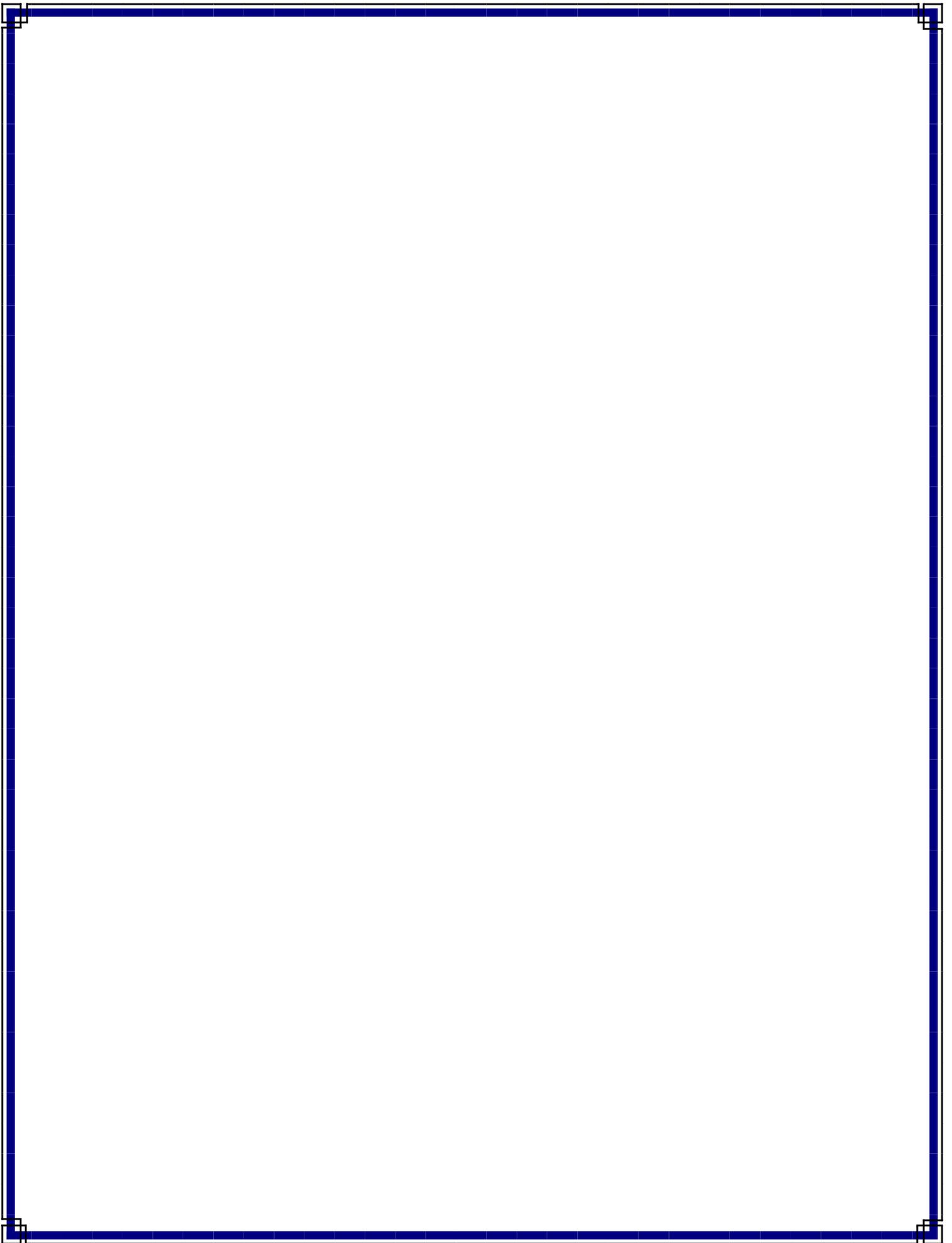


GUIDE TO SPECIAL EDUCATION



Student Support Services
Kansas State Department of Education
September 2006



Introduction

True partnerships aren't easy. They require trust, respect, and willingness to compromise and, ultimately, to share power and responsibility. Although some might argue that's a lot to expect of parents and educators, given what's at stake—our children and our schools—is it right to expect any less?

James Comer

The Kansas State Department of Education is pleased to provide this *Guide to Special Education*. The intended purpose of the guide is to provide special education information in an easy to understand manner. The primary audience of this guide is parents, education advocates, self-advocates, and other legal decision-makers of students with exceptionalities. Parents are to share in the responsibility for developing educational plans for their students. This active role requires parents to have information about the special education process and requirements.

This guide provides resources of interest to parents. Most of the resources can be accessed through the world wide web (Internet). We acknowledge that some parents may not have access to the internet. If you are unable to access a resource that is on the Kansas State Department of Education websites (www.ksde.org or www.kansped.org), you may contact Student Support Services for this information (800-203-9462). Please note that at this time the *Special Education Process Handbook* has not been revised to reflect changes in IDEA 2004 or revised state and federal laws and regulations.

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) was signed into law in December 2004, and federal regulations implemented in October 2006. The state regulations for the implementation of IDEA 2004 have not been revised at this time. Once the regulations have been revised, there could be changes that will be necessary to the guide. These changes will be reflected in revisions of the guide that will be available on the www.kansped.org website, through the Student Support Services or Families Together, Inc.

This guide was developed in collaboration with Families Together, Inc., which is the Kansas Parent Training Center funded through IDEA, and the parent partner of the Kansas State Department of Education. You can find additional resources and information about education advocate and parent training across the state on their website <http://www.familiestogetherinc.org/>, or by phone 800-264-6343.

Making decisions about a student's education is very important. We hope this guide is helpful to everyone who is concerned with the education of students in the special education process and will enable a true partnership between parents and educators.

Acknowledgements

The Guide to Special Education is a collaborative document between the Student Support Services and Families Together, Inc. Families Together, Inc. is supported with IDEA funds as the Kansas Parent Training and Information Center by the Federal Department of Education, Office of Special Education Programs. Families Together, Inc. provides training and support for the Education Advocate program, which uses this Guide as the primary resource.

