that are relevant to the agency's proposed or refused action (34 C.F.R. 300.508(e)(1); K.S.A. 72-3415(c)).

A party may amend its due process complaint notice only if: (a) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting; or (b) the special education due process hearing officer grants permission not less than 5 days before a due process hearing occurs (K.S.A. 72-3415(e)). When a complaint is amended the timelines start over.

Within five business days prior to a hearing, each party must disclose to the other party any evidence the party plans to use at the hearing, including all evaluations and recommendations based on the

evaluation that they intend to use at the hearing (K.S.A. 72-3416(b)(5)). Failure to timely provide this evidence to the other party gives the other party a right to prohibit presentation of the evidence at the hearing.

If the public agency and the parent agreed to the resolution meeting but have not resolved the issues within 30 days of the date the notice of due process was received, the hearing may begin. Also, note that, if both parties agree in writing to waive the resolution meeting, the 45 day timeline to complete the due process hearing begins the day after the written agreement is signed.

E. CONDUCTING A DUE PROCESS HEARING

The due process hearing must be held at a time and place reasonably convenient to the parent of the child and be a closed hearing, unless the parent requests an open hearing. Unless a resolution meeting is agreed to by both parties, the due process hearing shall be held not later than 35 days from the date on which the request is received. The parties shall be notified in writing of the time and place of the hearing at least five days prior to the hearing (K.S.A. 72-3416(c).

Both parties have the right to be present at the hearing and be accompanied and advised by legal counsel and people who have special knowledge about children with exceptionalities.

Special education due process hearing officers may administer oaths before hearing testimony (K.S.A. 72-3419). The parties have the right to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of a subpoena. Each party may present witnesses in person or present their testimony by affidavit, including expert medical, psychological or educational testimony. Each party has a right to prohibit the other party from raising any issue at the hearing that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing (K.S.A. 72-3416(b); K.S.A. 72-3419).

Both parties have the right to have a written or, at the option of the parent, an electronic, verbatim record of the hearing. They also have the right to a written, or at the option of the parent, electronic decision, including the findings of facts and conclusions. Both the record of the hearing and the decision of the special education due process hearing officer must be provided at no cost to the parents (K.S.A. 72-3416(b)(7)(8); K.S.A. 72-3419(e)).

F. REACHING A DECISION

The 45 day timeline for completion of a due process hearing starts on the day after one of the following events occurs:

- both parties to the due process proceedings agree, in writing, to waive the resolution meeting;
- the parties begin a resolution meeting or a mediation but agree, in writing, that resolution of their dispute is not possible before the end of the 30 day resolution period; or
- both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30 day resolution period, but later, one, or both, of the parties withdraws from the mediation. (K.A.R. 91-40-28(g))

A Special education due process hearing officer may grant extensions of time upon request of either party, unless the due process hearing is an expedited hearing (K.S.A. 72-3419(c)).

After the close of the special education due process hearing the special education due process hearing officer must render a decision on the matter, including findings of fact and conclusions, within 10

calendar days. The decision must be written or, at the option of the parent, must be an electronic decision. Any action of the special education due process hearing officer resulting from a due process hearing shall be final, subject to appeal and review (K.S.A. 72-3416(h)).

A written notice of the result of any hearing must be given to the public agency providing for the hearing and must be sent by certified mail to the parent, or attorney of the child within 24 hours after the result is determined. In addition, the special education due process hearing officer must send a copy to the State Board of Education, which must make the decision available to the Special Education Advisory Council (K.S.A. 72-3418(a); 34 C.F.R. 300.514(c), after deleting any personally identifiable information.

G. APPEALING THE DUE PROCESS DECISION

If public agency personnel or the parents are dissatisfied by the findings of the special education due process hearing officer, either party may file a notice of appeal to Special Education Services, designee of the Commissioner of the State Department of Education not later than 30 calendar days after the date of the postmark on the envelope containing the written decision. The notice of appeal must be mailed to:

Notice of Appeal
ATTN: Special Education Services
Landon State Office Building
900 SW Jackson Street, Suite 620
Topeka, Kansas 66612-1212.

Filing is complete upon receipt of the Notice of Appeal in the office of Special Education Services. Emailed submissions will not be accepted for filing. A review officer appointed by the State Board of Education must conduct an impartial review of the hearing and make an independent decision based on the review. The review officer must conduct the review according to the requirements of K.S.A. 72-3418 and 72-3419. The review must be completed and the decision sent to both parties and the State Board within 20 calendar days after the notice of appeal is filed. Personally identifiable information is deleted by the State Board from the decision, and is made available to the Special Education Advisory Council.

The decision of the review officer is final unless either party chooses to bring a civil action in either State or Federal district court.

Whenever an order of a due process hearing officer or state review officer requires a local education agency (LEA) to take some action, and no further appeal is available, Special Education Services will provide written notification to the LEA that it must provide Special Education Services with documentation of compliance with the order. The notification will identify the specific date by which the documentation must be delivered to Special Education Services. Whenever an order of a due process hearing officer or state review officer requires the State Educational Agency (SEA) to take some action, and no further appeal is available, Special Education Services will identify the specific written documentation needed to verify that the order has been implemented, and produce the identified documentation. The documentation will be placed in the SEA due process file, and a copy of the documentation will be sent to the hearing officer and to the prevailing party.

H. STAY PUT

While the due process hearing is pending, the student involved in the complaint must remain ("stay-put") in the current educational placement, unless:

- The parents and the public agency agree to a different placement (34 C.F.R. 300.518).
- The proceedings arise in connection with the initial admission of the child to school, in which case the child will be placed in the appropriate regular education classroom or program (34 C.F.R. 300.518), unless otherwise directed by a special education due process hearing officer because a child's behavior is substantially likely to result in injury to the student or to others.
- The student is in an interim alternative educational setting for disciplinary reasons. (K.S.A. 72-3435(a); 34 C.F.R. 300.533)

See Chapter 13 about suspension and expulsion of students with disabilities for a more complete explanation of stay-put requirements under disciplinary actions. These provisions are addressed in federal regulations (34 C.F.R. 300.533), and state statute (K.S.A. 72-3435(a)).

If the due process hearing involves an evaluation or initial services under Part B for a child who is transitioning from Part C services to Part B services and is no longer eligible for Part C services because the child has turned age three, the LEA is not required to provide the Part C services that the child had been receiving. However, if the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the LEA must provide those special education and related services that are not in dispute between the parent and the LEA (K.A.R. 91-40-31(c); 34 C.F.R. 300.518(c)).

I. CIVIL ACTIONS

After a due process hearing, or an appeal to that hearing, has been completed either the parents or the public agency may pursue a civil action through a state or federal court for reimbursement of attorneys' fees. Federal and state regulations allow the civil action by either party. The state statute adds the timeline; in Kansas, a civil action must be filed within 30 calendar days after the review officer's decision (K.S.A. 72-3418(c)(d); (34 C.F.R. 300.516).

J. ATTORNEY FEES

If the parents prevail in the due process hearing or upon appeal, the Court may award some or all of the attorney fees they have paid in conjunction with the due process hearing. Only a Court can award attorney fees to the parents. The special education due process hearing officer has no authority to do so. However, there may be limitations on the amount paid. For example, if it is found that the parents prolonged the process or if the fees charged are more than the hourly rate usually charged, the judge has the authority to reduce the award paid to the parents.

The public agency may be awarded attorney fees if a parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. The public agency may be awarded attorney fees if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

In determining the amount of the reimbursement of attorney fees, the judge must follow federal regulations (34 C.F.R. 300.517) and State law (K.S.A. 72-3430(b)(12)):

34 C.F.R. 300.517. Attorneys' fees

(a) In general.

(1) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(b) Prohibition on use of funds.

(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:

(1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--

(A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(B) The offer is not accepted within 10 days; and

(C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506.

(iii) A meeting conducted pursuant to §300.510 shall not be considered--

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section.

(3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--

(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.

(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

K.A.R. 72-3415. Due process hearing, initiation of; complaint notice; response to notice.

(a) (1) Subject to the requirements in this section, the parent of an exceptional child or the agency responsible for providing services to the child may initiate a due process hearing regarding any problem arising in regard to any matter governed by this act, if:

(A) The problem about which complaint is made occurred not more than two years before the filing of the complaint and the party filing the complaint knew or should have known about the alleged action that forms the basis of the complaint;

(B) the party filing the complaint or the attorney for that party provides to the other party and to the department, a written due process complaint notice that shall remain confidential and include the following information:

(i) the name of the child, the address of the residence of the child (or in the case of a homeless child or youth, available contact information for the child), and the name of the school the child is attending;

(ii) a description of the nature of the problem and the facts that form the basis of the complaint; and

(iii) a proposed resolution of the problem.

(2) A parent or an agency shall not be entitled to a due process hearing until the parent or agency, or their attorney, files a notice that meets the requirements of this subsection.

(b) (1) Any due process complaint notice filed by a parent shall be deemed to be timely even if presented more than two years after the occurrence of the facts giving rise to the complaint, if:

(A) The agency made specific misrepresentations that it had resolved the problem forming the basis of the complaint; or

(B) the agency withheld information from the parent that is required to be given to the parent under this act.

(2) The due process complaint notice required by subsection (a) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party, in writing, within 15 days of receiving the complaint, that the receiving party believes the notice does not meet the requirements.

(3) Within five days of receipt of the notification provided under subsection (a), the hearing officer shall make a determination of whether the notification meets the requirements of subsection (b)(2) and shall immediately notify the parties, in writing, of such determination.

(c) (1) If the complaint is filed by a parent and the agency has not sent a prior written notice to the parent regarding the problem described in the parent's due process complaint notice, the agency, within 10 days of receiving the complaint, shall send to the parent a response that includes:

(A) An explanation of why the agency proposed or refused to take the action raised in the complaint, or an appropriate reply if the problem does not address proposed or refused action by the agency;

(B) a description of other options that the IEP team considered and the reasons why those options were rejected;

(C) a description of each evaluation procedure, assessment, record or report the agency used as the basis for any action it has proposed or refused; and

(D) a description of the factors that are relevant to the agency's proposal or refusal, or in reply to the complaint.

(2) The fact an agency gives notice to a parent pursuant to paragraph (1) shall not preclude such agency from asserting that the parent's due process complaint notice is insufficient.

(d) The non-complaining party, within 10 days of receiving the complaint, shall send to the complaining party a response that specifically addresses the issues raised in the complaint.

(e) (1) A party may amend its due process complaint notice only if:

(A) The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to K.S.A. 72-973, and amendments thereto; or

(B) the hearing officer grants permission, except that such permission shall be granted not less than five days before a due process hearing occurs.

(2) The applicable timeline for a due process hearing shall recommence at the time the party files an amended notice, including the timeline for resolution of the complaint.

(f) (1) Nothing in this section shall be construed to preclude a parent or an agency from filing a separate due process complaint on an issue different from issues presented in a due process complaint already filed.

(2) Upon motion of either party and if deemed appropriate by the due process hearing officer presiding in the initial hearing, the issues raised in the separate complaints may be considered and resolved in the same due process hearing.

K.S.A. 72-3416. Due process requirements; time limitations; access to records; hearing officers.

(a) (1) Except as hereinafter provided, within 15 days of receipt of a due process complaint notice from a parent, the agency shall convene a meeting with the parent and the member or members of the IEP team who have specific knowledge of the facts identified in the complaint, and a representative of the agency who has the authority to make binding decisions on behalf of the agency. This meeting shall not include the agency's attorney unless the parent is accompanied by an attorney.

(2) At this meeting, the parent of the child shall discuss and explain the complaint, including the facts that form the basis of the complaint and the agency shall be provided the opportunity to resolve the complaint.

(3) If the meeting of the parties results in a resolution of the complaint, the parties shall execute a written agreement that both the parent and the representative of the agency shall sign and that, at a minimum, includes the following statements:

(A) The agreed upon resolution of each issue presented in the complaint;

(B) that each party understands that the agreement is legally binding upon them, unless the party provides written notice to the other party, within three days of signing the agreement, that the party giving notice is voiding the agreement; and

(C) if not voided, each party understands that the agreement may be enforced in state or federal court.

(4) If a resolution of the complaint is not reached at the meeting held under this subsection and the agency has not resolved the complaint to the satisfaction of the parent within 30 days of the agency's receipt of the complaint, the due process hearing procedures shall be implemented and all of the applicable timelines for a due process hearing shall commence. All discussions that occurred during the meeting shall be confidential and may not be used as evidence in any subsequent hearing or civil proceeding.

(5) A meeting shall not be required under this subsection if the parent and the agency agree, in writing, to waive such a meeting, or they agree to use mediation to attempt to resolve the complaint.

(b) Any due process hearing provided for under this act, shall be held at a time and place reasonably convenient to the parent of the involved child, be a closed hearing unless the parent requests an open hearing, and be conducted in accordance with procedural due process rights, including the following:

(1) The right of the parties to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right of the parties to be present at the hearing;

(3) the right of the parties to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of the issuance of a subpoena;

(4) the right of the parties to present witnesses in person or their testimony by affidavit, including expert medical, psychological or educational testimony;

(5) the right of the parties to prohibit the presentation of any evidence at the hearing which has not been disclosed to the opposite party at least five days prior to the hearing, including any evaluations completed by that date and any recommendations based on such evaluations;

(6) the right to prohibit the other party from raising, at the due process hearing, any issue that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing;

(7) the right of the parties to have a written or, at the option of the parent, an electronic, verbatim record of the hearing; and

(8) the right to a written or, at the option of the parent, an electronic decision, including findings of facts and conclusions.

(c) Except as provided by subsection (a), each due process hearing, other than an expedited hearing under K.S.A. 72-993, and amendments thereto, shall be held not later than 35 days from the date on which the request therefore is received. The parties shall be notified in writing of the time and place of the hearing at least five days prior thereto. At any reasonable time prior to the hearing, the parent and the counsel or advisor of the involved child shall be given access to all records, tests, reports or clinical evaluations relating to the proposed action.

(d) (1) Except as otherwise provided in K.S.A. 72-993, and amendments thereto, during the pendency of any proceedings conducted under this act, unless the agency and parent otherwise agree, the child shall remain in the then-current educational placement of such child.

(2) If proceedings arise in connection with the initial admission of the child to school, the child shall be placed in the appropriate regular education classroom or program in compliance with K.S.A. 72-1111, and amendments thereto, unless otherwise directed pursuant to section 18, and amendments thereto.

(e) Subject to the provisions of K.S.A. 72-973a, and amendments thereto, the agency shall appoint a hearing officer for the purpose of conducting the hearing. Members of the state board, the secretary of social and rehabilitation services, the secretary of corrections, the commissioner of the juvenile justice authority, and members of any board or agency involved in the education of the child shall not serve as hearing officers. No hearing officer shall be any person responsible for recommending the proposed action upon which the hearing is based, any person having a personal or professional interest which would conflict with objectivity in the hearing, or any person who is an employee of the state board or any agency involved in the education of the child. A person shall not be considered an employee of the agency solely because the person is paid by the agency to serve as a hearing officer. Each agency shall maintain a list of hearing officers. Such list shall include a statement of the qualifications of each hearing officer. Each hearing officer and each state review officer shall be qualified in accordance with standards and requirements established by the state board and shall have satisfactorily completed a training program conducted or approved by the state board.

(f) (1) Any party to a due process hearing who has grounds to believe that the hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice or a conflict of interest may file a written request for the hearing officer to disqualify such officer and have another hearing officer appointed by the state board. Any such written request shall state the grounds for the request and the facts upon which the request is based.

(2) If a request for disqualification is filed, the hearing officer shall review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then shall prepare a written order concerning the request and serve the order on the parties to the hearing. If the grounds are found to be insufficient, the hearing officer shall continue to serve as the hearing officer. If the grounds are found to be sufficient, the hearing officer immediately shall notify the state board and request the state board to appoint another hearing officer.

(g) (1) Except as provided in paragraph (2), the decision of the hearing officer in each due process hearing shall be based on substantive grounds and a determination of whether the child received a free appropriate public education.

(2) In due process hearings in which procedural violations are alleged, the hearing officer may find that the child did not receive a free appropriate public education only if the hearing officer concludes the procedural violations did occur and those violations:

(A) Impeded the child's right to a free appropriate public education

(B) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or

(C) caused a deprivation of educational benefits.

(3) Nothing in this subsection shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this act.

(h) Whenever a hearing officer conducts any hearing, such hearing officer shall render a decision on the matter, including findings of fact and conclusions, not later than 10 days after the close of the hearing. The decision shall be written or, at the option of the parent, shall be an electronic decision. Any action of the hearing officer in accordance with this subsection shall be final, subject to appeal and review in accordance with this act.

K.S.A. 72-3417. Same; list and appointment of hearing officers; procedure.

Prior to appointing any hearing officer to conduct a due process hearing provided for under this act, the agency shall make its list of hearing officers available to the parent of the involved child and shall inform the parent of the right to request disqualification of any or all of the hearing officers on the list and to request the state board to appoint a hearing officer in accordance with the procedure provided in this subsection. If the parent does not give written notice of disqualification to the agency within five days after the parent receives the list, the agency may appoint from its list any hearing officer whom the parent has not requested to be disqualified. If the parent requests disqualification of all of the hearing officers and requests the appointment of a hearing officer by the state board, the agency shall immediately notify the state board and shall request the state board to appoint a hearing officer.

K.S.A. 72-3418. Appeal and review; procedure; review officers, appointment and duties; federal court actions.

(a) Written notice of the result of any hearing provided for under this act shall be given to the agency providing for the hearing and shall be sent by certified mail to the parent, or attorney of the child within 24 hours after the result is determined. Such decision, after deletion of any personally identifiable information contained therein, shall be transmitted to the state board which shall make the decision available to the state advisory council for special education and to the public upon request.

(b) (1) Any party to a due process hearing provided for under this act may appeal the decision to the state board by filing a written notice of appeal with the commissioner of education not later than 30 calendar days after the date of the postmark on the written notice specified in subsection (a). A review officer appointed by the state board shall conduct an impartial review of the decision. The review officer shall render a decision not later than 20 calendar days after the notice of appeal is filed. The review officer shall:

(A) Examine the record of the hearing;

(B) determine whether the procedures at the hearing were in accordance with the requirements of due process;

(C) afford the parties an opportunity for oral or written argument, or both, at the discretion of the review officer;

(D) seek additional evidence if necessary;

(E) render an independent decision on any such appeal not later than five days after completion of the review; and

(F) send the decision on any such appeal to the parties and to the state board.