The Student Support Services Team of the Kansas State Department of Education (KSDE) is grateful to the people who helped to revise this Guide to Special Education. Reviewers consisted of KSDE staff; Families Together, Inc. staff, who are also parents of children with disabilities; and representatives from the field. We wish to express our appreciation and acknowledge the work of the following people:

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A special thank you to Joseph and Jeanette Souther and their four sons, Isaac, Michael, Kaleb, and Nicholas, for the family portrait on the cover of this Guide.

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CHAPTER 1

Family, School, and Community Partnerships

Introduction

This guide has been written to help parents and other educational decision-makers understand the special education process. As a parent of a student who receives special education services, it is easy to get caught up in that process. Parents, and others who work with students, may even divide the school's student population into two groups: general education students and special education students. Special education is not a place to which one or a group of students in a school goes; it is supportive services that are given to students so that they may progress in and be a part of the *general* education curriculum. All students are general education students and all students benefit from their parents being involved in their education, not just the special education part of it. This chapter is included to encourage parents to become partners with the school and community, not only in the special education side, but the general education side as well.

Family, school, and community partnerships are defined as school personnel, children, parents, family members and community persons communicating and sharing responsibilities to ensure the success of all students. Successful partnerships recognize that the family is the most important and most enduring resource in a student's life.

Benefits of Family, School, and Community Partnerships

The benefits of partnerships are numerous and much research has been done in the area of parent involvement. Highlighted below are some of the positive findings.

When parents are involved:

- students have higher grade point averages;
- students have higher scores on standardized tests;
- students are involved in more challenging school programs;
- homework is completed on a more regular basis;
- graduation rates are higher;
- students are more likely to enroll in educational programs after high school.

The benefits of family involvement not only apply to grades and test scores; they affect students' attitudes and behaviors. When parents are involved:

- attendance is better;
- students are less likely to use alcohol, engage in violent behavior and other antisocial behaviors decrease;
- students have greater self-confidence, feel school is more important, and do better in school;
- high school students are able to make better transitions, maintain high quality work, and develop realistic plans for their futures.

What is Parent Involvement?

Involvement in your student's education does not just mean you being at the school building. Many parents cannot be involved in this way because of work schedules and other daytime commitments. The good news is that physical presence is not the highest factor in student success. Research shows that the most important contributor to student success is the *attitude* of the parent. When parents are supportive of the student's education, students experience positive benefits. Your words and actions are important. Do you express high expectations for your kids? Do you read to or with your student regularly? Do you make sure that homework is completed? Do your kids see you reading? Do you apply math skills to

everyday activities? If you said yes to these questions, you are very involved in your student's education and your student should be experiencing some benefits of that involvement. Joyce Epstein, the nation's leading researcher of family, school, and community partnerships, refers to *school-like families*. This type of family recognizes that each child is also a student. Families reinforce the importance of school, homework, and activities that build student skills and feelings of success.

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by ... strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home...

IDEA 2004

Epstein's Six Types of Involvement

One of the most significant contributions made by Joyce Epstein has been the development of the six types of parent involvement. The National Parent-Teacher Association <http://www.pta.org/> has adopted these principles as their National Standards for Parent and Family Involvement and the Kansas State Department of Education has endorsed parent and community involvement as two of the seven components in their redesign of the educational system.

Standard I. Communication

Communication between school and home should be regular, two-way and meaningful. School personnel and parents should be respectful of one another and accept that each has an important, but different, expertise about the student. Therefore, communication should be two-way and provide meaningful

information to each. Problems are definitely worth discussion but so are the strengths and goals of the student. Schools should create environments in which parents feel welcome and know that their input is valued.

Standard II. Parenting

Epstein encourages schools to support parenting skills. Schools can offer workshops on a variety of topics interesting to today's parents. A parent center can be located within the school building, where parents can checkout books and other informational materials. Schools should also be aware of community resources that may assist parents.

Standard III. Student Learning

Student learning increases when parents are involved in the process by helping their son or daughter at home. Most parents are willing to assist their student in learning but may not be sure how to go about it. Parents should have a good understanding about what is expected at each grade level. Students should have homework that requires discussion and interaction with their parents. Schools can offer workshops to teach parents about different ways they are using to teach specific subjects, like mathematics.

Standard IV. Volunteering

When parents volunteer, both families and schools benefit. Millions of dollars are saved when parents volunteer their time and expertise. The presence of parents at the school sends a message to kids that, "I care about what you do here." Volunteer work should be meaningful to the parent and when possible, capitalize on the expertise of the parent. Even if a parent can't volunteer during the day, there are creative ways parents can assist after-school and on weekends, like after-school programs or even helping out at the school carnival.

Standard V. Decision-Making and Advocacy

Studies have shown that schools where parents are involved in decision-making and advocacy have higher levels of student achievement and greater public support. Schools and programs that actively seek parent participation and input communicate that parents are valued as full partners in their student's education. Schools should include and give equal representation to parents on decision-making and advisory committees. Parents should be provided current information regarding school policies, practices, and information about how students and the school are doing. Parents should be involved in legislative actions involving education at the local, state and, even national, levels and schools can promote ways for parents to learn how to do that.

Standard VI. Collaborating with Community

When schools and communities work together, both are strengthened in ways that neither could do on its own. Families access community resources more easily, businesses connect education programs with how it really is in the workplace, and students serve and learn about their communities beyond the school building. Schools should give information to parents on community resources that serve the cultural, recreational, academic, health, social, and other needs of families. Partnerships with local businesses and community organizations should be developed to help with student learning. Students should participate in community service.

Conclusion

Schools and parents should keep in mind that partnering together leads to significant results for students. Schools can't do it alone. Parents need to find ways to get involved in their student's learning. Opportunities for learning are abundant in every day life. As stated earlier, the attitude of the parent about school and learning is the most important element to student success. However, studies show that when parents are visible in the school building, their student does even better. Ask your school about ways you can assist your student at home in different subject areas. Find ways that you can volunteer at the school, even if you can't during the school day. Most importantly, hold high expectations for your student and insist everyone else do the same. When your student receives special education services, for whatever reason, encourage him or her to exceed expectations. All students are capable of learning and being successful. Parents and schools, working together, can ensure the success of all students.

Resources

Epstein, J. L., Sanders, M. G., Simon, B. S., and Salinas, K. C. (2002). *School, Family, and Community Partnerships: Your Handbook for Action*. (Second Edition) Thousand Oaks, CA: Corwin Press, Inc.