(2) For the purpose of reviewing any hearing and decision under provision (1), the state board may appoint one or more review officers. Any such appointment may apply to a review of a particular hearing or to reviewing a set or class of hearings as specified by the state board in making the appointment.

(c) Subject to the provisions of subsection (e), any action of a review officer pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions or to an action in federal court as allowed by the federal law.

(d) Consistent with state court actions, any action in federal court shall be filed within 30 days after service of the review officer's decision.

(e) In any action brought under subsection (c), the court:

(1) Shall receive the records of the administrative proceedings;

(2) if it deems necessary, shall hear additional evidence at the request of a party;

(3) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate; and

(4) in accordance with the federal law, may award attorneys' fees to the prevailing party in any due process hearing or judicial action brought in accordance with this act.

K.S.A. 72-3419. Administration of oaths; issuance of subpoenas; extension of time; costs; hearing for additional evidence.

(a) Any person conducting a hearing or review under this act may administer oaths for the purpose of taking testimony therein.

(b) Any person conducting a hearing or review under this act or any party to any such hearing or review may request the clerk of the district court to issue subpoenas for the attendance and testimony of witnesses and the production of all relevant records, tests, reports and evaluations in the same manner provided for the issuance of subpoenas in civil actions pursuant to K.S.A. 60-245, and amendments thereto.

(c) Any person conducting a hearing or review under this act, at the request of either party, may grant specific extensions of time beyond the limitations specified in this act.

(d) Any person conducting a hearing under this act shall consider any request for discovery in accordance with the provisions of K.S.A. 77-522, and amendments thereto, except that depositions of witnesses who will be available for the hearing shall not be allowed.

(e) Every hearing and review under this act shall be provided for at no cost to the child or the parent of the child. The costs of any hearing provided for by a board shall be paid by the school district.

(f) Any review officer conducting a review under this act may hold a hearing to receive additional evidence. Every such hearing shall be conducted in accordance with requirements which are consonant with the requirements of this act.

K.S.A. 72-3430. Parental Rights.

(b) The parents of exceptional children shall have the right to:

(12) recover attorney fees, as provided in the federal law, if they are the prevailing parties in a due process hearing or court action; however, only a court shall have the authority to award attorney fees, and such fees may be reduced or denied in accordance with federal law.

K.A.R. 91-40-28. Special education mediation and due process hearings.

(a) If a disagreement arises between a parent and an agency concerning the identification, evaluation, or educational placement of the parent's exceptional child, or the provision of FAPE to the child, the parent or the agency, or both, may request mediation or initiate a due process hearing.

(b) (1) If mediation is requested by either party, the provisions of K.S.A. 72-3438 and amendments thereto shall be followed, together with the requirement in paragraph (2) of this subsection.

(2) When agreement is reached to mediate, the agency shall immediately contact the state board or its designee. A mediator shall be appointed by the state board from its list of qualified mediators, based upon a random or other impartial basis.

(c) If a disagreement as described in subsection (a) arises, the parent or the agency, or both, may initiate a special education due process hearing by filing a due process complaint notice. Each due process hearing shall be provided for by the agency directly responsible for the education of the child.

(d) (1) If a special education due process complaint notice is filed, the provisions of K.S.A. 72-3415 through 72-3419 and amendments thereto shall be followed, together with the requirements in this subsection.

(2) Not more than five business days after a due process complaint notice is received, the agency providing for the hearing shall furnish to the parent the following information:

(A) The agency's list of qualified due process hearing officers;

(B) written notification that the parent has the right to disqualify any or all of the hearing officers on the agency's list and to request that the state board appoint the hearing officer; and

(C) written notification that the parent has the right, within five days after the parent receives the list, to advise the agency of any hearing officer or officers that the parent chooses to disqualify.

(3) (A) If a parent chooses to disqualify any or all of the agency's hearing officers, the parent, within five days of receiving the list, shall notify the agency of the officer or officers disqualified by the parent.

(B) An agency may appoint from its list any hearing officer who has not been disqualified by the parent.

(4) Not more than three business days after being notified that a parent has disqualified all of the hearing officers on its list, an agency shall contact the state board and request the state board to appoint a hearing officer. In making this request, the agency shall advise the state board of the following information:

(A) The name and address of the parent;

(B) the name and address of the attorney, if any, representing the parent, if known to the agency; and

(C) the names of the agency's hearing officers who were disqualified by the parent.

(5) Within three business days of receiving a request to appoint a hearing officer, the parent and agency shall be provided written notice by the state board of the hearing officer appointed by the state board.

(e) If a due process hearing is requested by a parent or an agency, the agency shall provide written notice to the state board of that action. The notice shall be provided within five business days of the date the due process hearing is requested.

(f) (1) Unless the agency and parent have agreed to waive a resolution meeting or to engage in mediation, the agency and parent shall participate in a resolution meeting as required by K.S.A. 72-3416 and amendments thereto. The parent and agency shall determine which members of the IEP team will attend the meeting.

(2) If a parent who files a due process complaint fails to participate in a resolution meeting for which the agency has made reasonable efforts to give the parent notice, the timelines to complete the resolution process and begin the due process hearing shall be delayed until the parent attends a resolution meeting or the agency, at the end of the 30-day resolution period, requests the hearing officer to dismiss the due process complaint.

(3) If an agency fails to hold a resolution meeting within 15 days of receiving a due process complaint or to participate in a meeting, the parent may request the hearing officer to begin the due process hearing and commence the 45-day timeline for its completion.

(g) The 45-day timeline for completion of a due process hearing shall start on the day after one of the following events occurs:

(1) Both parties to the due process proceedings agree, in writing, to waive the resolution meeting.

(2) The parties participate in a resolution meeting or in mediation but agree, in writing, that resolution of their dispute is not possible by the end of the 30-day resolution period.

(3) Both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30-day resolution period, but later one or both of the parties withdraw from the mediation process.

K.A.R. 91-40-29 Qualifications of special education mediators and due process hearing officers.

(a) To initially qualify as a special education mediator, a person shall meet the following requirements:

(1) Have passed a written examination prescribed by the state board concerning special education laws and regulations; and

(2) have completed a program sponsored or approved by the state board concerning effective mediation techniques and procedures, and the role and responsibilities of a mediator.

(b) (1) Except as otherwise provided in paragraph (2) of this subsection, to initially qualify as a special education due process hearing officer or review officer, a person shall meet the following requirements:

(A) Be a licensed attorney in good standing with the licensing agency in the state in which the person is licensed to practice law;

(B) have passed a written examination prescribed by the state board concerning special education laws and regulations;

(C) have completed a program sponsored or approved by the state board concerning due process hearing procedures and the role and responsibilities of a due process hearing officer; and

(D) have passed a written examination prescribed by the state board concerning due process proceedings.

(2) Each person who is on the list of qualified due process hearing officers maintained by the state board shall remain eligible to serve as a due process hearing officer or review officer, if the person the continuing education programs in special education law that are conducted or approved by the state board.

K.A.R. 91-40-31. Educational placement during proceedings.

(a) Except as otherwise provided in K.S.A. 72-3435 and amendments thereto and this regulation, during the pendency of any special education due process or judicial proceeding, the child's educational placement shall be determined in accordance with K.S.A. 72-3416(c) and amendments thereto.

(b) If a state review officer in an administrative appeal agrees with the parent's position as to the appropriate educational placement for the child, the child shall be educated in that placement during any further proceedings, unless the parent and agency agree to another placement or the child's placement is changed in accordance with K.S.A. 72-3435 and amendments thereto.

(c) If the due process hearing involves the evaluation of or initial services for a child who is transferring from the infant and toddler program under the federal law because the child has reached three years of age, the agency shall not be required to provide the services that the child had been receiving under the infant and toddler program. However, if the child is determined to be eligible for special education and related services, the agency shall provide appropriate services to which the parent consents.

DUE-PROCESS TIMELINE (PRE-HEARING PROCEDURES)
SEC. 615

Timeline	Responsible Party	Action
Day 1	Family or LEA	Due process **complaint notice** (problem about which complaint is made occurred not more than two years before the filing of the complaint) delivered to the other party and to KSDE. Notice must include sufficient information
	LEA	Five business days to furnish parents with the following: (a) list of qualified due process hearing officers; (b) written notice of (1) parent's right (within five days) to disqualify any or all of the hearing officers on the list; (2) public agency may select any hearing officers left on the list; (3) if no hearing officers are left on the list, the public agency will request that the KSDE select a hearing officer; (4) availability of mediation. Also give written notice of the filing of a due process hearing to the KSDE.
	Family	Five days from receipt of list of hearing officers to respond with notice of disqualification of hearing officer(s).
	LEA	If all hearing officers are disqualified, the LEA has three business days after a parent gives notice that all hearing officers have been disqualified to contact KSDE and request appointment of hearing officer. (KSDE then has three business days to appoint a hearing officer.)
By day 10	Family	10 days to **respond** and specifically address the issues
	LEA	10 days response and notice, unless prior written notice regarding the issues has already been given to parents
By day 15	LEA	15 days to convene a **resolution session** unless waived by both parties
	Family or LEA	15 days to send **notice of insufficiency** of notice of complaint to Hearing Officer and to the other party
	Hearing Officer	5 days from receipt of Notice of Insufficiency **determine sufficiency** of complaint notice and notify parties in writing
N/A	LEA or Family	**Amendment** of complaint notice may be made any time prior to hearing if the other party consents in writing and has an opportunity for a resolution session or if the hearing officer grants permission for the amendment—if complaint notice is amended, all timelines recommence
	Hearing Officer	May grant request for **amendment** not later than 5 days prior to hearing
At least 5 days before Hearing	Family and LEA	5 business days prior to hearing (not less than), each party must disclose to the other party all **evaluations and recommendations** based on the evaluations that they intend to use at the hearing
Not before day 30	Hearing Officer	30 days from receipt of Notice of Complaint, if LEA has not resolved issues, the **hearing may begin** and applicable timelines for hearing shall commence
By day 65	Hearing Officer	35 days from end of initial 30 day period, hearing must begin, unless time is extended by the Hearing Officer.

QUESTIONS AND ANSWERS ABOUT DUE PROCESS HEARING

1. May the parents strike all names of special education due process hearing officers provided by the public agency?

   Yes. The public agency must then request the Kansas State Department of Education to appoint a special education due process hearing officer.

2. Do the parents have the right to an attorney at the due process hearing at public expense?

   No. However, if the parents are the prevailing party, they may request from the Court that attorney fees be reimbursed by the public agency. The law provides for exceptions and limitations as appropriate.

3. May the parents or the public agency district ask that their request for a special education due process hearing be withdrawn or dismissed?

   Yes. A party that has filed for a special education due process hearing may, subsequently, request the action be dismissed.

4. May the special education due process hearing officer award attorney fees?

   No. Only a Court has the authority to award attorney fees.

5. What if either party disagrees with the decision of the special education due process hearing officer?

   If either party wishes to appeal a decision of the due process hearing officer, following the special education due process hearing, public agency personnel or the parents may appeal to the Kansas State Board of Education (KSBE) by filing notice of appeal to Special Education Services, designee of the Commissioner of the State Department of Education, not later than 30 calendar days after the date of the postmark on the envelope containing the written decision of the hearing officer. The notice of appeal must be mailed to:

   Notice of Appeal
   ATTN: Special Education Services
   Landon State Office Building
   900 SW Jackson Street, Suite 620
   Topeka, Kansas 66612-1212.

   Filing is complete upon receipt of the Notice of Appeal in the office of Special Education Services. Emailed submissions will not be accepted for filing. If an appeal to the KSBE is unsuccessful, either party may pursue further action through a civil proceeding in state or federal district court.

6. What are some alternatives to due process hearings?

   Parents and public agency personnel should always try to resolve differences at the local level. If they wish to use the informal process of mediation, they may contact Special Education Services at the Kansas State Department of Education and request mediation (800-203-9462). An impartial third party is assigned to serve as a facilitator in reaching an agreement at no cost to either party. (See Chapter 10, Mediation.) If the parents or an organization wishes to file a formal complaint alleging the public agency has violated a special education law or regulation, they may do so. (See Chapter 11, Formal Complaint.)

7. When would a formal complaint be filed instead of requesting a due process hearing?

A formal complaint would be considered if the parents or any other person or organization wishes to have their complaint against the public agency investigated. Formal complaints are filed with the Kansas State Department of Education. The complaint must allege a violation of special education law or regulation that occurred not more than one year ago. The Kansas State Department of Education does not have authority to consider complaints regarding other legal requirements that do not allege a violation of special education law or regulation (34 C.F.R. 300.153).

Due process is usually the last resort. Hopefully, the parties have first attempted all other forms of negotiation or mediation in an attempt to resolve their differences before filing for due process.

8. If a parent or the public agency brings in an "expert witness" can they be reimbursed for this expense by a court of law?

The United States Supreme Court case, Arlington Central School Dist. V. Murphy, 126 S. Ct. 2455, 45 IDELR 267 (S.C. 2006), decided that the IDEA attorney's fees provision did not include any provision for the awarding of expert witness fees. Therefore, a court cannot award recovery of expert witness fees in an IDEA case.

CHAPTER 13: SUSPENSION AND EXPULSION OF CHILDREN WITH DISABILITIES FOR DISCIPLINARY VIOLATIONS

(Code of Student Conduct, and Drugs, Weapons, or Serious Bodily Injury Option)

INTRODUCTION

Amendments to the Individuals with Disabilities in Education Act (IDEA 2004) made several changes related to the discipline requirements and most specifically to the procedures for manifestation determinations, stay put, and children committing violations related to weapons, drugs, or serious bodily injury. For each specific situation, the required disciplinary procedures may be different. Therefore, it is extremely important to examine each disciplinary situation as unique, carefully analyzing the behavior subject to discipline, in order to understand the school's responsibilities.

This chapter examines issues related to disciplinary actions for code of conduct violations including the option for violations related to weapons, drugs, serious bodily injury and behavior substantially likely to result in injury to the child or others. Section F specifically addresses violations related to weapons, drugs, and serious bodily injury.

Schools may use customary disciplinary techniques for all children, including those with disabilities. The school's focus should be on prevention; that is, methods used to prevent future occurrences of behavior problems. Schools may use a school wide multi-tiered system of positive behavior interventions and supports (MTSS-PBIS) for all children in the school. For children with disabilities, traditional forms of discipline such, detention, or the restriction of privileges can also be used so long as these forms of discipline are also used with nondisabled children and do not violate the provisions of a child's Individualized Education Program (IEP or the child's right to a free appropriate public education (FAPE).

Most legal problems related to discipline arise when a school proposes to suspend or expel a child with a disability. When the issue is suspension or expulsion, the law has special provisions which sometimes require schools to treat children with disabilities differently than other children. (See Section D below.)

The Kansas special education statutes and regulations contain provisions that parallel federal suspension and expulsion requirements. Other state laws regarding suspension and expulsion which apply to all children are also cited within the chapter. "Procedures for Disciplinary Violations for Code of Student Conduct" in this chapter is a chart that will be helpful in understanding some of the most important federal and state requirements for disciplinary removal procedures. Under Kansas special education statutes and regulations students with giftedness are not covered by the discipline requirements.

This chapter includes a discussion of the following topics:

A. Local School District Responsibilities
B. Code of Conduct Violations
C. Short-Term Removals (Not A Change of Placement)
D. Subsequent Short-Term Removals (Not A Change of Placement)
E. Long-Term Removals (Change of Placement)
F. 45 School Day Interim Alternative Educational Setting (Weapons, Drugs, or Serious Bodily Injury)
G. 45 School Day Interim Alternative Educational Setting (Special Education Expedited Due Process Hearing)
H. Appeals through a Special Education Expedited Due Process Hearing
I. Children Not Yet Eligible for Special Education
J. Reporting A Crime

A. LOCAL SCHOOL DISTRICT RESPONSIBILITIES

School-wide policies and discipline plans help foster a safe and caring child culture. Curricula aimed at teaching children pro-social skills are based on the belief that violent behavior is typically learned through modeling and reinforcement and that these same processes can be used to teach children nonviolent behavior patterns. Most programs teach children to empathize and cooperate with others, to see others' points of view, and to help peers settle differences peacefully.

Research shows that schools with low levels of behavior problems are distinguished from those with high levels by the presence of a positive school climate where nurturing, being inclusive, and a feeling of community are evident. Children who feel valued by at least one adult at school will be less likely to act out in the school environment.

Requirements for imposing disciplinary removals of children with disabilities (not gifted) are found in numerous federal and state laws and regulations. Some of these apply to all children in public schools. It is important for local school districts to examine their current policies to ensure that they comply with all requirements. Additionally, school districts may wish to consult with their attorney to consider what other policies might be needed. It is advisable for school districts to develop clear definitions and inform children and parents of the school district's expectations in terms of behavior and conduct.

IDEA encourages school districts to establish preventive measures and approaches, such as the use of positive behavioral interventions, supports and strategies. School districts are also advised to provide sufficient staff development activities to ensure that both new employees and experienced staff are knowledgeable about federal and state requirements. Both special and general education administrators need to know what to do immediately when serious situations arise.

School districts must carefully consider the personnel involved when disciplinary situations result in a hearing. There are two kinds of hearing officers. The first kind of hearing officer is usually a school administrator, employee, or committee, authorized by the local school board as the school's disciplinary hearing officer (K.S.A. 72-6115(f)). The second kind of hearing officer is a special education due process hearing officer, who addresses any special education issue that arises as a result of an appeal regarding special education actions related to suspension and expulsion (i.e., change of placement, manifestation determination, etc.). The special education due process hearing officer is assigned by the State and is not from the school district. It is important that school districts understand when each kind of hearing officer is required. The terms "school's disciplinary hearing officer" and "special education due process hearing officer" will be used throughout this chapter to differentiate the two types of hearing officers.

The IDEA allows traditional disciplinary methods such as restriction of privileges. School officials may also use in-school or out-of-school suspension so long as it does not constitute a change of placement. The law does not set an absolute limit on the number of cumulative school days needed to constitute a change of placement, but requires a case-by-case examination of specific factors and requires that services be provided after the 10th school day of suspension in a school year.

School districts are required to document certain incidences of suspension and expulsion of all students, including all suspensions and expulsions of students with disabilities, in the Discipline Data Collection in the Kansas Integrated Accountability System (KIAS) web application and submit it to the Kansas State Department of Education annually.

Kansas regulations clarify that children identified as gifted are subject to suspension or expulsion from school the same as a child without a disability. While a child identified as gifted is suspended or expelled

from school, the school is not required to provide special education or any other educational services to the child (K.A.R. 91-40-34(c)).

B. CODE OF CONDUCT VIOLATIONS

When a child with a disability violates a school's code of conduct, that behavior could result in suspension or expulsion. Such removals from school are subject to the disciplinary provisions of special education law. Therefore, school district officials must consider suspension and expulsion for children with disabilities very carefully. The initial questions for administrators to answer are:

INITIAL QUESTIONS FOR ADMINISTRATORS

1. Is the child a child with a disability (not gifted only)?
   - If yes, continue with these questions.
   - If no, could the school be deemed to have knowledge that the child, although not identified, is a child with a disability? See Section G of this chapter.
   - If the child is identified as gifted (and does not have a disability), the school's usual disciplinary policies should be followed, because IDEA disciplinary provisions do not apply to children who do not have a disability.
2. Does the anticipated disciplinary action involve suspension or expulsion?
   - If yes, continue with these questions.
   - If no, this chapter does not apply to your situation.
3. With this suspension, how many cumulative school days will this child have been suspended during the current school year? (It is important to monitor the number of school days of suspension.)
   NOTE: Any part of a school day counts as a full school day.
   - If the number is 10 or less, school officials may suspend the student without educational services, but should be addressing the behavior that results in suspensions. See Section C of this chapter.
   - If this suspension will result in the 11th cumulative school day of suspension, school officials or the IEP team must determine what services are needed. See Section D of this chapter,
   - If this removal results in a pattern of removals that constitutes a change of placement see Section D of this Chapter.
4. Was the behavior subject to discipline a code of conduct violation involving weapons, drugs, serious bodily injury or behavior substantially likely to result in injury to the child or others?
   - If your situation is a code of conduct violation not involving weapons, drugs, serious bodily injury or behavior substantially likely to result in injury to the child or others, see Section C and D of this chapter.
   - If your situation did involve weapons, drugs, serious bodily injury or behavior substantially likely to result in injury to the child or others, also see Section F of this chapter.

If assistance is needed in answering these questions, please consult with your special education director, school attorney, or the Kansas State Department of Education.

Several terms used throughout this chapter are defined as follows:

a. Change in Placement for Disciplinary Reasons

Change in Placement for Disciplinary Reasons (long-term removal) means that school officials or a special education due process hearing officer has ordered any of the following changes in placement of a child with a disability:

1. The child is suspended or expelled from school for more than 10 consecutive school days.
2. The child is subjected to a series of short-term suspensions that constitute a pattern because all of the following have occurred:
    a. they cumulate to more than 10 school days in a school year;
    b. each incident of misconduct involves substantially the same behavior; and
    c. because of other factors such as the length of each suspension, the total amount of time the child is suspended, and the proximity of the suspensions.
3. The child is placed in an interim alternative educational setting. (K.A.R. 91-40-33(a)(1))

b. School Day

School day means any day, including a partial day, that all children, including children with disabilities, are in attendance at school for instructional purposes (K.A.R. 91-40-1(eee); 34 C.F.R. 300.11(c)). Given this definition, if a child is suspended for part of a school day, the partial day counts as a full day for purposes of determining if a change of placement has occurred, or if educational services are required during the period of suspension.

c. School Official

School official means (1) A regular education administrator; (2) the director of special education or the director's designee or designees; and (3) a special education teacher of the child with a disability (K.A.R. 91-40-33(b)).

d. Short-Term Suspension

Short-term suspension means removal for a short term not exceeding 10 school days (or a series of removals not constituting a change in placement) (K.S.A. 72-6115(a)).

e. Controlled Substance

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)). (K.S.A. 72-3433(g)(1); 34 C.F.R. 300.530(i)(1)).

f. Illegal Drug

Illegal drug means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law NOTE: Alcohol and tobacco are not included in this definition. (K.S.A. 72-3433(g)(2), 34 C.F.R. 300.530(i)(2)).

g. Weapon

Weapon means any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length (K.S.A. 72-3433(g)(3)).

h. Serious Bodily Injury

Serious bodily injury means a bodily injury that involves one or more of the following: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or

impairment of the function of a bodily member, organ, or mental faculty (K.S.A. 72-3433(g)(h) and Federal Register, Aug. 14, 2006, p. 46723).

i. Bodily Injury

Bodily injury includes: a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ, or mental faculty; any other injury to the body, no matter how temporary (18 U.S.C. 1365(h)(4)).

Additionally, in this chapter, the term "*dangerous behavior*" may be used interchangeably with the phrase "*substantially likely to result in injury to the child or others*".

PROCEDURES FOR DISCIPLINARY VIOLATIONS FOR CODE OF STUDENT CONDUCT INCLUDING WEAPONS, DRUGS, SERIOUS BODILY INJURY

LENGTH OF REMOVAL	SERVICES REQUIRED	IEP MEETING REQUIRED	SERVICES DETERMINED BY WHOM	IF CHALLENGED, STAY PUT
1. Short term removals, not exceeding 10 consecutive school days, and not cumulating to more than 10 school days. 34 C.F.R. 300.530(b)	None 34 C.F.R.300.530(d)(3)	No	N/A	N/A
2. All short term removals which include or are subsequent to the 11th cumulative day (but do not constitute a change of placement)	Beginning on the 11th cumulative day, services necessary to enable the child to: 1) Participate in the general education curriculum (although in another setting); and 2) Progress toward meeting the goals in the IEP 34 C.F.R.300.530(d)(4)	No. No manifestation determination is required. 34 C.F.R. 300.530(e) – Also see row 3 if long term suspension/expulsion is anticipated.	School officials, (General. Ed. Administrator, Director. of Sp. Ed. and the child's Sp. Ed teacher). 34 C.F.R. 300.530(d)(4). K.A.R. 91-40-33(b) and 91-40-36(a)	N/A
3. 1) A removal for more than 10 consecutive days, or 2) another removal that cumulates to more than 10 school days, and shows a pattern of removal constituting a change of placement. 34 C.F.R. 300.536(a)(1)(2) and 300.530(c)	Same as above except that services begin immediately. 34 C.F.R.300.530(d)(5)	Yes, to: 1) Make a manifestation determination (Notice of action and Parent Rights immediately, and meeting within 10 school days. 34 C.F.R. 300.530(e), (h); and 2) If the behavior is a manifestation of the disability, (a) develop a FBA and BIP, or review existing BIP, and make any changes needed to address behavior and (b) return student to IEP placement unless parent and school agree otherwise. 34 C.F.R. 300.530(f)	IEP Team determines services and place where the services will be provided. 34 C.F.R. 300.530(d)(5) and 300.531 Parental consent is not required for this change in placement. K.A.R. 91-40-27(a)(3)	Disciplinary Placement. 34 C.F.R. 300.533
4. 45 school day alternative educational setting (IAES) (weapons, drugs, serious bodily injury)	Same as above, but services begin immediately. 34 C.F.R. 300.350(d)(1)	Yes to: 1) Make manifestation determination; 2) Determine IAES setting and services, regardless of manifestation determination; 3) Determine if FBA and BIP are appropriate; 4) Provide notice of action and parents' rights to parents. 34 C.F.R. 300.530(d)(1), (d)(5) and 300.531	Same as directly above	Disciplinary placement 34 C.F.R. 300.533
5. 45 school day alternative educational setting (IAES) ordered by H.O. (dangerous behavior) 34 C.F.R. 300.532(a),(b)	Same as above.	Yes to: 1) Propose IAES services (K.A.R. 91-40-36(d)(l)), and 2) Determine if FBA and BIP are appropriate.	Services determined by the hearing officer. K.A.R. 91-40-36(d)(2)	Disciplinary placement 34 C.F.R. 300.533

The chart on the previous page illustrates the most important requirements for the legal course of action for school personnel to follow when removing a student and the disciplinary reasons. The chart may be used for disciplinary removals involving code of conduct violations and for violations relating to weapons, drugs, serious bodily injury or behavior substantially likely to result in injury to the child or others.

C. SHORT TERM REMOVALS (NOT A CHANGE OF PLACEMENT)
(Row 1 on Discipline Chart)

School officials may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. The school need not provide educational services during the first 10 days of removal in a school year, unless it provides educational services to a child without disabilities who is similarly removed.

When proposing a short-term suspension for a child with a disability, school officials must also consider the provisions of the Kansas Pupil Suspension and Expulsion Act, K.S.A. 72-6114 et seq. This State law sets forth due process requirements that apply to all children in implementing a suspension. This law requires (1) providing notice, and (2) the opportunity for an informal hearing before a child is removed from school.

K.S.A. 72-3433. Disciplinary change of placement.

(a) School personnel may order a change in the placement of a child with a disability:

(1) To an appropriate interim alternative educational setting or other setting, or the short-term suspension of the child...

K.S.A. 72-6115. Duration of suspension or expulsion; notice; hearings, opportunity afforded, waiver, time, who may conduct.

(a) A suspension may be for a short term not exceeding 10 school days, or for an extended term not exceeding 90 school days. An expulsion may be for a term not exceeding 186 school days. If a suspension or expulsion is for a term exceeding the number of school days remaining in the school year, any remaining part of the term of the suspension or expulsion may be applied to the succeeding school year.

(f) A formal hearing on a suspension or expulsion may be conducted by any person or committee of persons authorized by the board of education to conduct the hearing.

D. SUBSEQUENT SHORT-TERM REMOVALS (NOT A CHANGE IN PLACEMENT)
(Row 2 on Discipline Chart)

When a child with a disability has more than a single suspension in a school year, school officials should carefully monitor the cumulative number of school days of suspension and make decisions about the effect of imposing additional short-term suspensions. Note that partial days count as full school days. Suspensions should be carefully monitored so that school personnel will be aware of whether another removal will constitute a change of placement. School officials should be addressing the issues of the suspensions prior to reaching the 11th day. By addressing accumulated days of suspension early, the school may be able to avoid the need for a suspension that would result in a disciplinary change in placement.

Additionally, if the child has not had a functional behavioral assessment and the district has not implemented a behavioral intervention plan for the child, school officials may (but are not required to) determine that the child needs a functional behavioral assessment to address the behavior that resulted in the suspension and to develop a behavioral intervention plan if the assessment suggests such a plan is necessary for the child (See Functional Behavior Assessment information at the KSDE's

Technical Assistance System Network (TASN) website, https://ksdetasn.org/resources/1809 and http://moodle.tasnatbs.org.)

Schools must provide FAPE to all children with disabilities, including those who are suspended or expelled from school. Nevertheless, children with disabilities like students without disabilities may be given short-term suspensions. As stated previously, the school is not required to provide educational services to children with disabilities during the first 10 cumulative days of suspension in a school year. However, when the total number of school days of suspension in a school year reaches 11, and the current removal is for not more than 10 consecutive school days and is not a change of placement, the school must begin providing educational services. School officials (keep in mind the definition of *school officials*) must determine the extent to which special education and related services must be provided to the child beginning on the 11th school day of suspension. This is known as the "11th day rule." Beginning on the 11th school day of suspension in a school year, and each school day of suspension thereafter, special education and related services needed for the child must be provided to enable the child to:

- participate in the general education curriculum, although in another setting; and
- to progress toward meeting the goals set out in the child's IEP.

The comments to the federal regulations clarify that the services to be provided to the child on the 11th day do not have to "replicate every aspect of the services that a child would receive if in his or her normal classroom." (Federal Register, Aug. 14, 2006, p. 46716) "The [IDEA] modified the concept of FAPE in these circumstances to encompass those services necessary to enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child's IEP. An LEA is not required to provide children suspended for more than 10 school days in a school year for disciplinary reasons, exactly the same settings as they were receiving prior to the imposition of discipline." It is important, however, that the child continue to progress toward meeting graduation requirements.

If the short-term suspension includes the 11th cumulative school day of suspension in a school year, necessary services identified by the school officials must be provided. The 11th day rule applies, whether or not the 11th school day of suspension results in a pattern of removal that constitutes a change of placement. If school officials order two or more short-term suspensions of a child with a disability during a school year, these suspensions are not a change in placement for disciplinary reasons if the suspensions do not constitute a pattern of removals. To determine if a change of placement has occurred, school officials must consider whether the series of suspensions constitutes a pattern of removals. Keep in mind the definition of school officials here. *School official* means (1) A regular education administrator; (2) the director of special education or the director's designee or designees; and (3) a special education teacher of the child with a disability. This determination is subject to appeal by the parent through an expedited due process proceeding. (K.A.R. 91-40-33(a)).

When a series of suspensions/removals total more than 10 school days in a school year, school officials should determine whether a pattern of removals has developed by considering:

- Whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals
- Other factors such as:
    - The length of each removal;
    - The total amount of time the child has been removed;
    - The proximity of the removals to one another; and

- Any other unique circumstances on a case-by-case basis.

Federal regulations (34 C.F.R. 300.530(b)(1), (2), (d)(1), (3), (4)) address these requirements, as do Kansas regulations:

K.A.R. 91-40-33. Change in placement for disciplinary reasons; definitions.

As used in K.A.R. 91-40-33 through 91-40-38, the following terms shall have the meanings specified in this regulation:

(a) (1) The phrase "change in placement for disciplinary reasons" means that school personnel or a special education due process hearing officer has ordered any of the following changes in placement of a child with a disability:

(A) The child is suspended or expelled from school for more than 10 consecutive school days.

(B) The child is subjected to a series of short-term suspensions constituting a pattern that meets all of the following criteria:

(i) The suspensions cumulate to more than 10 school days in a school year,

(ii) Each incident of misconduct resulting in a suspension involved substantially the same behavior.

(iii) The length of each suspension, the total amount of time the child is suspended, and the proximity of the suspensions to one another indicate a pattern.

(C) The child is placed in an interim alternative educational setting.

(2) (A) If school personnel order two or more short-term suspensions of a child with a disability during a school year, these suspensions shall not constitute a change in placement for disciplinary reasons if the suspensions do not constitute a pattern as described in paragraph (a)(1)(B)

(B) School officials shall have the authority to make the determination of whether a series of short-term suspensions of a child with a disability constitutes a change in placement for disciplinary reasons. This determination shall be subject to review through due process proceedings.

(b) "School officials" means the following:

(1) A regular education administrator;

(2) the director of special education or the director's designee or designees; and

(3) a special education teacher of the child with a disability.

(c) "Short-term suspension" means a suspension as authorized by K.S.A. 72-6115(a) and amendments thereto.

K.A.R. 91-40-35. Services required during suspensions or interim alternative educational placements.

(a) An agency shall not be required to provide special education or related services to a child with a disability who has been suspended from school for 10 or fewer school days during any school year, if the agency does not provide educational services to nondisabled children who are suspended from school.

(b) (1) A child with a disability shall be entitled to continue to receive special education and related services if the child is suspended from school under either of the following circumstances:

(A) For more than 10 cumulative school days in any school year, but with these suspensions not resulting in a change of placement for disciplinary reasons; or

(B) for more than 10 consecutive school days in any school year for behavior that has been determined not to be a manifestation of the child's disability.

(2) If a child with a disability is suspended from school under either of the circumstances stated in paragraph (b)(1), the agency that suspended the child shall provide, commencing on the 11th day of suspension and during any subsequent day or days of suspension, special education and related services that are needed to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP.

(c) If a child with a disability is placed in an interim alternative educational setting in accordance with K.S.A. 72-3433 and amendments thereto, the agency shall provide special education and related services to the child that meet the following requirements:

(1) The services provided shall enable the child to continue both of the following:

(A) To progress in the general curriculum, although in another setting; and

(B) to receive those services and modifications, including those described in the child's IEP, that will enable the child to meet the goals set out in the IEP.

(2) The services shall include services and modifications that address the child's misbehavior and that are designed to prevent the misbehavior from recurring.

E. LONG-TERM REMOVALS (CHANGE OF PLACEMENT)

(Row 3 on Discipline Chart)

To determine if a change of placement has occurred, school officials must consider whether the series of short-term removals (less than 11 consecutive school days) constitutes a pattern of removals. School officials may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements, is appropriate for a child with a disability who violates a code of student conduct. (34 C.F.R. 300.530(a))

A removal of a child with a disability is a change of placement when:

- the removal is for more than 10 consecutive school days; or
- the removal is one of a series of short-term removals that constitutes a pattern of removals.

  Note that partial days count as full school days. In each case, determining if a pattern has occurred will rest on the unique facts.

There are specific steps to follow when school officials consider either a long-term suspension for more than 10 consecutive school days, an expulsion, or another short-term suspension that cumulates to more than 10 school days and shows a pattern constituting a change of placement (34 C.F.R. 300.530(d)(5),(e)).

- On the date the decision is made to make a removal that constitutes a change of placement of a child with a disability the school must notify the parents of that decision, and provide the parents with a copy of the Parent Rights notice (K.S.A. 72-3433(d)(1).
- On the 11th cumulative school day of removal resulting from disciplinary action, the school must begin providing appropriate special education and related services. Note that the determination of services needed as a result of a disciplinary change of placement is not made by the school officials as in the previous situations. Instead, the IEP team decides on these services and where they will be provided.
- The school, the parent and relevant members of the child's IEP team (as determined by the parent and the school) must determine if the child's violation of the school's code of student conduct was a manifestation of his or her disability.
- The school must provide parents with prior written notice of meeting before convening meetings regarding the manifestation determination and the services to be provided during disciplinary removals (K.A.R. 91-40-25). However, the school is required to give only 24 hours prior (written) notice of a meeting to the child's parents (K.A.R. 91-40-38(d)).
- When a disciplinary change of placement occurs, the IEP team, including the parent, determines the special education and related services to be provided during the removal. However, parental consent for the disciplinary change in placement is not required. (K.A.R. 91-40-27(a)(3))

1. Manifestation Determination

As soon as practical, but not later than 10 school days after the date on which the decision is made to change the placement of a child with a disability because of a violation of a student code of conduct, the representative of the school, the parent and other relevant members of the child's IEP team, as determined by the parent and the school, must meet to review:

- all of the relevant information in the child's file,
- the child's IEP,
- any teacher observations, and
- any relevant information provided by the parent.

Based on its review of all the relevant information, the group must determine if the conduct in question was:

a. caused by, or had a direct and substantial relationship to the child's disability; or
b. the direct result of the school's failure to implement the child's IEP. (K.S.A. 72-3433(d)(2),(e)(1); 34 C.F.R.300.530(e)(1)).