The research is abundantly clear; nothing motivates a child more than when learning is valued by schools and families and community working together in partnership...

Michael Fullan (1997)

CHAPTER 2

The Promise of IDEA

The purposes of IDEA 2004 are to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. It is to ensure that the rights of children with disabilities and their parents are protected. IDEA assists States, local education agencies and federal agencies to provide for the education of all children with disabilities; and to assess and ensure the effectiveness of efforts to educate children with disabilities.

Congress has acknowledged that a disability is a natural part of the human experience. In no way does a disability diminish the right of individuals to participate in and contribute to society. Improving educational results for children with disabilities is an essential element of our national policy that promotes

- equality of opportunity;
- full participation;
- independent living; and
- economic self-sufficiency for individuals with disabilities.

Before the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met. The purposes of the law are to:

- ensure children with disabilities have access to a free appropriate public education;
- ensure that the rights of children with disabilities and their parents are protected;
- ensure that educators and parents have the necessary tools to improve

educational results for children with disabilities;

- assess and ensure the effectiveness of efforts to educate children with disabilities.

Federal and state laws require the Kansas Department of Education to have a Special Education Advisory Council (SEAC). The purpose of the SEAC is to advise the Kansas State Board of Education and Student Support Services regarding special education services in the State. The majority of the members are required to be parents of students with disabilities or a person with a disability. Additionally, the membership consists of representatives of other state agencies and providers of special education, as well as students with disabilities. The SEAC meets monthly and all meetings are open to the public. The agenda provides a time for public comments. (See the SEAC website <http://www.kansped.org> .)

The reauthorization of the Education for All Handicapped Children Act of 1975, now known as The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), is intended to help children with disabilities achieve to high standards by

- promoting accountability for results;
- enhancing parental involvement;
- using effective practices and materials; and
- providing more flexibility and reducing paperwork burdens for teachers and local school districts.

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by:

- (A) having high expectations for children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to:
 - (1) meet developmental goals and, to the maximum extent possible, the

challenging expectations that have been established for all children; and (2) be prepared to lead productive and independent adult lives, to the maximum extent possible.

- (B) strengthening the role and responsibility of parents and ensuring that families have meaningful opportunities to participate in the education of their children at school and at home.
- (C) coordinating this law with other school improvement efforts, including improvement efforts under NCLB, in order to ensure that children benefit from such efforts and that special education can become a service for children rather than a place where children are sent.
- (D) providing appropriate special education and related services, and supports in the regular classroom whenever appropriate.

Key Initiatives of IDEA-2004

The IDEA 2004 reauthorization of the federal special education law moves beyond access to public school programs to improved results for students with disabilities. IDEA 2004:

- Provides incentives to reduce the need to label children as disabled in order to address the learning and behavioral needs of children;
- Focuses resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results for children with disabilities;
- Supports the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities;
- Expands opportunities for parents and schools to resolve their disagreements in positive and constructive ways;
- Focuses on preventing the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities;
- Provides effective transition services to promote successful post-school employment or education as an important

measure of accountability for children with disabilities;

- Supports high-quality, intensive teacher preparation and professional development for all personnel who work with children with disabilities;
- Requires state agencies to work to provide a seamless system of services. State agencies are to develop agreements to outline how services are to be coordinated. By working together, students with disabilities can receive the services they need to reach their goals;
- Supports public schools working collaboratively with private schools to ensure that children with disabilities attending private schools have special education and related services available to them.

(See IDEA-2004

<http://www.kansped.org/ksde/laws/idea04/idea04.html> .)

Kansas Special Education

Kansas law and regulations expand on IDEA law and regulations in several important ways. First, Kansas includes children who demonstrate characteristics of giftedness in the special education laws and regulations. There are a few exceptions in Kansas laws and regulations where students who are gifted are not included, such as in the discipline requirements. In general, however, students who are gifted are included in most aspects of the requirements. In Kansas, the law refers to “exceptional children” when it includes students who are gifted, and to “children with disabilities” when it does not include students who are gifted. (Refer to Chapter 11, Parent and Student Rights, for more information about gifted requirements.)

Another way that Kansas has expanded the IDEA laws and regulations is that every child with an exceptionality attending a private school has the opportunity to receive a free appropriate public education if the parent requests all the services that the child is eligible to receive. (See Kansas Special Education for Exceptional Children Act, 2006

and Kansas Special Education Regulations, 2001
<http://www.kansped.org/ksde/laws/legalreqmts.html> .)

The Kansas State Board of Education administers the provision of public education for almost 470,000 children in school districts in the state. The State Board is committed to the provision of inclusive special education to meet the needs of all students and has a policy statement to this effect.

This guide was developed to assist parents and other readers in understanding how federal and state special education laws are implemented in Kansas. The Kansas State Board of Education is the governing board responsible for the implementation of educational laws, including special education. The State Board has a mission statement for Kansas education, and has identified goals and objectives to support accomplishing the mission.

http://www.ksde.org/commiss/core_principles.htm.

Kansas State Board of Education Mission Statement

“To promote student academic achievement through vision, leadership, opportunity, accountability, and advocacy. The State Board believes that the key to ensuring the fulfillment of its mission lies in helping schools to work with families and communities to prepare students for success.”

Kansas State Board of Education 2005-06 Goal:

Ensure that all students meet or exceed high academic standards by:

Redesigning the delivery system to meet our state’s changing needs

- identify, replicate, and promote best practice;
- study and clarify regulations and identify challenges;

- develop and implement policy on academic/vocational integration;
- examine the definition of a classroom in a redesigned system.

Providing a caring, competent teacher in every classroom

- identify obstacles;
- assess the effectiveness of current professional development practices;
- identify, replicate, and promote best practices in teacher preparation and professional development;
- develop policy on alternative compensation;
- improve the support system for teachers;
- develop recruitment strategies for future teachers;
- assess and improve the alternate licensure program;
- promote loving, safe, supportive and nurturing environments.

Ensuring a visionary leader in every school

- identify, replicate, and promote best practices in preparation and performance;
- identify and grow visionary leaders focused on learning;
- study the impact of current leadership programs.

Improving communication with all constituent groups

- develop a structure for regularly communicating about education with the legislative leadership of both interests;
- keep the public informed on key policy areas;
- resume focus group meetings in each board member district and periodic meetings with the media; and
- improve communication of relevant information with school faculty.

Resources

If you are unable to access the information from the website links within the text of this chapter, you can contact Student Support Services, at KSDE for copies of the information on their website 1-800-203-9462.

The purposes of IDEA 2004 are to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living...

IDEA 2004

CHAPTER 3

How Special Education Works in Kansas

Introduction

Special education and related services are support services for students with an exceptionality. In order for a student to be eligible for special education and related services, the student must first be determined to have an exceptionality and need specialized instruction. Once eligibility is determined, an IEP is developed and special education and related services can begin. This chapter gives a very brief overview of the steps in the process. Later chapters have more information about each step. *The Kansas Special Education Process Handbook* gives more details in each area. (See Kansas Special Education Process Handbook (Rev. 2001) <http://www.kansped.org/ksde/ph01/process01.html> .)

Figure 1 is a flow chart of the steps in the special education process.

Child Find

Child find is an ongoing process that school staff use in public and private schools to locate and identify students who may need special education services. In Kansas, “child find” for young children ages birth through age 5 is called “screening.” Schools should provide screenings for children within 30 days of the request for a screening. Screenings may consist of observations, interviews, and assessments that would identify a disability or developmental delay in the areas of communication, thinking/reasoning development, social-emotional development, self-help/adaptive behavior,

and/or physical development. (See Chapter 9, Early Childhood Special Education.)

For children in kindergarten through 12th grade, child find is accomplished through general education interventions. In many schools, child find is a first step in the school’s efforts to meet the needs of students based on their response to instruction. After a child or group of children have been identified as needing additional support from the classroom teacher to meet expectations, different intensified instruction is attempted to help the students learn. The teacher keeps track of the children’s progress. If the teacher, parent or someone else in the school decides a child needs additional support, a team meets to consider the student’s needs in the area of concern.

This team will use a problem-solving process known as general education interventions. Each school has a team to assist students. The team is sometimes called a student support team, student improvement team, care team, or something similar.

The purpose of general education interventions is to see to what extent adjustments or changes need to be made to the general education curriculum and/or environment in order for the student to be successful. A team of educators work together to identify the appropriate academic or behavioral interventions, implement the interventions, and assess the results of the intervention.

If the general education interventions are significant, beyond what could be provided by the general education and requires specialized instruction, the team would refer the student for an initial evaluation. The school must let parents know about these activities and encourage parents to be involved. However, consent from parents is not required before teachers try different

interventions at school. (See Chapter 4, General Education Interventions.)

Initial Evaluation and Eligibility

Initial evaluation means the process of collecting information about a student for the following purposes:

1. to decide if the student has an exceptionality, based on eligibility criteria set by the Kansas State Department of Education;
2. to decide if special education services are needed for the student to benefit from his/her educational program; and
3. to identify the student's individual educational strengths and needs and to provide a basis for appropriate intervention.

The evaluation must assess the student's needs in all areas related to the suspected area of concern. The evaluation results will be used to decide the student's eligibility for special education and related services and to make decisions about an appropriate educational program for the student.

Parents will be provided prior written notice and be asked to provide written consent to allow the school to conduct the initial evaluation.

Parents are specifically named as members of the team that determines if a student is eligible for services. Eligibility has two components:

- the student must have an exceptionality; and
- the student must have a need for special education and related services.

The team must be sure that the concerns are not the result of a lack of instruction in reading or math, or because the student has limited English ability. Parents are to be given a copy of an evaluation report that documents the team's decision regarding eligibility and the reasons for that decision.

If it is determined that the student is not eligible for special education services, the student improvement team meets again to consider other services that might be appropriate (like migrant, bilingual, special reading or math enrichment programs) or, a student may be eligible for services under Section 504. (See Chapter 5, Initial Evaluation, Reevaluation, and Eligibility; and Section 504 Regulations <http://www.kansped.org/ksde/laws/504.doc>)

Individualized Education Program (IEP)

The IEP is a written plan for each eligible student with an exceptionality. The IEP is considered to be important to ensure the provision of a free appropriate public education (FAPE) and better results for all students with an exceptionality. To create an effective IEP, parents, teachers, other school staff, and often the student, must come together to look closely at the student's unique needs. These individuals pool knowledge, experience, and commitment to design an educational program that will help the student be involved in, and progress in, the general curriculum. The IEP guides the delivery of special education supports and services for the student. Without a doubt, writing and implementing an effective IEP requires teamwork. (See Chapter 6, Individualized Education Program.)

IEP Team

The members of the IEP team include:

- the parents (or education decision-maker);
- at least one special education teacher of the child;
- at least one general education teacher, if the child is, or may be, participating in the general education environment;
- representatives of the school with knowledge of available resources, curriculum, and special instruction;
- a person who can interpret what evaluation results mean for the student;

- other persons who are invited by the school or the parent because they know the child or have special expertise that would be helpful to the team; and
- the student at age 14 or earlier if appropriate.

Defining the IEP

- The IEP is both a process and a document.
- An IEP is required for students ages 3 through 21 with exceptionalities who need special education services.
- As a process, the IEP meeting brings together people who work with a student. The meeting is for the parents, the student, and the school staff to talk about the student's strengths and needs. They also set goals, identify resources, and develop a plan for the student's education.
- As a document, the IEP serves as a blueprint that guides the student's day-to-day instruction, support, and related services.
- The IEP must be reviewed every year, or more often, if needed, to make sure the student is making progress in meeting his/her goals.

Once the student is age 14, the IEP team, including the parent and student, will begin planning for the student's life after leaving the public schools. (See Chapter 10, Transition.)

Developing the IEP

The school must schedule the IEP meeting at least annually and at a time and place agreeable to the parents and the school. Parents are to be notified in writing of the IEP meeting, and who will be attending. They must also be informed that they may invite people to the meeting who have knowledge or special information about the student. If the parents agree, IEP team meetings may be conducted with the use of conference calls, video conferencing or other alternative means.

The IEP team must discuss any significant behavior concerns they might have about the student. They must also consider any specific communication needs including receptive and expressive language delays, limited English proficiency, deaf or hard-of-hearing or Braille for students who may be blind or visually impaired

Placement Recommendations

After the IEP is written, the team considers where the most appropriate setting might be for the student to receive services and make progress on his/her goals. Services for the student are to be in general education classes with students without disabilities unless the IEP team believes a different setting is necessary in order for the student to be successful. If the team thinks the student should be taught in a different setting, they must write their reasons in the IEP.