If it is determined by the group that the conduct of a child was a result of either "a" or" "b" above, then the conduct must be determined to be a manifestation of the child's disability. (See Manifestation

Determination Form at: https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/additional-forms.)

If the school, the parent and other relevant members of the child's IEP Team determine that the student's behavior was the direct result of the school's failure to implement the student's IEP, the school district must take immediate action to remedy those deficiencies.

2. Determination Behavior WAS a Manifestation of the Disability

If the school, the parent and other relevant members of the IEP team determine that the child's behavior was a manifestation of the disability, the IEP team must:

a. Return the child to the placement from which the child was removed, unless the parent and the school agree to a change of placement; and
b. Either:
    i. Conduct a functional behavioral assessment, unless the school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    ii. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior. (See Functional Behavior Assessment information at the KSDE's Technical Assistance System Network (TASN) website, https://ksdetasn.org/resources/1809 and http://moodle.tasnatbs.org.)

If it is determined that the child's behavior is a manifestation of the child's disability the child cannot be subject to a long-term removal for the behavior. However, the school and the parents could agree to another setting. Also, even when the behavior is a manifestation of the child's disability the school could request a special education due process hearing officer to order a 45 school-day interim alternative educational setting if the school district can show that maintaining the current placement is substantially likely to result in injury to the child or others (See Letter to Huefner, OSEP, October 3, 2006 (47 IDELR 228) and 34 C.F.R. 300.532 https://www.ksde.gov/policy-and-funding/special-education/special-education-law/statutes-and-regulations).

Requirements for the manifestation determination review, as stated above, are found in Federal regulations (34 C.F.R. 300.530(e)) and State statute (K.S.A. 72-3433(e)).

K.S.A. 72-3433. Change in placement of child with disability to alternative setting as disciplinary action for certain behavior; duties of IEP team and hearing officer; behavioral assessment and intervention plan; determination and review procedure.

(d) If a disciplinary action is contemplated as described in subsection (a)(2) or (a)(3):
(1) Not later than the date on which the decision to take that action is made, the agency shall notify the parents of that decision and of all procedural safeguards afforded under section 18, and amendments thereto; and
(2) Within 10 school days of the date on which the decision to take disciplinary action is made, a review shall be conducted to determine the relationship between the child's disability and the conduct that is subject to disciplinary action.

(e) (1) The review described in subsection (d)(2) shall be conducted by the agency, the parent, and relevant members of the child's IEP team as determined by the parent and the agency. In carrying out the review, that group shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent.
(2) Based upon its review of all the relevant information, the group shall determine if the conduct in question:
(A) Was caused by, or had a direct and substantial relationship to, the child's disability; or
(B) Was the direct result of the agency's failure to implement the child's IEP.
(3) If it is determined that the conduct of the student is described in either paragraph (2)(A) or (2)(B) of this subsection, then the conduct shall be determined to be a manifestation of the child's disability.

(f) If it is determined that the conduct of a child was a manifestation of the child's disability, the IEP team shall:
(1) Conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the agency has not conducted such an assessment prior to the behavior that resulted in a change in placement;
(2) If the child already had a behavioral intervention plan, review and modify it, as necessary, to address the behavior; and
(3) Except as provided in paragraph (a)(2), return the child to the placement from which the child was removed, unless the parent and the agency agree to a change of placement as part of the modification of the behavioral intervention plan.

K.A.R. 91-40-38. Manifestation determination; appeal.

(a) If an agency proposes to make a change in educational placement for disciplinary reasons, the agency shall implement the provisions of K.S.A. 72-3433 and amendments thereto.

(b) An agency may conduct the manifestation determination at the same IEP team meeting that is held in regard to developing or reviewing a behavioral intervention plan under K.S.A. 72-3433 and amendments thereto.

(c) If, in making a manifestation determination, deficiencies are identified in the child's IEP or placement or in the provision of services to the child, the IEP team shall make any changes it deems appropriate, and the agency shall implement those changes.

(d) An agency shall convene meetings under this regulation as expeditiously as possible and shall be required to give only 24 hours' prior notice of a meeting to the child's parent.

(e) (1) If a parent files a due process complaint concerning the manifestation determination, a resolution meeting between the parties shall be held within seven days of the filing of the complaint, unless the parties agree, in writing, to waive the resolution meeting or to engage in mediation.

(2) If the matter has not been resolved to the satisfaction of both parties within 15 days of the filing of the due process complaint, the due process hearing may proceed.

3. Determination Behavior was NOT a Manifestation of the Disability

If the IEP team determines the behavior was NOT a manifestation of the child's disability, the district may proceed with suspension and expulsion proceedings under K.S.A. 72-6114 et seq. Using these proceedings, school officials may order a change in placement of a child with a disability to an appropriate interim alternative educational placement for not more than 186 school days if it is determined that:

a. the behavior of the child violated the code of student conduct;
b. the behavior was not a manifestation of the child's disability; and
c. if the relevant disciplinary procedures applicable to children without disabilities are applied in the same manner and the discipline is for the same duration as would be applied to a child without disabilities (K.S.A. 72-3433(a)(3)).

Parental consent for this disciplinary change in placement, and for the services to be provided in that placement, is not required; however, a child with a disability must continue to receive educational services during the period of a long-term disciplinary removal. The services that must be provided during the long-term removal are the services that the IEP team determines are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. If the IEP team determines it is appropriate, the child must receive a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur (K.S.A. 72-3433(a)(3); 34 C.F.R. 300.530(d)(1)) (See Functional Behavior Assessment information at the KSDE's Technical Assistance System Network (TASN) website, https://ksdetasn.org/resources/1809 and http://moodle.tasnatbs.org.)

If the violation of the code of student conduct is not a manifestation of the child's disability, the district may transmit the special education and disciplinary records of the child to the school's disciplinary hearing officer for consideration in making the final determination in the disciplinary action. [Note: 34 C.F.R. 300.535 only requires transmittal of special education records to appropriate authorities when a crime has been reported.] Even if the school's disciplinary hearing officer determines that the child should be suspended or expelled, the district must continue to provide a free appropriate public education (FAPE) for the child. Federal regulations (34 C.F.R. 300.530(d)(1)) address this topic, as does state statute:

K.S.A. 72-3433. Change in placement of child with disability to alternative setting as disciplinary action for certain behavior; duties of IEP team and hearing officer; behavioral assessment and intervention plan; determination and review procedure.

(a) School personnel may order a change in the placement of a child with a disability:

(3) To an appropriate interim alternative educational placement for not more than 186 school days, if it is determined that the conduct of the child violated the code of student conduct and was not a manifestation of the child's disability, if the relevant disciplinary procedures

applicable to children without disabilities are applied in the same manner and the discipline is for the same duration as would be applied to a child without disabilities, except that services must continue to be provided to the child during the period of disciplinary action.

(b) Any child with a disability whose placement is changed under subsection (a)(2) or (a)(3) shall:

(1) Continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the child's IEP; and

(2) Receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the inappropriate behavior so that it does not recur.

(c) The alternative educational setting described in subsections (a)(2) and (a)(3) shall be determined by the IEP team.

F. 45 SCHOOL DAY INTERIM ALTERNATIVE EDUCATIONAL SETTING (WEAPONS, DRUGS, OR SERIOUS BODILY INJURY)

(Option For Behavior Related To Weapons, Drugs, Serious Bodily Injury) (Row 4 Of Discipline Chart)

School officials may remove a child with a disability to an interim alternative educational setting (IAES) up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the school district or the State Board of Education;
b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the school district or the State Board of Education (tobacco and alcohol are not illegal drugs under this definition); or
c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or the state. (K.S.A. 72-3433(a)(3); 34 C.F.R. 300.530(g))

When a child has been removed to an interim alternative educational setting, the IEP team must determine what special education and related services are needed and where the services will be provided to enable the child to:

- participate in the general education curriculum, although in another setting; and
- to progress toward meeting their goals set out in the child's IEP.

Although removal to a 45 school day interim alternative educational setting pursuant to K.S.A. 72-3433(a)(2) is allowed without regard to whether the behavior is determined to be a manifestation of the child's disability, the manifestation determination procedure is still required. If the behavior is determined to be a manifestation of the child's disability or the IEP team determines appropriate, a functional behavioral assessment will be conducted and the IEP team will review and revise any existing behavioral intervention plan or develop one with services and modifications that are designed to address the behavior violation so that it does not recur. (See Functional Behavior Assessment information on the KSDE's Technical Assistance System Network (TASN) website, https://ksdetasn.org/resources/1809 and http://moodle.tasnatbs.org.)

When a child commits a violation related to **weapons**, **drugs**, or **serious bodily injury**, the school officials may initially suspend the child for up to 10 school days without educational services (if the suspension includes the 11th cumulative day of suspension in the school year, educational services should begin on the 11th day). When the IEP team meets, it can determine the location of the 45 school day interim alternative educational setting and the services to be provided to the child.

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a **violation of a code of student conduct (including weapons, drugs or serious bodily injury)** the school **must notify the parents** of that decision, and provide the parents the **Parent Rights Notice** (K.S.A. 72-3433(d)(1).

K.S.A. 72-3433. Change in placement of child with disability to alternative setting as disciplinary action for certain behavior; duties of IEP team and hearing officer; behavioral assessment and intervention plan; determination and review procedure.

(a) School personnel may order a change in the placement of a child with a disability:

(2) to an appropriate interim alternative educational setting for not more than 45 school days if:

(A) The child carries or possesses a weapon to, or at, school, on school premises, or to, or at, a school function under the jurisdiction of an agency;

(B) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an agency; or

(C) the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an agency;

(b) Any child with a disability whose placement is changed under subsection (a)(2) or (a)(3) shall:

(1) Continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the child's IEP; and

(2) receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the inappropriate behavior so that it does not recur.

(c) The alternative educational setting described in subsections (a)(2) and (a)(3) shall be determined by the IEP team.

(g) For the purposes of this section, the following definitions apply:

(1) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in 21 U.S.C. 812(c);

(2) "illegal drug" means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under any federal or state law;

(3) "weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length; and

(4) "serious bodily injury" means an injury as described in subsection (h)(3) of section 1365 of title 18 of the United States Code.

G. 45 SCHOOL DAY INTERIM ALTERNATIVE EDUCATIONAL SETTING (SPECIAL EDUCATION EXPEDITED DUE PROCESS HEARING)

(Option Only When returning the Child to the setting specified in the child's IEP would be substantially likely to result in injury to the child or others.)

(Row 5 of Discipline Chart)

If the school believes that returning the child to the setting specified in the child's IEP would be substantially likely to result in injury to the child or others, the school may request an expedited due process hearing through KSDE to request a special education due process hearing officer to order a 45 school day interim alternative educational setting. (See 34 C.F.R. 300.532(b)(3) and Letter to Huefner, OSEP, October 3, 2006 (47 IDELR 228) https://www.ksde.gov/policy-and-funding/special-education/special-education-law/statutes-and-regulations.) The burden of proof is on the school to justify a removal be ordered by the special education due process hearing officer.

H. APPEALS THROUGH A SPECIAL EDUCATION EXPEDITED DUE PROCESS HEARING

If the child's parents disagree with any decision regarding the disciplinary placement or the results of the manifestation determination, the parents may appeal the decision by requesting an expedited due process hearing. Additionally, if the school believes that maintaining the child's current placement is substantially likely to result in injury to the child or others, the school may request an expedited due process hearing. (K.S.A. 72-3434(a); 34 C.F.R. 300.532(a)) (See Letter to Huefner, OSEP, October 3, 2006 (47 IDELR 228) https://www.ksde.gov/policy-and-funding/special-education/special-education-law/statutes-and-regulations.)

A parental request for a due process hearing does not prevent the school district from seeking judicial relief such as a temporary restraining order or an injunction, when necessary.

1. Resolution Meeting During Expedited Due Process Hearing

A resolution meeting must occur within seven days of the school receiving notice of a parent's request for an expedited due process hearing, unless the parents and school agree in writing to waive the resolution meeting or agree to use the mediation process. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the school's receipt of the due process complaint (K.A.R. 91-40-38(e)).

K.S.A. 72-3434. Same; parental disagreement with determination; due process hearing and review.

(a) The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under K.S.A. 72-991a, and amendments thereto, or an agency that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or to others, may request a hearing.

(b) A hearing officer appointed under this act shall hear, and make the determination regarding, an appeal requested under subsection (a).

(c) In making the determination under subsection (b), the hearing officer may order a change in placement of the child. In such situations, the hearing officer may:

(1) Uphold the manifestation determination;

(2) uphold the interim alternative educational placement of the child;

(3) return the child to the placement from which the child was removed; or

(4) order a change in placement of the child to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

K.A.R. 91-40-38. Manifestation determination; appeal.

(e) (1) If a parent files a due process complaint concerning the manifestation determination, a resolution meeting between the parties shall be held within seven days of the filing of the complaint, unless the parties agree, in writing, to waive the resolution meeting or to engage in mediation.

(2) If the matter has not been resolved to the satisfaction of both parties within 15 days of the filing of the due process complaint, the due process hearing may proceed.

2. Placement During Expedited Due Process Hearing

When the parent or the school appeal a disciplinary placement or the result of the manifestation determination, the child remains in the interim alternative educational setting determined by the IEP team pending the decision of the hearing officer or until the expiration of the time of the disciplinary removal, whichever occurs first, unless the parent and the school agree otherwise. Federal regulations (34 C.F.R. 300.533) address this issue, as does the state statute:

K.S.A. 72-3435. Same; placement of child during pendency of due process proceedings.

(a) If a parent or agency requests a hearing under section 18, and amendments thereto, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five-school-day period described in subsection (a)(2) of section 17, and amendments thereto, whichever occurs first, unless the parent and the agency agree otherwise.

(b) The agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing. To expedite the hearing, the agency, within three school days of receiving the request for a hearing, shall request the state board to appoint a hearing officer to conduct the hearing.

3. Expedited Due Process Hearings

Expedited due process hearings occur in two instances under the disciplinary provisions:

a. When a parent challenges the manifestation determination or any placement decision in a disciplinary context; or
b. When a school district asks a special education due process hearing officer to order an interim alternative educational setting because a child's behavior is substantially likely to result in injury to the child or to others.

State statutes (K.S.A. 72-3434 and 72-3435) and regulations (K.A.R. 91-40-30) define the procedures to follow when an expedited hearing is requested.

- Within 3 days of receiving the request for a hearing the school district must notify KSDE of the need for a special education due process hearing officer and provide the parents' names and addresses. The local list is not provided to the parents before asking KSDE to appoint a special education due process hearing officer.
- KSDE appoints a special education due process hearing officer as soon as possible.
- A resolution meeting must occur within seven days of the school receiving notice of a parent's due process complaint, unless the parents and school agree in writing to waive the resolution meeting or agree to use the mediation process.
- The parties must exchange exhibits, witness lists, and other required information at least 2 business days (rather than 5 business days) before the hearing.
- The special education due process hearing officer must conduct the expedited due process hearing within 20 school days of receipt the request for an expedited due process hearing and must render a decision in the matter within 10 school days after the close of the hearing.
- The special education due process hearing officer cannot grant extensions of time in an expedited hearing.

For forms that may be used to request an expedited due process hearing, see Request for Expedited Due Process Hearing for District; and Request for Expedited Due Process Hearing for Parent at https://www.ksde.gov/policy-and-funding/special-education/special-education-law/dispute-resolution.

4. Authority of the Special Education Due Process Hearing Officer

In making a determination in an expedited due process hearing requested by the parent or the school, the special education due process hearing officer may:

a. Return the child with a disability to the placement from which the child was removed if the special education due process hearing officer determines that the removal exceeded the disciplinary authority of school personnel or that the child's behavior was a manifestation of the child's disability; or
b. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for up to 45 school days if the special education due process hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. The school may also request that a special education due process hearing officer order additional 45 school day interim alternative educational settings if school personnel believe that returning the child to the placement specified in the child's IEP would be substantially likely to result in injury to the child or to others.

K.S.A.72-3435. Same; placement of child during pendency of due process proceedings.
(a) If a parent or agency requests a hearing under section 18, and amendments thereto, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five-school-day period described in subsection (a)(2) of section 17, and amendments thereto, whichever occurs first, unless the parent and the agency agree otherwise.
(b) The agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing. To expedite the hearing, the agency, within three school days of receiving the request for a hearing, shall request the state board to appoint a hearing officer to conduct the hearing.
K.S.A. 72-3434. Same; parental disagreement with determination; due process hearing and review.
(a) The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under K.S.A. 72-3433, and amendments thereto, or an agency that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or to others, may request a hearing.
(b) A hearing officer appointed under this act shall hear, and make the determination regarding, an appeal requested under subsection (a).
(c) In making the determination under subsection (b), the hearing officer may order a change in placement of the child. In such situations, the hearing officer may:
(1) Uphold the manifestation determination;
(2) uphold the interim alternative educational placement of the child;
(3) return the child to the placement from which the child was removed; or

(4) order a change in placement of the child to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

K.A.R. 91-40-30. Expedited due process hearings.

(a) If an expedited due process hearing is requested under the provisions of K.S.A. 72-3434 or 72-3435 and amendments thereto, the agency responsible for providing the hearing shall immediately notify the state board of the request and the parent's name and address.

(b) Upon being notified of a request for an expedited due process hearing, the state board shall appoint, from its list of qualified hearing officers, a due process hearing officer and shall notify the parties of the appointment.

(c) Each of the parties to an expedited due process hearing shall have the rights afforded to them under K.S.A. 72-3416 and amendments thereto, except that either party shall have the right to prohibit the presentation of any evidence at the expedited hearing that has not been disclosed by the opposite party at least two business days before the hearing.

(d) (1) Each hearing officer shall conduct the expedited due process hearing within 20 school days of the agency's receipt of the parent's request for the expedited due process hearing and shall render a decision in the matter within 10 school days after the close of the hearing.

(2) A hearing officer in an expedited due process hearing shall not grant any extensions or otherwise fail to comply with the requirement of paragraph (1) of this subsection.

(e) Either party to an expedited due process hearing may appeal the decision in accordance with K.S.A. 72-3418 and amendments thereto.

I. CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION

The discipline requirements address the issue of suspending or expelling children not yet identified as a child with a disability but whose parents allege the school district had knowledge that the child was a child with a disability before disciplinary action was proposed. The IDEA affords protections to children not determined eligible only if a school district had knowledge that a child was a child with a disability before the behavior which precipitated the disciplinary action occurred.