Parents must be provided prior written notice and asked to give written consent before the student's initial placement in special education or related services. If a parent refuses to give this consent, the school cannot begin the initial placement. (See Chapter 8, Least Restrictive Environment.)

Reviewing and Revising the IEP

The IEP must be reviewed, and if necessary, revised at least annually, or more often if the parents or school ask for a review. If reviewed annually, this review must be on or before the anniversary date of the IEP (this is the date the IEP was written by the IEP team.)

Parents, as a member of the IEP team, must be invited to attend these meetings.

The IEP team:

- determines if the student is making progress toward the measurable annual goals on the IEP;
- revises the IEP, if needed, to help the student progress in the general curriculum and achieve annual goals;
- reviews the results of any reevaluation;
- reviews any new information about the student;

- reviews the student's anticipated needs; and
- may change the IEP, after the annual review, without a meeting, if both parents and the school agree in writing.

Reevaluation

A reevaluation of the student's needs is to be conducted at least every three years unless the parent and the school agree that a reevaluation is unnecessary. A reevaluation may be conducted more frequently, if the student's parent or teacher requests a reevaluation. However, no more than one reevaluation may occur in one year, unless the parent and the school agree to more than one during a year. Parents must be provided prior written notice and asked to give their written consent before any reevaluation.

The IEP team must review the evaluation information about the student, including information provided by the parents. The team determines if more information is needed to decide if the student continues to have an exceptionality and his/her present levels of academic achievement and functional performance.

Additionally, the IEP team is to consider whether any additions or modifications to the special education and related services are needed to be sure the student can meet the measurable annual goals set out in the IEP and allow for participation, as appropriate, in the general education curriculum.

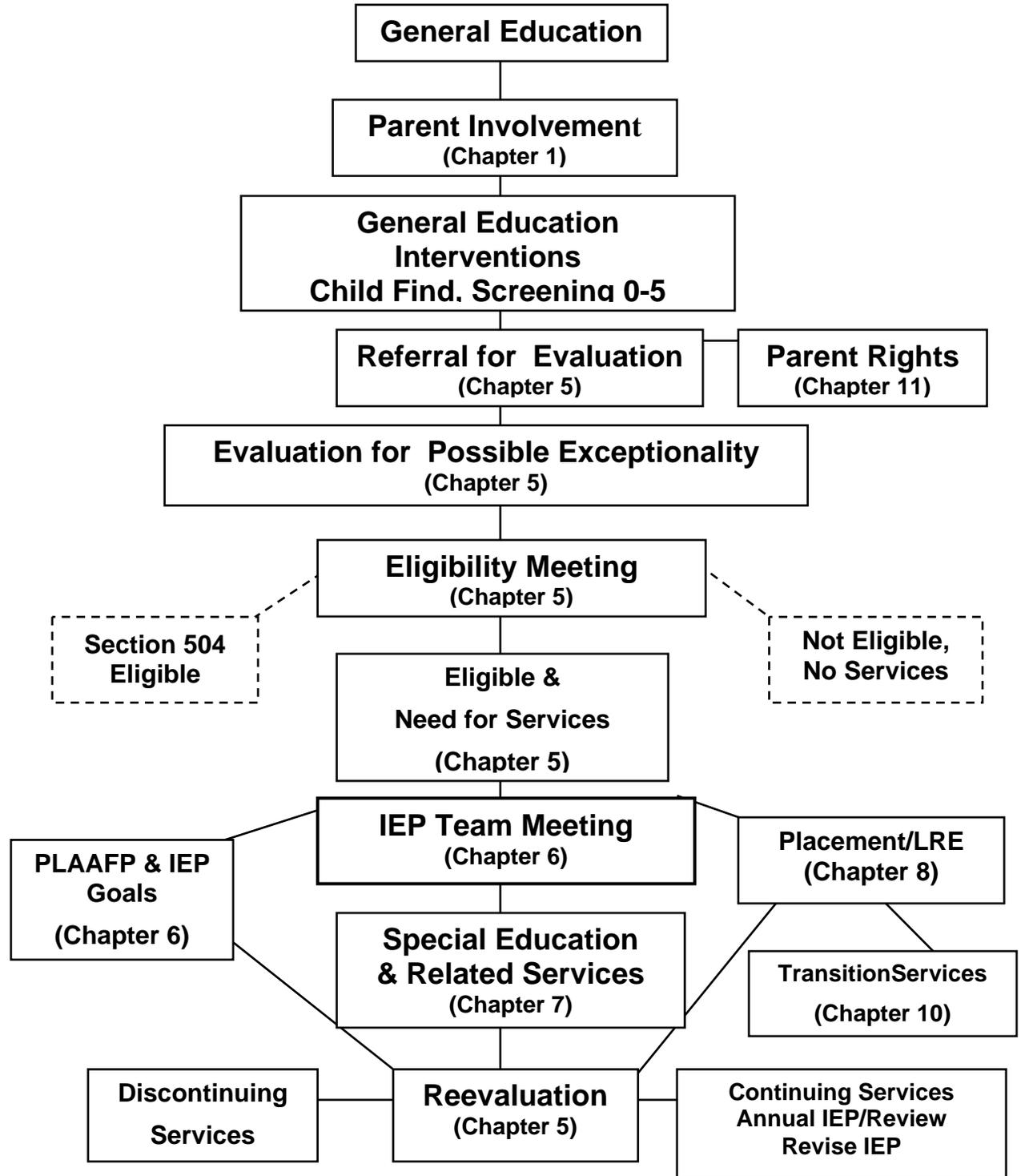
(See Chapter 5, Initial Evaluation Reevaluation and Eligibility.)

Resources

Special Education Process Handbook, Kansas State Department of Education, Student Support Services. (Rev. 2001).
<http://www.kansped.org/ksde/ph01/process01.html>

A Parent Primer on Special Education Acronyms, Abbreviations, and Definitions. Families Together, Inc., 2005
<http://www.familiestogetherinc.org/acr.pdf>

Table 3-1
SPECIAL EDUCATION FLOW CHART



Early Childhood Special Education	Chapter 9
Education Advocate	Chapter 12
Discipline	Chapter 13
Resolving Disputes	Chapter 14

CHAPTER 4

General Education Interventions

Introduction

Each school is to have a child find process for screening preschool age children and general education intervention (GEI) for students in kindergarten through grade 12. Screening and GEI are to address the concerns identified by parents or teachers' regarding the student's behavioral or learning needs. The purpose of GEI is to see what adjustments or changes need to be made to the general education curriculum and/or environment in order for the student to be successful. Schools generally have a team of teachers and support personnel who come together to go through a problem-solving process to understand the concern and develop a plan for intervention in the general education environment.

How to Get Help

When a parent has a concern about a student's learning or behavior they may contact the student's teacher or principal. Each school should let the parents know about who they can contact if they have a concern about their student and explain what happens when a referral is made to get help for a student. This information could be in the school newspaper, fliers or brochures, or a school handbook that goes home.

Initially, the concern may be addressed by the teacher, the parent and the student. If they are not successful, schools will have a procedure for making a referral to the Student Improvement Team. Once the referral is made, the Student Improvement Team will begin to address the concerns. Parents are encouraged to be part of the team in order to provide information about the student.

Schools are to make sure that students enrolled in private schools by their parents have access to GEI. The GEI process for students in private schools should be similar to the process used in the public schools. Representatives of the public and private schools will decide how this will happen.

Student Improvement Team

Each school has a team to assist/support students. The team is sometimes called a student support team, student improvement team, care team, or something similar. We will refer to it here as the student improvement team (SIT). The purpose of the SIT is to design an intervention plan to address individual students' academic or behavioral challenges, monitor the plan and revise as appropriate.

The student improvement team may be made up of different people for each student. The team membership is determined by the identified concerns for the student and may consist of both school and community members. Parents are encouraged to be an active member of the team. The school should identify the supports available to them to bring into the SIT as necessary. Figure 4-2 gives more information about the kinds of school-based and community-based resource teams might use to help.

The team will come together on a regular basis to utilize a problem-solving process to develop and implement a plan that will address the needs of the student.

Four Levels of GEI

The general education interventions process has four levels. At each level of GEI, the problem-solving process is used, data-informed decisions are made, interventions are documented and progress is evaluated.

Level 1: Classroom teacher and parent discuss concerns and agree to implement identified interventions.

Level 2: The classroom teacher consults with another professional(s) and the parent(s). The classroom teacher, with input from parents and another professional, implements intervention strategies in the classroom.

Level 3: Teacher works with a team of professionals to identify additional interventions that may work with a student. Many times, the team provides additional instructional support for the student and/or teacher. At this level an intervention plan is developed and monitored. This level is often referred to as the Student Improvement Team.

Level 4: When interventions at level 3 become intensive enough to require specialized instruction and related services, the team makes a referral for an initial evaluation for special education.

During each level of the GEI process, all 4 steps of the problem-solving process are used — problem identification; problem analysis; intervention planning and implementation; and, monitoring and evaluation.

If the general education interventions are significant enough to be considered special education, the team would use these data as they move into an initial evaluation. The school is to let parents know about the amount and nature of the information to be collected. However, consent from parents is not required before teachers try different classroom interventions at school.

Problem-Solving

The purpose of the problem-solving process is to (1) provide high-quality instruction/ interventions matched to student needs; (2) to look at learning over time and the level of performance; and (3) to make important

educational decisions. The team uses a problem-solving process to clarify the concern someone has about the student; think about what might be contributing to the problem; propose interventions that could be said to make things better; and identify a way to monitor progress.

The first step of the problem-solving process is to identify what the student's problem is, based on how they are behaving or learning now and how they should be learning or behaving in the general education curriculum and/or environment. The team will collect information from some of the people the student interacts with during the day. This could be teachers, other school staff, the school administrators, parents or, in some cases, community representatives. They will look at the curriculum, instruction, environment, and the student's performance and behavior to clearly state the problem and determine what might be the cause of the concern.

Once the problem and the possible causes have been identified, the team brainstorms specific intervention activities that are directly related to what the team thinks is making learning or behaving difficult for the student. Intervention activities proposed by the team are to be those that have been proven to be successful in similar situations.

As the intervention activities are implemented, the student's progress is measured for success. If the intervention activity is not successful, the team will go back through the process to identify why the intervention activity was not successful and propose new intervention activities.

Using the problem-solving process promotes a shared understanding of the concern about a student by addressing the problem and what is contributing to it, and then allows the team to think creatively about what can be done to make things better. Finally, the team looks to see if the student has been successful or whether they need to reassess the interventions.

This process to determine if a student responds to interventions that are scientifically research-based is called response to intervention (RTI). The RTI

model is designed to ensure that students who are at risk of failing in the early grades receive scientific, research-based intervention as soon as possible.

Figure 4-1
The Problem Solving Model

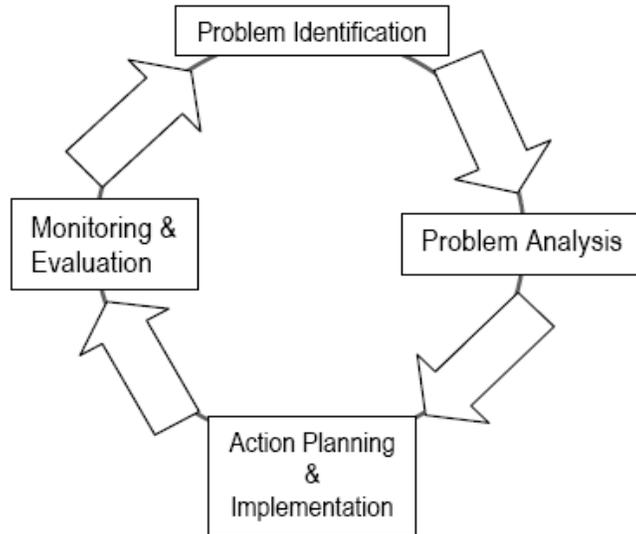


Figure 4-2

PROBLEM-SOLVING RESOURCES				
SCHOOL-BASED RESOURCES			COMMUNITY-BASED RESOURCES	
Volunteers	Peer/Teacher Mentors	Peer Leadership	Parenting Services	Community Mentor Programs
Teacher Expertise	Saturday School	Tutoring Sessions	Alcohol and Drug Assessment and Treatment Services	Mental Health Centers
Daily Progress Reports	Special Education Expertise	Instructional Classroom Modification	Community Service Programs	Social and Rehabilitation Services (SRS)
Parent Partnerships	Before and After School Programs	Mentor Programs	Support Groups	Juvenile Justice Authority
Life Skills Training	Night Classes	Support Groups	Community Health Departments	Civic and Service Groups
Parent Skill Building	Peer Mediation	School Initiations	Public Library	Head Start

Writing the Plan

As the Student Improvement Team goes through the problem-solving process, a plan will be written. The focus of the plan is to document the problem-solving process that the team implements for the student. It includes:

- clear statements of the concerns and explains what might be causing it;
- a focus for the plan that addresses curriculum, instruction, environment, the classroom and the student;
- proven intervention activities to be used in the classroom or community;
- the resources in the school and/or community that may support the student and family;
- staff responsible for the intervention activities;
- how to assess the success of the intervention activities; and changes to the plan that are made as necessary.