A school district is deemed to have such knowledge if before the behavior occurred:

- the parents of the child have expressed concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services;
- the parents of the child have requested an evaluation of the child; or
- the teacher of the child or other school personnel expressed specific concern about a pattern of behavior demonstrated by the child directly to the special education director or other supervisory school personnel.

Although teachers and other school personnel may casually express concerns about the behavior or performance of children in their classrooms, such expression of concern do not create knowledge on the part of the school district. Schools also are not deemed to have knowledge of a disability merely because a child received services under other programs designed to provide compensatory or remedial services or because the child had limited English proficiency.

Also, a school will not be considered to have knowledge of a disability if:

- the parent of the child
    - has not allowed an evaluation of the child;
    - has refused special education and related services; or
- the child has been evaluated and determined not to be a child with a disability.

If it is determined that the school did not have knowledge that the child is a child with a disability, the school may proceed with its proposed disciplinary action, including suspension or expulsion without educational services.

If the child's parents request an evaluation of the child during the period of suspension or expulsion or other disciplinary action, the evaluation must be conducted in an expedited manner. No timeline is

specified with regard to an expedited evaluation. However, in this context, the term "expedited" suggests the evaluation should be concluded in a shorter time frame than a normal evaluation.

Pending the results of the evaluation, the child remains in the disciplinary setting determined by school authorities (that may be the out-of-school suspension or expulsion). The school is not required to put disciplinary proceedings on hold until the evaluation is completed. If the child is subsequently determined to be a child with a disability, based on the evaluation and review of information supplied by the parents, the school must provide the child with all of the protections of the IDEA, including the provision of special education and related services during the suspension. If the child is determined to not be a child with a disability, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.

These provisions are found in federal regulations (34 C.F.R. 300.534) and state statute (K.S.A. 72-3436):

K.S.A. 72-3436. School district knowledge that child is child with disability prior to determination, when deemed; subjection of child to disciplinary action, when; evaluation and placement of child.

School district knowledge that child is child with disability prior to determination, when deemed; subjection of child to disciplinary action, when; evaluation and placement of child.

(a) A child who has not been determined to be eligible for special education and related services under this act and who has engaged in behavior that violated any rule or code of conduct of the school district may assert any of the protections provided for in this act if the school district had knowledge, as determined in accordance with this section, that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) A school district shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

(1) The parent of the child has expressed concern, in writing, to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child, that the child is in need of special education and related services;

(2) the parent of the child previously has requested an evaluation of the child; or

(3) the teacher of the child, or other personnel of the school district, previously has expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of such school district or to other supervisory personnel of the district.

(c) A school district shall not be deemed to have knowledge that a child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services under this law, or the child has been evaluated but it was determined that the child was not a child with a disability.

(d) (1) Subject to provision (2) of this subsection, if a school district does not have knowledge that a child is a child with a disability prior to taking disciplinary action against the child, the child may be subjected to the same disciplinary action as is applied to children without disabilities who engage in comparable behaviors.

(2) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary action described by this act, an evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the school district shall provide special education and related services in accordance with the provisions of this act, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities, which may be long-term suspension or expulsion from school.

J. REPORTING A CRIME

School districts are permitted to report a crime that a child with a disability may have committed to appropriate law enforcement authorities. However, under the Family Educational Rights and Privacy Act (FERPA), the district must ask for parent consent to transmit a child's special education records to the authorities. Or, if ordered by a judge or by a subpoena, the district must transmit the records. Otherwise, records are not transmitted in accordance with 34 C.F.R. 300.535. This regulation makes it clear the school can transmit records to appropriate law enforcement and judicial authorities only if FERPA will allow the disclosure. (34 C.F.R. 300.535(b)(2)).

FERPA always allows disclosure if parents consent to the disclosure. FERPA exceptions to the parent consent requirement may allow for disclosure in other circumstances:

- Child records may be disclosed in compliance with a lawfully issued subpoena. However, parents must be notified in writing that the records have been subpoenaed before they are forwarded, unless the court has ordered that the existence of the subpoena or the contents of the subpoena not be disclosed.
- Child records may be disclosed in emergency situations where the disclosure is necessary to protect the health or safety of the child or others.
- Child records may be disclosed under limited circumstances pursuant to State laws concerning the juvenile justice system.

When records are provided to law enforcement or judicial authorities, the disclosure must be on the condition that the record will not be further disclosed without the written consent of the child's parents, or the student if the student is 18 or older.

Although it is easy for a school district to determine to whom the crime should be reported, it is less clear to who copies of special education and disciplinary records should be forwarded. Parent consent to release the records to certain individuals or a subpoena for the records will eliminate the confusion, and should ensure the appropriate parties receive the records. Unless the authority to release the record under FERPA is clear, schools should not forward child records to any law enforcement officer who comes into contact with the child. Federal regulations of IDEA 2004 addressing this issue are found at 34 C.F.R. 300.535. Additionally, Kansas has a state statute, K.S.A. 72-6143, which requires that schools adopt a policy of reporting misdemeanors and felonies that happen at school to law enforcement. FERPA does not prohibit school personnel from describing personal observations to law enforcement personnel.

K.S.A. 72-3437. Crimes committed by child with disability, reports to law enforcement and judicial authorities; transmittal of special education and disciplinary records.

(a)Nothing in this act shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent state or local law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal, state, or local law to crimes committed by a child with a disability.

(b) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

K.S.A. 72-6143. SCHOOL SAFETY AND SECURITY ACT. Information regarding identity of specified pupils, disclosure requirements; criminal acts, reports to law enforcement agencies and state board of education; school safety and security policies, availability; civil liability, immunity.

(a) If a school employee has information that a pupil is a pupil to whom the provisions of this subsection apply, the school employee shall report such information and identify the pupil to the superintendent of schools. The superintendent of schools shall investigate the matter and, upon determining that the identified pupil is a pupil to whom the provisions of this subsection apply, shall provide the reported information and identify the pupil to all school employees who are directly involved or likely to be directly involved in teaching or providing other school related services to the pupil. The provisions of this subsection apply to:

(1) Any pupil who has been expelled for the reason provided by subsection (c) of K.S.A. 72-6114, and amendments thereto, for conduct which endangers the safety of others;

(2) any pupil who has been expelled for the reason provided by subsection (d) of K.S.A. 72-6114, and amendments thereto;

(3) any pupil who has been expelled under a policy adopted pursuant to K.S.A. 72-6132, and amendments thereto;

(4) any pupil who has been adjudged to be a juvenile offender and whose offense, if committed by an adult, would constitute a felony under the laws of Kansas or the state where the offense was committed, except any pupil adjudicated as a juvenile offender for a felony theft offense involving no direct threat to human life; and

(5) any pupil who has been tried and convicted as an adult of any felony, except any pupil convicted of a felony theft crime involving no direct threat to human life.

A school employee and the superintendent of schools shall not be required to report information concerning a pupil specified in this subsection if the expulsion, adjudication as a juvenile offender or conviction of a felony occurred more than 365 days prior to the school employee's report to the superintendent of schools.

(b) Each board of education shall adopt a policy that includes:

(1) A requirement that an immediate report be made to the appropriate state or local law enforcement agency by or on behalf of any school employee who knows or has reason to believe that an act has been committed at school, on school property, or at a school supervised activity and that the act involved conduct which constitutes the commission of a felony or misdemeanor or which involves the possession, use or disposal of explosives, firearms or other weapons; and

(2) the procedures for making such a report.

(c) School employees shall not be subject to the provisions of subsection (b) of K.S.A. 72-6144 and amendments thereto if:

(1) They follow the procedures from a policy adopted pursuant to the provisions of subsection (b); or
(2) their board of education fails to adopt such policy.

(d) Each board of education shall annually compile and report to the state board of education at least the following information relating to school safety and security: The types and frequency of criminal acts that are required to be reported pursuant to the provisions of subsection (b), disaggregated by occurrences at school, on school property and at school supervised activities. The report shall be incorporated into and become part of the current report required under the quality performance accreditation system.

(e) Each board of education shall make available to pupils and their parents, to school employees and, upon request, to others, district policies and reports concerning school safety and security, except that the provisions of this subsection shall not apply to reports made by a superintendent of schools and school employees pursuant to subsection (a).

(f) Nothing in this section shall be construed or operate in any manner so as to prevent any school employee from reporting criminal acts to school officials and to appropriate state and local law enforcement agencies.

(g) The state board of education shall extract the information relating to school safety and security from the quality performance accreditation report and transmit the information to the governor, the legislature, the attorney general, the secretary of health and environment, the secretary of social and rehabilitation services and the commissioner of juvenile justice.

(h) No board of education, member of any such board, superintendent of schools or school employee shall be liable for damages in a civil action resulting from a person's good faith acts or omissions in complying with the requirements or provisions of the Kansas school safety and security act.

QUESTIONS AND ANSWERS ABOUT SUSPENSION AND EXPULSION OF CHILDREN WITH DISABILITIES FOR DISCIPLINARY VIOLATIONS

1. Does in-school suspension count as a day of suspension toward the 11th day rule?

Whether school days of in-school suspension count as school days of suspension for determining if a change of placement has occurred depends on the nature of the in-school suspension environment. Many schools already use in-school suspension for code of conduct violations. Because children frequently are unsupervised and undirected by school personnel if placed on out-of-school suspension, many school districts prefer to use in-school suspension, at least for first-time offenders or less serious offenses. Comments following the Federal regulations indicate that school districts have authority to utilize in-school suspension as a disciplinary tool (Federal Register, August 6, 2006, p. 46715).

Additionally, a school day of in-school suspension should not count as a school day of suspension for services or change of placement purposes if, during the in-school suspension, the child is afforded an opportunity to:

- Continue to appropriately progress in the general curriculum;
- Continue to receive the services specified on his or her IEP; and
- Continue to participate with children without disabilities to the extent they would have in their current placement.

The assumption is that school districts may use in-school suspension for children with disabilities just as they would for children without disabilities. The issue is really whether the school day(s) count toward accumulating the 11th school day of suspension, which would require the beginning of educational services, or toward the 10 consecutive school days or toward a pattern of removals that would result in a change of placement. The comments in the federal regulations indicate that for children with disabilities, if the in-school suspension approximates the current placement in the areas outlined above, it does not count toward the 10 school days needed for a change of placement or provision of services. On the other hand, if in-school suspension is a place where children are held without opportunities to progress in the general curriculum, receive IEP services, and participate with children without disabilities to the same extent they would have in the current placement, the days do count as school days of suspension for change of placement and provision of services purposes.

2. Does the 10-day written notice requirement for an IEP meeting apply to IEP meetings conducted to consider disciplinary matters?

   The school is required to give only 24 hours prior notice of the IEP team meeting to the parents when a student receives a long-term suspension, an expulsion, a short-term suspension that includes the 11th school day of suspension in a school year, or is placed in a 45-day alternative educational setting, and the purpose of the IEP meeting is to develop a functional behavioral assessment or behavior intervention plan (91-40-37(c)), or to determine the special education services needed by the student (91-40-36(d)), or to conduct a manifestation determination (91-40-38(d)).

3. May a student with a disability be suspended from the bus?

   Yes, children with disabilities may be suspended from using public school transportation even though they are not suspended from school. However, bus suspension may affect the district's requirement to provide FAPE. If special education services are needed for the child to receive FAPE and the child needs transportation to receive special education services, transportation would be needed and should be addressed by the IEP Team. Guidance to school districts to determine if school days for bus suspension count as a suspension from school is as follows:

   - The school is always required to provide FAPE. If a child with a disability cannot get to school to benefit from special education, it is likely that the school is required to continue to provide transportation in some manner.
   - If transportation is specified as a related service on the IEP, school days of suspension from bus transportation would count in determining if a change of placement occurs and in provision of services unless the school provides transportation some other way.
   - If transportation is NOT required as a related service under the IEP, school days of suspension from the bus ordinarily should NOT count as school days of suspension for change of placement and provision of services purposes. In such cases, the child's parents have the same obligation to get the child to and from school as a child without disabilities who has been suspended from the bus (unless the parents cannot provide the needed transportation). However, because the FAPE requirement is always present, if bus transportation is not included on the IEP, the comments suggest a suspension from transportation privileges may indicate the IEP team should consider whether that behavior on the bus should be addressed within the IEP or a behavioral intervention plan for the child. (Federal Register, August 14, 2006, p. 46715.)

4. Do the discipline provisions of IDEA 2004 extend to children who are gifted and receiving special education services according to the Kansas statute for special education?

   No, IDEA 2004 discipline provisions only apply to children with disabilities.

5. Do the discipline provisions of IDEA 2004 extend to children who are in the process of being identified as eligible for special education services?

   Yes. Federal regulations for IDEA 2004 state that if a school had knowledge that the child is a child with a disability, the child is covered under these provisions. A school is deemed to have knowledge if, before the behavior that precipitated the disciplinary action occurred, a teacher or other personnel have expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or to other supervisory personnel, or if the parent of the child previously requested an evaluation, or if the parent expressed concern in writing to an

administrator or teacher of the child that the child needs special education. Therefore, it is very important that screening records be maintained on children under 5 years of age in the child's cumulative folder. Likewise, for children over age 5, records from the general education intervention process should be maintained in the student's cumulative folder. Such data will provide documentation that if there was a suspected disability at some time in the past, the school made the determination whether or not the child should be referred for an initial evaluation to determine eligibility. Therefore, it is important for schools to maintain records on children as such data could be important should a disciplinary proceeding occur later.

6. Are parents entitled to be notified when their child is suspended or expelled for behavior that is subject to these discipline provisions?

   Yes. If contemplating a suspension or an expulsion of a child with a disability, school districts must follow the requirements of K.S.A. 72-6115. For long-term suspensions or expulsions, the school district must also provide parents the required notice, under K.S.A. 72-3433(d), of the school's decision to make a disciplinary change of placement as well as a copy of the Parent Rights document (34 C.F.R. 300.523(a)(1)).

7. What steps must be completed by the end of the 10th school day for a student to be suspended for a long term, or expelled from school, for behavior not involving weapons, drugs, or serious bodily injury?

   In addition to the two notice requirements discussed in Question #6, the school must conduct a manifestation determination. K.S.A. 72-3433(d)(2) requires a manifestation determination within 10 school days from the decision to impose a long-term suspension or an expulsion. School personnel may not put a long-term suspension or expulsion of a child with a disability into effect until a manifestation determination has been completed (K.S.A. 72-6115).

8. Many high schools have a point system for behavioral infractions, with a certain number of points leading to a suspension or other disciplinary actions. The principal has knowledge about a student's total points. Does this constitute the school's having knowledge of a potential disability?

   Not necessarily. A student who is frequently violating the school's code of conduct is not necessarily a child with a disability. Such a child should be referred to the building's general education intervention (GEI), Multi-Tiered System of Supports, or other problem-solving team, which would provide a method of addressing the needs of a student who is experiencing behavior problems in school. The problem-solving team may use general education interventions and then make a determination if other evaluations or a referral should be made, as appropriate.

9. Who determines the interim alternative educational setting?

   It depends on the behavior and the situation in which the determination is being made. The school can determine the interim alternative educational setting for a short-term removal for 10 consecutive school days or less, or for a short-term removal that results in more than 10 cumulative days of suspension but does not constitute a change in placement. When the child is being removed for more than 10 school days and the behavior is not a manifestation of the child's disability, the IEP team will determine the interim alternative educational setting.

   For behavior relating to drugs, weapons, or serious bodily injury the decision regarding IF a student is ordered to an interim alternative educational setting is made by designated school officials. However, the decision of WHERE that setting will be and what services will be provided is made by

the child's IEP Team (K.S.A. 72-3433(c); 34 C.F.R. 300.531). For behavior substantially likely to result in injury to the child or others, the decision regarding an appropriate interim alternative educational setting is made by a special education due process hearing officer (34 C.F.R. 300.532(b)(2)(ii)).

10. The law is specific in defining a pocket knife with a blade of more than 2-1/2 inches in length as being a weapon. What about a scalpel, X-ACTO knife, or box cutter?

    These items could very well be considered a weapon under the law, which defines a weapon, in part, as any instrument or material that is used for, or is readily capable of, causing death or serious bodily injury. The exception for a knife having a blade of less than 2-1/2 inches in length applies only to "pocket" knives (K.S.A. 78-6115(a)(3)(C)).

11. May a child be placed in an interim alternative educational setting more than one time each school year?

    Yes, however, a school district cannot order a second interim alternative educational setting for the same incident of behavior. A child could be placed in a short term interim alternative educational setting several times if they are not more than 10 consecutive days or if they do not constitute a change in placement. If a child brings a weapon to school, the school officials could impose one 45 school day interim alternative educational setting, and if the school believes returning the child to his placement specified in the child's IEP at the end of the 45 school day period is substantially likely to result in injury to the child or others, the school district could ask a special education due process hearing officer, in an expedited due process hearing, to order an additional 45 school day the interim alternative educational setting.

12. If a child without a disability has been removed for disciplinary reasons, and during the disciplinary period the child was referred for an evaluation, evaluated, and found to be eligible, would the days of discipline prior to eligibility count toward the legal limitations regarding suspension of a child with a disability?

    No.

13. If a child with a disability is sent home for part of a day due to misbehavior is it considered a suspension?

    Yes. Any time a child is removed from school as a disciplinary action without educational services this would be considered a suspension. Any part of a day is considered a whole day of suspension.

14. If a child with a disability has a behavior intervention plan (BIP) that calls for a removal from school, is that considered a suspension?

    IEP teams should take caution when including a removal from school as part of a BIP. If a child is removed from school without educational services this would be counted as a day of suspension.

15. If the school has a school wide behavior plan for all students, and a child with a disability reaches the point where he is suspended, what behavior does the team consider during a manifestation determination?

    The team must consider all behaviors which led to the suspension.

16. With regard to a manifestation determination, what is meant by conduct that has a "direct and substantial" relationship to a student's disability?

    One way that a student's behavior is determined to be a manifestation of the student's disability is when relevant members of the student's IEP team determine that the behavior in question was

caused by, or had a "direct and substantial" relationship to the child's disability. The phrase "direct and substantial" has not been specifically defined. The only guidance to what is meant by the phrase "direct and substantial" is a statement in the comments to the federal regulations indicating that a behavior should not be determined to be a manifestation of a student's disability if the relationship of that behavior to the child's disability was merely "an attenuated association, such as low self-esteem." Federal Register, August 14, 2006, pg. 46720.

With so little guidance regarding this question, it is useful to examine the plain meaning of the words themselves. Webster's dictionary defines the term "direct," as the term appears to be used in the context of a manifestation determination, as "proceeding in a straight line or by the shortest course; straight; not oblique; proceeding in an unbroken line of descent." The term "substantial" is defined as "of ample or considerable amount, quantity, size, etc." See, Webster's College Dictionary, Random House (Second Edition 1999). Accordingly, to have both a direct and substantial relationship to a student's disability, the student's behavior must be linked straight to the student's disability without the necessity of examining outside influences or effects and the link of the behavior to the disability must be one of ample or considerable proportion. This is a subjective standard and reasonable minds on the team may disagree. When that happens, the school representative on the team must make the final decision. A parent has a right to challenge the decision of a manifestation team through an expedited due process hearing.

17. Is removal under the 45 School Day Interim Alternative Educational Setting the only option a school district may consider when the student's code of conduct violation involves behavior related to weapons, drugs, or serious bodily injury?

    No. If the school seeks to remove the student for more than 45 school days and the manifestation determination review finds that the child's behavior was not a manifestation of the child's disability, then the district may move forward with suspension and expulsion proceedings and order a removal to an IAES of not more than 186 school days pursuant to K.S.A. 72-3433(a)(3). Removal to a 45 school day IAES pursuant to K.S.A. 72-3433(a)(3) is allowed without regard to whether the behavior is determined to be a manifestation of the child's disability.

18. Is a manifestation determination review always required when a student reaches the 11th cumulative day of suspensions in a school year?

    No. A manifestation determination review is only required in two instances: (1) the suspension is for more than 10 consecutive school days (including placement in an interim alternative educational setting for possession of weapons or drugs or for infliction of serious bodily injury); or (2) the suspension is for less than 10 consecutive school days, but constitutes a pattern of removals that result in a change in placement. A pattern of removals that results in a change of placement occurs when all of the following are present: (1) the removals in a school year cumulate to more than 10 school days; (2) each incident of misconduct involves substantially the same behavior; and (3) there are other factors present that indicate a pattern of removals, such as the length of each suspension, the total amount of time the child is suspended and the proximity of the suspensions to one another. Accordingly, short-term suspensions beyond the 11th cumulative day of suspension may continue to be imposed without a manifestation determination as long as all of the components of a pattern of removals are not present. However, educational services, although in another setting, are required for all suspensions beyond the 11th cumulative day.

CHAPTER 14: CHILDREN IN PRIVATE AND PAROCHIAL SCHOOLS

INTRODUCTION

Federal and state statutes and regulations recognize that children with exceptionalities may be receiving their education in private elementary and secondary school settings for different reasons. In different situations, school districts have different obligations. A school's obligation to provide special education services or pay for services provided to children in private schools depends on whether:

- The child with a disability is placed in the private school by the public school as a means of providing special education and related services;
- The child with an exceptionality (including gifted) is enrolled in a private school by his or her parents because the provision of a free appropriate public education (FAPE) is at issue; or
- The child with an exceptionality (including gifted) is voluntarily enrolled in a private school by his or her parents to receive general education.

Kansas defines a private school as: "an organization which regularly offers education at the elementary or secondary level, which is exempt from federal income taxation under section 501 of the federal internal revenue code of 1954, as amended, which conforms to the civil rights act of 1964, and attendance at which satisfies any compulsory school attendance laws of this state" (K.S.A. 72-3461(c)). The definition of private schools includes parochial schools.

Additionally, Kansas defines elementary and secondary schools as follows: (1) "elementary school" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades kindergarten through nine. (2) "Secondary School" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades nine through 12. (K.S.A. 72-3404(x) and (y))

These definitions do not include preschool programs or home schooling. Therefore, children ages 3 and 4, or 5 year old children not in kindergarten are not included in the private school requirements. Charter schools in Kansas are considered part of local school districts and are not private schools. In addition, there are specific requirements for children identified as gifted who are enrolled by their parents in private schools.

This chapter addresses the following topics:

A. Children Placed in Private Schools by the Public School
B. Children Enrolled by Their Parents in Private Schools Where FAPE is at Issue
C. Child Find for Children Voluntarily Enrolled in Private Schools by Their Parents
D. State Requirements for Children Voluntarily Enrolled in Private Schools by Their Parents
E. Federal Requirements for Children Voluntarily Enrolled in Private Schools by Their Parents
F. Mediation and Due Process Rights of Private School Children

A. CHILDREN PLACED IN PRIVATE SCHOOLS BY THE PUBLIC SCHOOL

Both Federal and state statutes and regulations allow a school district to place a child with a disability in a private school in order to meet its obligation to provide FAPE to the child. Kansas law clarifies that the use of private schools to meet the requirement for FAPE does not apply to children who are identified

as gifted, unless they also have a disability that requires placement in a private school in order to receive FAPE. In most situations, however, schools are able to offer services to meet children's needs within their districts. Only when the IEP team determines that the district is not able to provide the services locally would they arrange for services in a private school. Sometimes a private school setting is the least restrictive environment where a child can achieve educational benefit. In such cases, the IEP team may determine that the most appropriate educational placement is the private school. (See Chapter 6, Educational Placement and Least Restrictive Environment.)

When the public school determines, through the IEP process, that a child with a disability should be placed in a private school or facility, the child's educational program, including special education and related services, must:

- be provided according to an appropriately developed IEP and at no cost to the parents;
- ensure the special education program is provided by staff who meet KSDE personnel standards;
- ensure that the private school provides services consistent with IDEA requirements and other pertinent Federal and state statutes and regulations (e.g., in accordance with IEP requirements); and
- ensure that the child has all rights of a child with a disability who is served by the public school.

Before the public school places a child with a disability in a private school or facility, the public school must initiate and conduct a meeting to develop an IEP for the child. The public school must ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the public school must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

After the child with a disability enters the private school or facility, the public school responsible for providing FAPE to the child may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility. If the private school or facility initiates and conducts the IEP meeting, the private school must notify the public school and the public school must ensure that the parents and a public school representative participate in any decision about the child's IEP. In addition, the public school and the parent must agree to any proposed changes in the IEP before those changes are implemented.

K.S.A. 72-3410. Duties of boards of education in meeting requirements of law; responsibilities of state board of education and other state agencies; interagency agreements; dispute resolution.

(a) (2) Each board shall provide a free appropriate public education for exceptional children enrolled in the school district and for children with disabilities who are placed in a private school or facility by the school district as the means of carrying out the board's obligation to provide a free appropriate public education under this act and for children with disabilities who have been suspended for an extended term or expelled from school.

K.S.A. 72-3411. Methods of compliance with requirements of act; powers and duties of boards of education.

(a) Each board, in order to comply with the requirements of this act shall have the authority to:

(5) Contract with any private nonprofit corporation or any public or private institution, within or outside the state, which has proper special education or related services for exceptional children. Whenever an exceptional child is educated by a private nonprofit corporation or a public or private institution as provided under this paragraph, such child shall be considered a pupil of the school district contracting for such education to the same extent as other pupils of such school district for the purpose of determining entitlements and participation in all state, federal and other financial assistance or payments to such school district.

K.A.R. 91-40-22. Agency placement in private schools or facilities.

(a) If an agency places a child with a disability in a private school or facility as a means of providing FAPE to the child, the agency shall remain responsible for ensuring that the child is provided the special education and related services specified in the child's IEP and is afforded all the rights granted by the law.

(b) (1) Before an agency places a child with a disability in a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(c) (1) After a child with a disability enters a private school or facility, the agency responsible for providing FAPE to the child may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility.
(2) If the private school or facility initiates and conducts these meetings, the agency shall ensure that the parent and an agency representative are involved in any decision about the child's IEP and shall agree to any proposed changes in the IEP before those changes are implemented.

B. CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

If the parents of a child with an exceptionality (including gifted), who previously was receiving special education and related services from the public school, enroll their child, without the consent of or referral by the public school, in a private preschool or a private elementary or secondary school because the parents believe the child was not receiving FAPE from the public school, a court or special education due process hearing officer may require the agency to reimburse the parents for the cost of that enrollment only if the hearing officer makes both of the following findings:

1. The public school did not make FAPE available to the child in a timely manner before the private school enrollment; and
2. The private school placement made by the parents is appropriate to meet the needs of the child.

A court or special education due process hearing officer may find that a private school placement by the parents is appropriate for a child although that placement does not meet State standards that apply to special education and related services which are required to be provided by the public school.

A court or special education due process hearing officer may deny or reduce any reimbursement for private school placement by the parents, if the court or special education due process hearing officer makes any of the following findings:

1. At the most recent IEP meeting that the parents attended before making the private school placement, the parents did not inform the IEP team that the parents were rejecting the services or placements proposed by the public school to provide FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense; or, in the alternative
   At least 10 business days, including any holidays that occur on a business day, before removal of the child from public school, the parents did not give written notification to the public school that they were rejecting the services or placements proposed by the public school to provide FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense;
2. Before the parents' removal of the child from public school, the public school provided Prior Written Notice to the parents of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or
3. The actions of the parents in removing the child from public school were unreasonable. NOTE: Federal regulations require a judicial finding of unreasonableness, see 34 C.F.R. 300.148(d)(3).

A court or special education due process hearing officer must not deny or reduce reimbursement of the cost of a private school placement for failure to provide the notification to the public school, if the court or special education due process hearing officer makes any of the following findings:

- Compliance with the notification requirement would likely have resulted in physical harm to the child.

- The public school prevented the parents from providing the required notification.
- The public school did not inform the parents of their requirement to notify the school of their intent to remove their child.

A court or special education due process hearing officer, at its discretion, may allow a parent full or partial reimbursement of the costs of a private school placement even though the parent failed to provide the notice required, if the court or hearing officer finds either of the following:

1. the parent cannot read or write in English, or
2. compliance with the prior notice requirement would likely have resulted in serious emotional harm to the child.

The public school must be given an opportunity to offer FAPE to the child before tuition reimbursement can become an issue. However, the special education due process hearing officers and courts retain their authority under prior case law to award appropriate relief when a district fails to provide a FAPE for a child who has not yet received special education and related services.

Federal regulations (34 C.F.R. 300.148) address this issue, as do state regulations:

K.A.R. 91-40-41. Private school placement by parents to obtain FAPE.

(a) (1) If the parent of an exceptional child who previously was receiving special education and related services from an agency enroll the child, without the consent of or referral by the agency, in a private preschool or a private elementary or secondary school because the parent believes the child was not receiving FAPE from the agency, a court or special education due process hearing officer may require the agency to reimburse the parent for the cost of that enrollment only if the court or due process hearing officer makes both of the following findings:

(A) The agency did not make FAPE available to the child in a timely manner before the private school enrollment.

(B) The private school placement made by the parent is appropriate to meet the needs of the child.

(2) A court or due process hearing officer may find that a private school placement by a parent is appropriate for a child although that placement does not meet state standards that apply to special education and related services that are required to be provided by public agencies.

(b) Subject to subsection (c), a court or due process hearing officer may deny or reduce any reimbursement for private school placement by a parent, if the court or due process hearing officer makes any of the following findings:

(1) (A) At the most recent IEP meeting that the parent attended before making the private school placement, the parent did not inform the IEP team that the parent was rejecting the services or placements proposed by the agency to provide FAPE to the child, including a statement of concerns and the intent to enroll the child in a private school at public expense; or

(B) at least 10 business days, including any holidays that occur on a business day, before removal of the child from public school, the parent did not give written notice to the public agency of the information specified in paragraph (1) (A) of this subsection.

(2) Before the parent's removal of the child from public school, the agency notified the parent, in accordance with the requirements of K.S.A. 72-988 and amendments thereto, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parent did not make the child available for the evaluation.

(3) The actions of the parent in removing the child from public school were unreasonable.

(c) Notwithstanding the notice requirements in subsection (b), a court or due process hearing officer shall not deny or reduce reimbursement of the cost of a private school placement for failure to provide the notice, if the court or due process hearing officer makes any of the following findings:

(1) Compliance with the prior notice requirement would likely have resulted in physical harm to the child.

(2) The agency prevented the parent from providing the required prior notice.

(3) The parent had not been given notice by the agency of the prior notice requirement prescribed in subsection (b).

(d) At the discretion of a court or due process hearing officer, the court or hearing officer may allow a parent full or partial reimbursement of the cost of a private school placement even though the parent failed to provide the notice required in subsection (b), if the court or hearing officer finds either of the following:

(1) The parent is not literate and cannot write in English.

(2) Compliance with the prior notice requirement would likely have resulted in serious emotional harm to the child.

C. CHILD FIND FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

When children are enrolled by their parents in private schools, the public school has continuing responsibility for child find and must locate, evaluate, and identify children with exceptionalities

(including gifted) in private schools just as they do in the public schools. Federal and state laws require the district where the private school is located to conduct child find activities to locate children with disabilities attending private elementary and secondary schools that are located in the jurisdiction of the school district. This includes children with disabilities who reside in another state but attend a private school that is located within the boundaries of a public school district. Kansas child find requirements also require the district of residence to evaluate children with exceptionalities, including children attending a private school (K.A.R. 91-40-7(a)(1). Accordingly, parents of a child with an exceptionality who is attending a private school may request a special education evaluation from either the district where the private school is located or the district where the student resides. The district of residence is also required to conduct child find activities for children who may be identified as gifted and for children ages 3 and 4, or 5 year old children not in kindergarten. However, Kansas schools do not have a responsibility to locate, identify, evaluate or serve gifted children who reside in another state.

In meeting the child find obligation with regard to children with disabilities attending private schools within the school district boundaries, the public schools must consult with appropriate representatives of private schools and parents of private school children with disabilities to determine how best to conduct child find activities. The methods chosen to locate, identify, and evaluate must be comparable to methods used for children in public schools. Additionally, they will determine how parents, teachers, and private school officials will be informed of the process. (See Chapter 2, General Education Interventions and Screening.)

The activities undertaken to carry out the child find responsibility must meet the following criteria:

- Be similar to the activities undertaken for exceptional children enrolled in the public schools;
- Provide for the equitable participation of private school children;
- Provide for an accurate count of children with disabilities enrolled in the private schools; and
- Be completed in a time period comparable to the time for these activities in the public schools.

If the parents of a child who is voluntarily placed in a private school does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school may not use the consent override procedures of mediation or due process, and the school is not required to consider the child as eligible for special education services (K.A.R. 91-40-27(f)(2).

If a child is enrolled, or is going to enroll in a private school that is not located in the parent's district of residence, parental consent must be obtained before any personally identifiable information about the child is released between public school officials in the district where the private school is located and public school officials in the district of the parent's residence (34 C.F.R. 300.622(a)(3)).

K.S.A. 72-3410. Duties of boards of education in meeting requirements of law; responsibilities of state board of education and other state agencies; interagency agreements; dispute resolution.

(a) (1) Each board shall adopt and implement procedures to assure that all exceptional children residing in the school district, including homeless children, foster care children and children enrolled in private schools, who are in need of special education and related services, are identified, located and evaluated.

K.A.R. 91-40-42. Child find and count of children with disabilities enrolled in private schools; determination of children to receive services.

(a) Child find activities.

(1) Each board, in accordance with K.A.R. 91-40-7, shall locate, identify, and evaluate all children with disabilities who are enrolled in private elementary or secondary schools located in the school district, including children with disabilities who reside in another state.

(2) The activities undertaken to carry out this responsibility shall meet the following criteria:

(A) Be similar to the activities undertaken for exceptional children enrolled in the public schools;

(B) provide for the equitable participation of private school children;

(C) provide for an accurate count of children with disabilities enrolled in the private schools; and

(D) be completed in a time period comparable to the time for these activities in the public schools.

(3) Each board, in accordance with K.A.R. 91-40-42a, shall consult with representatives of private schools and parents of private school children concerning the activities described in paragraph (1) of this subsection.

(4) The cost of carrying out the child find activities required under this regulation, including individual evaluations of private school children, shall not be considered in determining if an agency has met its obligation to provide a proportionate share of its federal funds for private school children.

(b) Child count activities.

(1) Each board shall annually conduct a count of the number of children with disabilities who are enrolled in private schools located in the school district. This count, at the discretion of each board, shall be conducted on either December 1 or the last Friday of October of each school year.

(2) Each board, in accordance with K.A.R. 91-40-42a, shall consult with representatives of private schools and parents of private school children concerning the annual count required in paragraph (1) of this subsection.

(3) Each board shall use the child count required by this subsection to calculate the amount of funds provided to the school district under the federal law that the school district must allocate for the purpose of providing special education and related services to private school children with disabilities in the next succeeding school year.

(c) Each board, based upon the results of its child find activities under subsection (a), shall consult with representatives of private schools and parents of children with disabilities enrolled in private schools and then determine which private school children will be provided special education and related services by the board.

D. STATE LAW REQUIREMENTS FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

The state law relating to children voluntary enrolled in private schools by their parents significantly adds to federal requirements. State law requires that when a parent requests services, the school district of residence will make available all services and will provide any or all of the special education and related services that are identified by an IEP team for any child with an exceptionality, to which the parent provides consent. Therefore, the parent of a child attending a private school would go to the district of residence to request services.

Children whose parents request the district of residence to provide services identified by the IEP team would receive services through an IEP. The IEP is to be developed as it would be for any other child. Parents of children attending a private school and receiving services in a public school in accordance with an IEP have all the due process rights under state statutes and regulations and must have a free appropriate public education made available to them.

State law allows for the district of residence to expend state and local funds to provide services to children with exceptionalities voluntarily enrolled by their parents in private schools under the following conditions:

- In consultation with the parent or guardian of the child and with officials of the private school, the public school district determines the site for services.
- If services are provided at the public school site, the services must be provided on an equal basis with the provision of such services for children in public schools.
- If services are provided at the public school, the public school district must provide transportation to and from the public school, but it is not required to provide transportation outside the boundaries of the resident school district.
- If the public school provides the services at the private school, amounts expended for providing the services need not exceed the average cost of providing the same services to children with that same exceptionality in the public school. (K.S.A. 72-3462)

For children whose parents request any of the services identified by the IEP team and the services are provided at the private school, the school district of residence is not required to spend more than the "average cost" of providing the same service in public school. In determining this cost, the public school must look to similar services in the public school for children with the same exceptionality. The average amount expended may or may not allow for the provision of services at a level that would provide a free appropriate public education. For services provided at a private school, state law simply requires the

expenditure of this level of funding, however, and does not require the provision of FAPE. When calculating the average cost, the public school should not include the child in private school in the numbers of children currently being served.