Following Up and Evaluating the Plan

Student progress should be assessed on a frequent basis so that changes can be made in a timely manner. The student improvement team reviews information collected that give a picture of progress. The team continues to go through the problem-solving process and make adjustments to the plan until the student experiences success. If the interventions are such that they can be implemented in the general education curriculum by the general education teacher, then no further development of the plan is necessary.

If the information the team collects suggests that the activities tried are not working, the team needs to determine if:

- Parts of the intervention need to be changed because some of the intervention appears to help.
- A whole new intervention needs to be considered because what is being done is not helping the student.
- The team was off-base with what they thought was contributing to the problem

and they need to revisit their thoughts on this (example: The team thought that a reason the student misbehaved was because he wanted attention, but now they think the reason the student misbehaves is because the work is too difficult for him).

What If the Team Suspects an Exceptionality?

Each school district is to conduct general education interventions prior to referring a student for an initial evaluation. The team may suspect the student is a student with an exceptionality when:

- Focused intervention activities have been implemented over an extended period of time and the student is not making progress; or
- Focused intervention activities have resulted in progress, but the intervention activities require a high level of on-going support to maintain this progress and the supports are “specially designed instruction” beyond what is available in general education.

When one of these situations arises, the team, which may include the parents, makes a referral for an initial evaluation. Parents must be provided with a notice that the school is proposing to conduct an initial evaluation. The school must also request that parents give their consent for an initial evaluation in writing. In addition, parents must be given a copy of the *Parent Rights in Special Education* (Parent Rights), explaining their rights under special education law.

(For a copy of the Parent Rights see <http://www.kansped.org/ksde/laws/prights/prightspage.html> . See Chapter 5, Evaluation, Reevaluation, and Eligibility; and Chapter 11, Parent and Student Rights.)

QUESTIONS AND ANSWERS ABOUT GENERAL EDUCATION INTERVENTION

1. What areas will the Student Improvement Team look at that might be affecting the student's learning?

- ♦ relevant academic, developmental and functional performance;
- ♦ how instruction is delivered;
- ♦ classroom and community learning environment;
- ♦ student characteristics;
- ♦ family issues;
- ♦ health concerns; and
- ♦ other ideas.

2. What resources are available to the school?

The school should identify a variety of possible resources from within the school (counselors, tutoring programs, peer mentoring, etc.) and from the community (mental health, support groups, community health programs, social and rehabilitation services, etc.). (See Figure 4-2.)

3. What if a parent makes a referral and does not want to delay the initial evaluation?

If the parent gives consent for an initial evaluation, the evaluation team may conduct general education interventions as part of the evaluation procedures to assist in determining present levels of academic achievement and functional performance.

4. How do parents know how to access these resources?

Each school should let the parents know about whom they can contact if they have a concern about their student. They should explain what happens when a referral is made to get help for a student. This information could be in the school newspaper, fliers or brochure, or a school handbook that goes home.

5. How can parents be part of the general education intervention (GEI) process?

Parents should be informed as soon as a problem arises and be involved in any classroom interventions. They should be part of the decision-making when their student is referred to the GEI process. The team should encourage the parents to be a participating member of the SIT team.

6. How long does a student stay in the problem-solving process?

The amount of time the team continues with the problem-solving process is based on student success. There must be enough time to see if the intervention is going to work. Once the intensity of the intervention is such that it is special education, or it is apparent that the general education strategies are not working, the student should be referred for an initial evaluation. The data from the SIT process provides information about the student's present levels of academic achievement and functional performance.

Resources

Mather, K, and Miller, D., *Student Improvement Training Handbook*. Kansas State Department of Education. (Rev. 2004).

Special Education Process Handbook, Kansas State Department of Education, Student Support Services. (Rev. 2001), <http://www.kansped.org/ksde/ph01/process01.html>.

When schools work together with families to support learning, children tend to succeed not just in school, but throughout life.

Henderson and Mapp

CHAPTER 5

Initial Evaluation, Reevaluation, and Eligibility

Introduction

The Individuals with Disabilities Education Act (IDEA) requires an initial evaluation in order to determine if a student is a student with an exceptionality. This identification is needed for the student to receive special education services. There are three ways a student could be referred for an initial evaluation:

1. when screening or general education intervention indicates the student may have an exceptionality;
2. when the Part C Infant-Toddler program makes a referral to the school; or
3. when parents formally request an initial evaluation.

When a referral is made for an initial evaluation, the parents must be given a copy of their *Parental Rights in Special Education*, (Parent Rights) under IDEA (See Parent Rights <http://www.kansped.org/ksde/laws/prights/prightspage.html>)

If the parent's language is not a written language (such as sign language) the school must ensure that the parents understand the Parental Rights document. The document must be written in the parents' native language (unless it's not practical to do so), and be understandable to the public. (See Chapter 11, Parent and Student Rights).

Figure 5-1 is a flow chart that shows the steps in the process for an initial evaluation. **Written Notice and Parent Consent**

The school must provide the parents with prior written notice and ask for written permission from the parents before an initial evaluation can be conducted. The request for permission to conduct the initial evaluation must inform the parents about what they are giving permission or consent for. When parents give consent for an initial evaluation they are not giving consent for placement to receive special education and related services.