Federal law requires transportation to be provided if the child needs it to participate in special education and related services (34 C.F.. 300.139(b)). State law requires the school to provide transportation to and from the public school if the services are provided at the public school site. However, the district of residence does not have to provide transportation outside of the district boundaries. Therefore, an offer of services within the district meets the district's obligation of making FAPE available. The district of residence could contract for the services with the district where the private school is located, but is not required to do this.

Parents may refuse to accept some or all of the offered services. In this case, the public school should have documentation that the parents refused to accept some or all of the services recommended by the IEP team. One way this could be documented is by providing Prior Written Notice for all of the services identified on the IEP and the parent would consent to only the services they are accepting. For example, the parents may refuse services because they are unable to provide transportation for the child to the services in the district of residence.

State law allows for services to be provided at either the public or private school, but forbids the provision of special education and related services "in connection with religious courses, devotional exercises, religious training, or any other religious activity." The site where services are provided is determined by the school district in consultation with the parents and private school officials.

Under State law, children identified as gifted who are enrolled in a private elementary or secondary school outside of their district of residence are also to be provided special education services by the district in which the child resides. The resident district would conduct the child find, do the evaluation, determine eligibility, develop an IEP and offer services in the district of residence. However, the resident district is not required to cross district boundaries to provide special education and related services. Therefore, an offer of services provided in the district would fulfill its requirement to make FAPE available even if the parent refuses the services at that site.

K.S.A. 72-3410. Duties of boards of education in meeting requirements of law; responsibilities of state board of education and other state agencies; interagency agreements; dispute resolution.

(a) (3) Each board shall provide exceptional children who are enrolled by their parents in private schools with special education and related services in accordance with state law and federal law.

K.S.A. 72-3461. Special education services for exceptional children enrolled in private schools; definitions.

(c) "Private, nonprofit elementary or secondary school" means an organization which regularly offers education at the elementary or secondary level, which is exempt from federal income taxation under section 501 of the federal internal revenue code of 1954, as amended, which conforms to the civil rights act of 1964, and attendance at which satisfies any compulsory school attendance laws of this state.

K.S.A. 72-3462. Same; conditions for provision; location; transportation.

Every school district shall provide special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school, whether such school is located within or outside the school district upon request of a parent or guardian of any such child for the provision of such services. No school district shall be required to provide such services outside the school district. Any school district may provide special education services for exceptional children who attend a private, nonprofit elementary or secondary school located within the school district whether or not all such children reside in the school district. Special education services, which are provided under this section for exceptional children who attend a private, nonprofit elementary or secondary school which is located in the school district may be provided in the private, nonprofit elementary or secondary school or in the public schools of the school district. The site for the provision of special education services under this section for an exceptional child shall be determined by the school district in consultation with the parent or guardian of the child and with officials of the private, nonprofit elementary or secondary school. Special education services provided under this section for exceptional children who attend a private, nonprofit elementary or secondary school are subject to the following requirements:

(a) If the services are provided for in the private, nonprofit elementary or secondary school, amounts expended for the provisions of such services shall not be required to exceed the average cost to the school district for the provision of the same services in the public schools of the school district for children within the same category of exceptionality;

(b) If the services are provided for in the public schools of the school district, the services shall be provided on an equal basis with the provision of such services for exceptional children attending the public schools; and
(c) If the services are provided in the public schools of the school district, transportation to and from such public school shall be provided by the school district.

K.S.A. 72-3463. Same; provision in connection with religious activity prohibited.

No special education services shall be provided in connection with religious courses, devotional exercises, religious training, or any other religious activity.

E. FEDERAL REQUIREMENTS FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

Federal law requires that children with disabilities in private schools (K-12) be provided an opportunity for participation in special education services. Federal law makes it clear that a child with a disability in a private school has no individual right to special education or related services. Rather, the public school district where the private school is located must ensure that a proportionate share of federal funding is used to provide services to this population of children. Therefore, under federal law, in almost all cases, the public school district where the private school is located would not be obligated to provide any or all special education and related services to every child with a disability enrolled in a private school located within its boundaries.

This section of the federal and state law requiring the expenditures of a proportionate share of federal funding to provide special education services does not include children identified as gifted. Additionally, because the Kansas definition of a private elementary school does not include the education of children prior to kindergarten, this part of the federal and state statutes and regulations also does not include preschool age children with disabilities enrolled in preschool programs.

1. CONSULTATION REQUIREMENTS

Each school district must annually consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities attending private schools within the school district during the design and development of special education and related services for parentally-placed children and before making decisions regarding the following:

- The child find process, including:
  - How parentally-placed private school children suspected of having a disability can participate equitably; and
  - How parents, teachers, and private school officials will be informed of the process.
- The determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities including the determination of how the proportionate share of those funds was calculated.
- The consultation process among the school district, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
  - The types of services, including direct services and alternate service delivery mechanisms; and

    - How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
    - How and when those decisions will be made; and
- How, if the school district disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

Consultations with appropriate representatives of private schools and parents of private school children with disabilities should occur in a timely manner before decisions are made that affect the ability of children in a private school to participate in services. These representatives of private schools and parents of the private school children with disabilities must have a genuine opportunity to express their views and have meaningful input into the decision-making process.

The process for allocating the proportionate share of funds and provision of special education and related services to parentally placed private school children under federal requirements is described below.

K.A.R. 91-40-42a. Consultation.

(a) Each board shall engage in timely and meaningful consultation with representatives of private schools located in the school district and representatives of parents of children with disabilities enrolled in those private schools before making determinations regarding the following matters:

(1) How the consultation process among the board, private school officials, and representatives of parents of private school children shall be organized and carried out, including how the process will operate throughout the school year to ensure that children with disabilities who are identified throughout the school year can receive the special education and related services that are provided to private school children;

(2) how the child find process will be conducted, including the following:

(A) How children enrolled in private schools who are suspected of having a disability can participate equitably in the child find process; and

(B) how parents, teachers, and private school officials will be informed of the process;

(3) (A) How the determination of the proportionate share of federal funds that will be available to serve private school children will be made, including a review of how the proportionate share of those funds must be calculated under the federal law; and

(B) how special education and related services will be apportioned if the proportionate share of federal funds are insufficient to serve all of the private school children who are designated to receive services; and

(4) (A) How, where, and by whom special education and related services will be provided to private school children, including a discussion of the means by which services will be delivered, including direct services and services through contracts; and

(B)(2) how and when final decisions on these issues will be made by the board.

(b) (1) When a board of a school district believes that it has completed timely and meaningful consultation as required by this regulation, the board shall seek to obtain a written affirmation, signed by representatives of participating private schools, affirming that the consultation did occur.

(2) If representatives of the private schools do not provide the affirmation within 30 days of the date the affirmation is requested, the board shall forward documentation of the consultation to the state department.

(c) (1) A representative of a private school may submit a complaint to the state department alleging that the board of the school district in which the private school is located failed to engage in consultation that was meaningful and timely or did not give due consideration to the views of private school representatives. A copy of the complaint shall also be submitted to the board.

(2) Each complaint submitted by a private school representative shall include a statement of the specific requirement that the board allegedly failed to meet and the facts that support the allegation.

(3) Within 30 days of receiving a complaint, the board shall prepare a reply to the complaint and submit the reply and documentation supporting its position to the state department.

(4) (A) Within 60 days of receiving a complaint, the state department shall issue a determination on whether the complaint is justified and any corrective action that is to be taken.

(B) If the private school representative is dissatisfied with the decision of the state department, the representative may appeal the decision by submitting an appeal to the Secretary of the United States department of education as specified in the federal regulations.

2. CALCULATING THE ALLOCATION OF PROPORTIONATE SHARE OF FUNDS

Federal law describes the minimum amount of funds that must be expended to provide services for children enrolled in private schools by their parents. That amount is calculated by determining the number of children with disabilities who are enrolled in private schools by their parents within the school district compared to the total number of children with disabilities in the district, whether or not they are receiving services. This count must be reported in the application for the Part B federal funds received for children ages 3-21 and 3-5 preschool funds.

To meet federal requirements, a public school district must have an accurate count of the number of children with disabilities voluntarily enrolled by their parents in private schools located within the district. This count includes children attending private schools in the district that are identified as eligible for special education and related services by the public school, whether or not they are receiving any special education services. The public school must consult with appropriate representatives of private schools and representatives of parents of private school children with disabilities in deciding how to conduct the annual count of children with disabilities in private schools. The annual private school count may be different than the annual federal child count of children receiving special education or related services from the public school district or cooperative. The annual private school child count is to be used by the public school district for planning the level of services to be provided to private school children and in determining the proportionate share of funds to be used in the subsequent school year.

If state categorical aid funds or local funds are being used to provide services to children with disabilities who are enrolled in a private school, this expenditure must supplement not supplant the proportionate share amount and meet the requirement of the public school to spend its proportionate share of funds on such children. The cost of carrying out the child find activities, including an evaluation, cannot be included in determining if the district has met its obligation to provide a proportionate share of funds for private school children. If all funds allocated for special education and related services to private school children are not expended during the school year, the funds must be carried over to provide services to children in private schools in the next subsequent school year. (K.A.R. 91-40-42; 34 CFR 300.133).

The Kansas definition of private school only addresses settings for children beginning at kindergarten. Therefore, the proportionate share of funds under the preschool federal allocation would be calculated for five year old children voluntarily enrolled in a private schools K-12.

For complete information on allocation of funds for private schools contact KSDE, Special Education Services at 800-203-9462 and see Appendix B of the Federal Regulations, August 14, 2006.

K.A.R. 91-40-44. Allocation and expenditure of federal funds; reports.

(a) To meet the requirement of K.A.R. 91-40-43(a), each board shall allocate, for expenditure in providing special education and related services to private school children, the amounts specified below.

(1) For private school children aged three through 21, an amount calculated as follows:

(A) Divide the number of private school children aged three through 21 who are enrolled in private schools located in the school district by the total number of children with disabilities aged three through 21 in the school district; and

(B) multiply the quotient determined under paragraph (1) (A) times the total amount of federal funds received by the school district under section 1411 (f) of the federal law; and

(2) for private school children aged three through five, an amount calculated as follows:

(A) Divide the number of private school children aged three through five who are enrolled in private elementary schools located in the school district by the total number of children with disabilities aged three through five in the school district; and

(B) multiply the quotient determined under paragraph (2) (A) times the total amount of federal funds received by the school district under section 1419 (g) of the federal law.

(b) In making the calculations under subsection (a), each board shall include all private school children whether or not those children are actually receiving special education or related services from the school district.

(c) (1) Each board, to the extent necessary, shall expend the amounts calculated under subsection (a) of this regulation to provide private school children with those special education and related services that have been determined will be provided to those children under the provisions of K.A.R. 91-40-43.

(2) If a board does not expend all of the funds allocated for the provision of special education and related services to private school children during a school year, the board shall allocate the unexpended funds for the purpose of providing services to private school children during the next succeeding school year.

(d) (1) A board, in meeting the requirement of subsection (c) of this regulation, shall not be authorized to include expenditures made by the board for child find activities under K.A.R. 91-40-42.

(2) A board, in meeting the requirement of subsection (c) of this regulation, shall be authorized to include expenditures made by the board to provide transportation to private school children to receive special education and related services.

(e) Each board shall maintain records regarding the following information related to children enrolled in private schools located in the school district:

(1) The number of children evaluated;

(2) the number of children determined to be children with disabilities; and

(3) the number of children provided with special education and related services.

34 C.F.R. Appendix B to Part 300—Proportionate Share Calculation

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—

(1) A proportionate share of the LEA's subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21.

This is an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of parentally placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and

(2) A proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5.

This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5. Consistent with section 612(a)(10)(A)(i) of the Act and § 300.133 of these regulations, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA eligible to receive special education and related services under Part B, as compared with the total number of eligible parentally-placed private school children with disabilities enrolled in private elementary schools located in the LEA. This ratio is used to determine the proportion of the LEA's total Part B subgrants under section 611(f) of the Act for children aged 3 through 21, and under section 619(g) of the Act for children aged 3 through 5, that is to be expended on services for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA.

The following is an example of how the proportionate share is calculated:

There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's subgrant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives $152,500 in Federal flow through funds.

Therefore, the LEA must spend $9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in § 300.226).

The following outlines the calculations for the example of how the proportionate share is calculated. Proportionate Share Calculation for Parentally-Placed Private School Children with Disabilities For Flintstone School District:

Number of eligible children with disabilities in public schools in the LEA 300

Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA 20

Total number of eligible children 320

FEDERAL FLOW-THROUGH FUNDS TO FLINTSTONE SCHOOL DISTRICT

Total allocation to Flintstone $152,500

Calculating Proportionate Share:

Total allocation to Flintstone 152,500

Divided by total number of eligible children 320

Average allocation per eligible child 476.5625
Multiplied by the number of parentally placed children with disabilities 20
Amount to be expended for parentally- placed children with disabilities . 9,531.25

3. SERVICES PROVIDED WITH A SERVICES PLAN

After the public school district determines the amount of funds that must be allocated for providing services to children with disabilities in private schools located within the district, the public school district, in consultation with appropriate representatives of private schools and representatives of parents of children with disabilities voluntarily enrolled in private schools, must determine how the funds will be allocated, how and where services will be provided and by whom. The public school district, however, must ultimately determine the types and levels of services to be provided.

If a child with a disability, who is voluntarily enrolled by their parents in a private school, receives services offered by the school district where the private school is located, with its proportionate share of funds according to the agreement reached in the consultation, the school would develop a Services Plan for the child. The regulations refer to this plan as a Services Plan to avoid confusing it with an IEP. An IEP is an inherent component of a free appropriate public education (FAPE). A "Services Plan" is to be used because it is clear under federal and state law that these children in private schools do not have an individual right to receive FAPE. The parents of children served with a Services Plan do not have any due process rights beyond issues related to child find which includes evaluation/reevaluation. Parents may file a complaint with the Kansas State Department of Education (KSDE) if they feel that the public school has failed to meet its obligations under the federal and state statutes and regulations.

Kansas statutes and regulations require the district of residence to make FAPE available through an IEP for any child voluntarily enrolled in a private school by their parent if the parent requests an IEP. Therefore, the district where the private school is located would typically use a Services Plan only for non-resident children for whom they may be providing limited services with their proportionate share of funds.

The Services Plan describes the specific special education and/or related services to be provided to the child as a result of the consultation with appropriate representatives of private schools and representatives of the parents of private school children. To the extent appropriate, the Services Plan includes all of the IEP components. The elements in each child's Services Plan may vary depending on the services to be provided. Like an IEP, the Services Plan must be reviewed and revised on an annual basis, and as necessary. (34 C.F.R. 300.138)

Many children's Services Plans will include:

- The child's present level of academic achievement and functional performance;
- The measurable annual goals, including benchmarks or short-term objectives, if appropriate;
- A statement of the special education, related services, supplementary aids and services and modifications;
- A statement of the program accommodations, or supports;
- An explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education environment;
- The projected date for the beginning of the services and modifications, and the amount, anticipated frequency, location and duration of the services and modifications; and
- A statement of how the child's progress toward the measurable annual goals will be measured and how the parents will be regularly informed of their child's progress.

K.A.R. 91-40-43. Services to private school children.

(a) Consistent with the number and location of private school children in the school district, each board shall provide special education and related services to this group of children in accordance with K.A.R. 91-40-43 through 91-40-48. Each board also shall provide services to gifted children who reside in the district and are enrolled in a private school.

(b) The parent of an exceptional child may request that the child be provided special education and related services in accordance with K.S.A. 72-3462 and amendments thereto.

(c) A board shall not be required to provide any special education or related services to a private school child unless one of the following conditions is met:

(1) The child is a member of a group of private school children that has been designated to receive special education and related services in accordance with the provisions of K.A.R. 91-40-43 through 91-40-48.

(2) The parent of the child requests that services be provided to the child in accordance with K.S.A. 72-3462 and amendments thereto.

(d) Except as otherwise provided in K.S.A. 72-3462 and amendments thereto, a private school child shall not be entitled to receive any special education or related service that the child would be entitled to receive if enrolled in a public school, and a private school child may receive a different amount of special education or related services than a child with a disability who is enrolled in a public school.

(e) Each board shall ensure that the special education and related services provided to private school children are provided by personnel who meet the same standards as the standards for public school personnel, except that private school teachers who provide services to private school children shall not be required to be highly qualified under the federal law.

K.A.R. 91-40-45. Services plan or IEP

(a) Each board shall develop and implement a services plan for each private school child who meets both of the following criteria:

(1) The child is a member of the group of private school children that has been designated to receive special education and related services under the provisions of K.A.R. 91-40-43;and

(2) The child is not receiving special education and related services by request of the child's parent under the provisions of K.S.A. 72-3462 and amendments thereto.

(b) A board shall ensure that the services plan for each private school child meets each of the following requirements:

(1) The services plan shall describe the specific special education and related services that the board will provide to the child, based upon the services the board has determined that it will make available to private school children under the provisions of K.A.R. 91-40-43.

(2) The services plan shall be developed, reviewed, and revised, as necessary, in the same manner in which IEPs are developed, reviewed, and revised under this article, except the board shall ensure that a representative of the child's private school is invited to attend, or to otherwise participate in, each meeting held to develop or review the child's services plan.

(3) The services plan shall meet the requirements of K.A.R. 91-40-18 with respect to the services that the child is designated to receive.

(c) Each board shall develop, review, and revise, as necessary, in accordance with this article of regulations, an IEP for the following children:

(1) Each private school child whose parent requests special education and related services under the provisions of K.S.A. 72-3462 and amendments thereto; and

(2) each identified gifted child residing in the school district and enrolled in a private school whose parent elects to have the child receive special education and related services from the board.

4. LOCATION OF SERVICES FOR CHILDREN WITH A SERVICES PLAN

Under federal law, the location where services will be provided should be determined in consultation with appropriate representatives of private schools and with representatives of parents of children with disabilities enrolled in private schools. The location of services will impact the amount to be expended to provide services to children with disabilities in private schools. There are options available for the location of the delivery of services to children with disabilities in private schools. Some of the services may be provided in public schools throughout the district or at a central location in the district. The public school district may decide that only some services will be provided at the private school setting. When services are provided in the private school, they may take place at a central location rather than each attendance site.

However, while permitting services to be provided at a parochial school site, the federal law does not require that services be provided in that setting. An offer to provide services at the public school site generally meets a school district's obligations, even if parents refuse the services at that site.

5. TRANSPORTATION

Federal law requires transportation to be provided to a child with a disability in a private school if transportation is necessary for the child to benefit from or participate in the services provided. State law requires the school to provide transportation to and from the public school if the services are

provided at the public school site. Again, the public school is not required to provide transportation outside of its boundaries. Transportation costs may be figured into the proportionate amount of funds expended for services.

K.A.R. 91-40-47. Transportation for exceptional children enrolled in private schools

(a) Except as otherwise provided in this regulation, each board, to the extent necessary for an exceptional child to benefit from, or to participate in, special education and related services provided to the child by the board, shall furnish or provide for the following transportation services for the child:

(1) Transportation from the child's private school or home to the site at which the child is provided special education and related services; and

(2) transportation from the site at which special education and related services are provided to the child to the child's private school or the child's home, as appropriate.

(b) Except as provided in K.S.A. 72-6491 and amendments thereto, a board shall not be required to furnish or provide transportation from an exceptional child's home to the child's private school.

(c) A board shall not be required to furnish or provide transportation services outside of its school district.

6. RESTRICTIONS ON USE OF FEDERAL AND STATE FUNDS FOR PRIVATE SCHOOLS

Schools may not use funds to:

- create separate classes organized on the basis of school enrollment or religion of children if: (a) The classes are at the same site; and (b) The classes include children enrolled in public schools and children enrolled in private schools ;
- finance the existing level of instruction at a private school or otherwise benefit the private school;
- Meet the needs of the private school or the general needs of children enrolled in the private school

Additionally, federal and state law restrict the use of property, equipment, and supplies in serving children with exceptionalities in private schools. Property, equipment, or supplies used on private school premises for providing special education services must remain in the control of the public school and be removed from the private school when they are no longer needed to provide the services. They must also be removed to avoid unauthorized use. Federal funds cannot be used for repair, remodeling, or construction at a private school site. Therefore, State regulations require that public schools ensure that any equipment or supplies be placed in a private school in a manner that allows removal without the necessity of remodeling the private school.

K.A.R. 91-40-48. Use of funds and equipment

(a) Subject to subsection (d), an agency may use state and federal funds to make personnel available at locations other than at its facilities to the extent necessary to provide special education and related services to exceptional children enrolled in private schools, if those services are not normally provided by the private schools.

(b) Subject to subsection (d), an agency may use state and federal funds to pay for the services of an employee of a private school to provide special education and related services if both of the following conditions are met:

(1) The employee performs the services outside of the employee's regular hours of duty.

(2) The employee performs the services under public supervision and control.

(c) (1) Subject to subsection (d), an agency may use state and federal funds to provide for the special education and related services needs of exceptional children enrolled in private schools, but shall not use those funds for either of the following purposes:

(A) To enhance the existing level of instruction in the private school or to otherwise generally benefit the private school; or

(B) to generally benefit the needs of all students enrolled in the private school.

(2) Each agency shall ensure that special education and related services provided to exceptional children enrolled in private schools are provided in a secular and nonideological manner.

(d) An agency's authority to use federal funds under this regulation shall be limited to providing special education and related services to children with disabilities.

(e) An agency shall not offer or maintain classes that are organized separately on the basis of public or private school enrollment or the religion of the students, if the classes offered to students are provided at the same site and the classes include students enrolled in a public school and students enrolled in a private school.

(f) (1) An agency shall keep title to, and exercise continuing administrative control over, all property, equipment, and supplies that are acquired by the agency to be used for the benefit of exceptional children enrolled in private schools.
(2) An agency may place equipment and supplies in a private school, to the extent allowed by law, for the period of time needed to provide special education and related services to exceptional children enrolled in the school.
(g) (1) An agency shall ensure that any equipment or supplies placed in a private school are used to provide special education and related services and can be removed from the private school without the necessity of remodeling the private school.
(2) An agency shall remove its equipment or supplies from a private school if either of the following conditions exists:
(A) The equipment or supplies are no longer needed to provide special education or related services to students enrolled in the private school.
(B) Removal is necessary to avoid unauthorized use of the equipment or supplies.
(h) An agency shall not use public funds to construct, remodel, or repair any private school facility.

F. MEDIATION AND DUE PROCESS RIGHTS FOR PRIVATE SCHOOL CHILDREN

Parents of children voluntarily enrolled in private schools and receiving services from the district of residence in accordance with an IEP, under state law, may utilize the formal complaint process, request mediation or initiate a due process hearing on any matter concerning the child's special education.

Parents of children voluntarily enrolled in private schools and receiving services under a Services Plan cannot seek due process or mediation regarding the school's alleged failure to meet the requirement of providing services to these children. Rather, the parents may request a meeting to review and revise the child's Services Plan, or utilize the state formal complaint process. However, parents can request mediation or due process if the parents believe the school has failed to properly evaluate and identify their child.

Regulations addressing due process, mediation, and formal complaints are found at 34 C.F.R. 300.140 and K.A.R. 91-40-46:

K.A.R. 91-40-46. Mediation and due process rights of private school children.
(a) (1) The parent of a private school child may request mediation or initiate a due process hearing as authorized under this article, if the parent believes that a board has failed to properly identify and evaluate the parent's child, in accordance with K.A.R. 91-40-42 (a).
(2) Each due process complaint by the parent of a private school child shall be filed with the board of education of the school district in which the private school is located.
The parent of the child shall provide a copy of the complaint to the state board of education.
(b) The parent of a private school exceptional child who is receiving special education and related services in accordance with an IEP may request mediation or initiate a due process hearing as authorized under this article on any matter concerning the child's education.
(c) The parent of a private school child with a disability who is receiving special education and related services under a services plan shall not be entitled to request mediation or to initiate a due process hearing on any matter concerning the child's education, but shall be entitled to take either, or both, of the following actions:
(1) Request that a meeting be conducted, in accordance with K.A.R. 91-40-45 (b), to review and revise the child's services plan; or
(2) file a complaint with the state board, in accordance with K.A.R. 91-40-51.

QUESTIONS AND ANSWERS ABOUT CHILDREN IN PRIVATE AND PAROCHIAL SCHOOLS

1. Must the public school use its federal funds to meet the requirement that a proportionate share of funds be spent on providing services to parentally placed children in private schools?

Yes. Each LEA is required to spend a minimum amount of its subgrant under Part B of the IDEA for children with disabilities placed by their parents in private schools. State and local funds may be used to supplement, but not supplant, the LEA's proportionate share of federal funds required to be expended on children with disabilities placed by their parents in private schools.

2. How is the public school to meet the requirement to "consult with representatives of private school children and representatives of parents of private school children with disabilities" regarding various situations identified in the law?

The public school district must consult annually with representatives of private schools and representatives of parents of voluntarily placed private school children with disabilities regarding the provision of special education and related services needs of children with disabilities enrolled in the private schools located within the district boundaries. This consultation must be conducted in a timely and meaningful way, and provide a genuine opportunity for the representatives of the private schools and representatives of parents of children with disabilities in private schools to express their views regarding child find, child count, how the proportionate share of funds will be used to deliver services and what services will be delivered.

To meet the consultation requirement, the public school could propose a plan to meet the requirements of the law and request input from the appropriate representatives, or the school could invite representatives to attend a meeting to provide input into the plan.

3. What qualifications must the staff meet that provides special education services when the public school serves a parentally placed child in a private school?

The special education services provided to parentally placed private school children with exceptionalities must be provided by personnel meeting the same standards as personnel providing such services in public schools. The public school may use state and federal funds to make personnel available at the private school to the extent necessary to provide special education and related services to children enrolled by their parents in private schools, if those services are not normally provided by the private schools. The public school may use special education funds to pay for the services of an employee of a private school to provide special education and related services for children if both of the following conditions are met:

a. The employee performs the services outside of the employee's regular work hours; and
b. The employee performs the services under public supervision and control.

4. If a child in private school is evaluated and found to be a child with a disability and the parents refuse services from the public school, is the public school obligated to reevaluate the child in three years?

This is a child who would be included in the private school count of children with disabilities (found eligible but not receiving services). Because this is an identified child with a disability, the legal provisions regarding reevaluation apply. Therefore, at the end of three years, a reevaluation is needed. The public school district would provide Prior Written Notice and request consent from the parents to conduct a reevaluation, unless the parent and the public school agree that a reevaluation is not necessary.

5. Are children who are voluntarily placed by their parents in private schools entitled to special education services in Kansas?

   Under Kansas special education statutes and regulations, if parents request special education services for their child, the public school must develop a full IEP, the child is entitled to receive all of the services specified in the child's IEP (FAPE), and parents have all due process rights under federal and state law. If the services are provided at the public school, the child is entitled to services equal to all other children receiving special education at the public school. If the services are provided at the private school, the child is entitled to services up to the average cost of providing the same service in the public school.

   In contrast, federal law is clear that children enrolled in a private school by their parents have no individual entitlement to special education and related services. If children are part of a group agreed upon to receive services, they may receive the services offered by the public school under a services plan, but there is no requirement for any particular child to receive any services, and all services may end upon expenditure of the school's proportionate share of federal funds.

6. Who is responsible for the IEPs of children with disabilities who are placed in private schools by a public school IEP team?

   Before placing a child with a disability in a private school or facility, the public school must conduct a meeting and develop an IEP. With the consent of the parents, the IEP team may place a child in a private school as the result of the initial IEP meeting or as the result of a meeting to review an existing IEP. However, at the meeting in which a child is placed in a private school, the public school must ensure that a representative of the private school is present at the meeting or participates in the meeting through other means, such as individual or conference telephone call. After the initial IEP meeting, subsequent meetings to review the IEP may be conducted by the private school. A representative of the public school must attend these subsequent IEP meetings. Although the services are provided at the private school, the public school remains responsible for assuring that the IEP is implemented.

7. If services are provided in a parochial school, is there still a requirement to remove religious objects/symbols?

   No, the law does not make any such requirements. The Kansas Attorney General's ruling of 1981 has been superseded by IDEA. State law allows for services to be provided at either the public or private school, but forbids the provision of special education and related services "in connection with religious courses, devotional exercises, religious training, or any other religious activity." The site where services are provided must be determined by the school district in consultation with the parents and private school officials.

8. Is a parentally placed child with an IEP in a private school entitled to both general education and special education services from the public school?

   No. Public schools are required to provide special education and related services, but not to provide classes in the general curriculum for the private school child at the public school. For example, if parents request that in addition to receiving physical therapy at the public school, their child also be allowed to take physics, the public school is not obligated to allow the child to take physics. Instead, the child may be required to enroll in the public school as a full-time child in order to receive general education services, depending on the district's general policy regarding part-time enrollment of children in private schools.

9. Are children enrolled in or placed in private schools required to take the State Assessment?

   If a child is placed in a private school by the public school, the child is required to take the appropriate State Assessment. If the child has been enrolled in the private school by the parents, the child would follow the requirements of the private school. That may mean that they would not take the State Assessment, particularly if the private school was not in the Kansas Accreditation system.

10. If a child in a private school moves from one private school to another and the Services Plan has more services than offered by the new public school providing the special education services, what happens to the child's services?

    The new public school may conduct a meeting to review and revise the Services Plan. Under a services plan, a child with a disability has no individual right to any of the services in the plan. Accordingly, the new public school would not be required to provide any services. Even if the new public school provides services, the new public school is not required to provide services other than those agreed upon in consultation with the appropriate representatives of private schools and representatives of parents of children with disabilities enrolled in private schools. However, that does not prohibit the new public school from providing the services if it chooses to.

11. What is the obligation of the public school that does not have any private schools within its jurisdiction?

    Under state law, the parent of a resident exceptional child, who is attending a private school located outside the district of residence, may request special education and related services. In that case the school of residence must develop an IEP. However, the district of residence is not required to provide any special education or related services outside of its district boundaries.

12. Who makes the final decision regarding the location of the delivery of special education or related services to an exceptional child enrolled in a private school?

    The public school, in consultation with the private school and the parents, makes the final decision about the location of the delivery of services. Ultimately, the decision rests with the public school.

13. Must a general education teacher in the private school participate in developing, reviewing, and revising a child's IEP or Services Plan?

    A meeting to develop, review, and revise an IEP or a Services Plan must include all of the participants required for an IEP team meeting, including at least one general education teacher of the child (if the child is or may be participating in the general education environment). The general education teacher in the private school would meet the requirement for a general education teacher.

    The public school must also ensure that a representative of the private school attends each meeting to develop or revise a child's Services Plan. If the representative cannot attend, the public school must use other methods to assure a representative's participation, including individual or conference telephone calls. The participation of the child's private school teacher could meet this requirement.

14. What happens when the district where the private school is located has used its entire proportionate share of funds and a nonresident child is found to be a child with a disability and the parent requests services?

    The district where the private school is located is not obligated to provide any services to a nonresident child with a disability once it has expended the required proportionate share of funds. The parent of the nonresident child would have to go to the district of residence to request services. The district of residence can offer services in the resident district, but if the parent refuses, the resident school has met its obligation to make FAPE available.

15. What happens to the proportionate share of funds when the only child in a private school receiving services moves, and there are no more identified children to utilize the funds?

    The amount of funds may be carried over for one additional year. If it appears there are no children in a private school in need of special education or related services, the remaining funds may be reallocated.

16. Are children who are receiving special education or related services from the public school with a Services Plan considered to be enrolled in the public school and counted on the public school's September 20 enrollment count?

    Yes. All parentally placed children in private school receiving services with either an IEP or a Services Plan are considered to be enrolled in the public school for special education services and are to be counted on the public school's September 20 enrollment count.

    Also, all children for whom the school provides services through a contract with a private school or other agency or institution are considered to be enrolled in the public school and are counted on the public school's September 20 enrollment count.

17. Why might the child count of children with disabilities enrolled by their parents in private schools be different from the annual child count that is reported to the state and federal departments of education?

    The district of residence is required to locate, evaluate and identify children with disabilities enrolled in private schools located within its boundaries. Parents of children voluntarily enrolled in private school may choose to not accept special education and related services. The district would not be found in violation of the law. Once a public school has expended the entire federal proportionate share of funds it has no obligation to provide special education and related services to nonresident children attending a private school located within the district boundaries. These nonresident children would go to the district of residence to request services. If the parent does not accept services being offered at the district of residence these children may not be receiving any services, but would be included in the child count. Additionally, any resident child whose parent refuses services would also be included in the child count. Therefore, any child identified as a child with a disability, even though not receiving special education services, would be included in the child count of children with disabilities enrolled by their parents in private schools.

18. When would a district use a Services Plan and not an IEP for services to parentally placed private school children?

    A Services Plan would be used when the district where the private school is located is providing services according to the agreement from the consultation with representatives of private schools and representatives of parents of children with disabilities attending private schools using its proportionate share of funds to serve a nonresident child.

In contrast, when a parent and student are residents of the district and request special education services, the district must offer an IEP and make FAPE available. The parent may refuse any or all of the services. The parent's refusal should be documented by the district. One way to document the offer of FAPE by the district and the refusal by the parent would be to provide the parent with Prior Written Notice and ask for consent for all of the services. The parent may consent only to the services they are accepting.

19. When a child is voluntarily enrolled in a private school by a parent, and special education and related services are provided in a public school, is the district of residence required to provide transportation to and from the services only if transportation is needed in order for the child to benefit from or participate in special education and related services?

    A. No. Although Kansas regulation K.A.R. 91-40-47(a) says transportation must be provided to exceptional children enrolled by their parents in a private school "to the extent necessary for an exceptional child to benefit from or to participate in special education and related services provided to the child by the board," that regulation reflects the federal requirement at 34 C.F.R. 300.139(b), but is inconsistent with the pertinent state statute. The pertinent state statute regarding special education services for children enrolled in private school by their parents is K.S.A. 72-3462. K.S.A. 72-3462(c) says: "If the services are provided in the public schools of the school district, transportation to and from such public school shall be provided by the school district." This statute requires that transportation be provided to these children, without an analysis of whether the child needs transportation. Portions of K.A.R. 91-40-47, stating that this regulation does not require a district to transport an exceptional child from the child's home to the child's private school or to provide transportation services outside the district continue to apply.

20. When the child resides in one district and is voluntarily enrolled in a private school located in another district, what are each districts' responsibilities related to child find and providing special education and related services?

    Both districts have responsibilities related to locating, evaluating, and identifying children with disabilities. Therefore, the parent may request an evaluation by either or both districts and the districts would be required to conduct an evaluation. See Section C. of this chapter for more information about child find for children voluntarily enrolled in private schools by their parents.

    Additionally, both districts have responsibilities related to providing special education and related services to a child with a disability in this situation. However, federal and state law have different requirements.

    Under state law, if the district of residence provides services identified by the IEP team, the child would receive services through an IEP. The IEP is to be developed as it would be for any other child. Parents of children attending a private school and receiving services from a public school where the child resides, in accordance with an IEP, have all of the due process rights under Federal and State laws and regulations, and must have a free appropriate public education made available to them. State law allows for the district of residence to expend State and local funds to provide services to children with exceptionalities voluntarily enrolled by their parents in private schools under the certain conditions. See Section D. of this chapter for more detailed information. Although there is a consultation requirement, the school district of residence is not required to provide special education and related services at a private school located in another district nor is that district required to transport a child to or from a location out of the district of residence even if

the child attends a private school located in another district and requires special education and related services from the district of residence.

Under federal law, child with a disability in a private school has no individual right to special education or related services. The public school district where the private school is located must only ensure that a proportionate share of Federal funding is used to provide services to this population of children. Therefore, under federal law, it is likely the public school district where the private school is located would not be obligated to provide any or all special education and related services to every child with a disability enrolled in a private school located within its boundaries. If the parent chooses to receive services from the district where the private school is located, and that district has not exhausted its proportionate share of federal funds, the school would develop a Services Plan for the child. In Kansas, a Services Plan would only be used in a district for a non-resident child for whom they may be providing limited services with their proportionate share of funds. To the extent appropriate, the Services Plan includes all of the IEP components. For more information on the requirements under federal law see Section E. of this chapter.

See related Questions and Answers 5, 11, and 18 in this chapter.

BOARD PAGE

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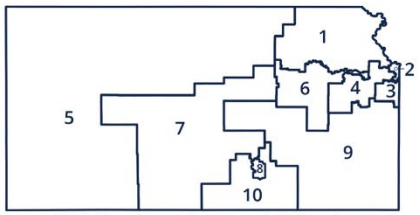

Kansas divided into the ten State Board of Education districts.

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