If requested by the parent, a school will give parents a chance to meet to discuss the reasons for wanting the evaluation. The written notice may be mailed or personally delivered to the parents. In addition, a parent may choose to receive the notice by email, if the school makes that option available. The prior written notice for initial evaluation and request for consent must:

1. provide a description of the reasons they are requesting an initial evaluation and any relevant factors;
2. clearly describe the evaluation procedures, including the kinds of assessments, records or reports to be used as part of the evaluation;
3. provide a description of other options considered and the reason why those options were rejected;
4. inform parents they are protected by the procedural safeguards in the *Parental Rights in Special Education*, and how they can obtain a copy; and
5. give parents resources to contact for help in understanding their rights.

If the parents give written consent for the evaluation, the school may start the evaluation immediately. If the parents have not given consent for the evaluation, the school should try to contact the parents to explain the need for the evaluation and answer any questions they may have. If the parents still refuse to consent to the evaluation, the school would either: (1) accept their decision, or (2) ask for mediation

or a due process hearing. The school should keep records of contacts and meetings with the parents.

If the parents refuse to give consent and the school decides it needs to do the evaluation, the school may ask the parents if they want to have a mediation meeting. Mediation is voluntary for both the parents and the school. There is no cost to either of them because mediation is paid for by the Kansas State Department of Education. Mediation may not be used to deny or delay the parents' right to a due process hearing or to deny any other rights. Mediation has been found to be an informal and positive way to resolve issues. Discussions during mediation are confidential and may not be used as evidence in any later due process hearings or civil proceedings. (See Chapter 14, Resolving Disputes.)

If the parents request an initial evaluation and the school decides that the evaluation is not necessary, the school would provide the appropriate written notice to the parent. This written notice must be provided to the parents within 15 school days, unless there is some unusual circumstance. If the parent does not agree that the initial evaluation is not necessary, the parent may request mediation or a due process hearing.

Under some circumstances, a school may have to get consent for an initial evaluation from a person other than a parent of the student. For example, when a student and the parent's rights have been severed by a court or the parents cannot be located, an education advocate must be appointed by the State Board of Education to make educational decisions for that student. Another example is that a judge may appoint a person other than the parent to make educational decisions for the student. In cases like these, the school must get consent from the appropriate persons before conducting an initial evaluation. (See Chapter 12, Education Advocate.)

Initial Evaluation

The evaluation team is made up of the parents and other qualified professionals. The team has at least one teacher or another specialist who knows the area of suspected exceptionality, and at least one person qualified to do individual diagnostic evaluations.

In conducting the initial evaluation the school shall:

- use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information including information provided by the parent;
- not use any single measure or assessment as the sole criterion for determining an appropriate educational program for the child;
- use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- not require the use of a severe discrepancy between intellectual ability and achievement; and
- may use a process based on the student's response to scientifically, research-based interventions and alternative research-based procedures.

The initial evaluation must be finished within 60 school days from the date the school receives written consent from the parent. This timeline may not apply if the school can justify the need for a longer period of time or the parent and the school agree to an extension of time. If a student transfers from one school district to another during the evaluation of the student the parent and the school shall agree on a reasonable time for the completion of the evaluation. A school shall not be held to the timeline if the parent fails or refuses to make the student available for the evaluation.

If the parents request an initial evaluation before general education interventions are tried, the general education interventions may continue as part of the evaluation.

The evaluation team will use a variety of assessment tools and strategies including: record reviews, interviews, observations, tests, and the student's response to scientific research-based interventions. The student will be assessed in all areas related to the suspected exceptionality and all assessments will be administered by trained and knowledgeable personnel. The purpose is to get academic, functional and developmental information, including information from the parents that may help determine if the student is eligible for special education services.

Some of the information from the evaluation also becomes a part of the student's individualized education program (IEP), including information about the present levels of academic achievement and functional performance, and how the student will be involved in and progress in the general curriculum. For preschool children, this means how they can participate in activities appropriate for their age.

The team will review all of the information they have about the student. The team may decide that they have enough information for the evaluation without conducting additional assessments. In this case, the school will provide the appropriate written notice to let the parent know they have enough information and will not conduct any more assessments. The parent may still request that additional assessments be conducted if they think it is necessary to determine eligibility and the educational needs of the student.

Eligibility

After the evaluation is completed, the evaluation team meets to decide if the results of the evaluation show that the student is eligible for special education services. No one measure can be used as the only evidence to decide if a student is eligible. For example, an IQ test score cannot be the only source of information used to say that a student meets the requirements as an exceptional student.

The student's parents are to be invited to be part of the team making this decision. They may attend the meeting or have their opinions given by another person or a team member. The team provides the parents a copy of the evaluation report and the documentation of determination of eligibility.

The Kansas special education law considers that a child is eligible if they:

- (1) meet the requirements of one or more of the exceptionalities including:
 - mental retardation,
 - hearing impairments (including deafness),
 - speech or language impairments,
 - visual impairments (including blindness),
 - serious emotional disturbance (emotional disturbance),
 - orthopedic impairments,
 - autism,
 - traumatic brain injury,
 - other health impairments,
 - specific learning disabilities,
 - developmental delay ages 3-9,
 - giftedness; and
- (2) as a result of having an exceptionality, need special education and related services.

If the evaluation results show that the student is a student with an exceptionality the team must also decide if the student needs special education services. A student may be a student with disabilities or giftedness, but may not need special education services. These students may still need some special help. In such cases, they may have their needs met through accommodations to the general education curriculum. If the student has a disability, s/he may qualify for services under Section 504.

A team made up of parents and qualified professionals, make the decision about eligibility. No one person can decide if the student is eligible for special education

services. If the student's learning problems are primarily from a lack of instruction in reading or math, or limited English ability, the student is not eligible for special education services. In those situations, the team should suggest what other services or programs might help the student. (See Table 4-2)

Reevaluation

The student is to be reevaluated at least once every 3 years unless the parent and the school agree that a reevaluation is not necessary. Also, a reevaluation may be conducted any time the school believes the needs of the student should be reevaluated, or the parent or teacher requests a reevaluation. A reevaluation may not happen more than once a year unless the parent and the school agree that it is necessary.

The school must give the parents the same notice as outlined in this chapter for an initial evaluation and ask the parents for their written consent before doing any reevaluation. If the school tries several times to get the written consent and the parents do not respond, the school can go ahead with the reevaluation. If the parent does not respond or refuses to give consent for a reevaluation the reevaluation will not take place unless the school pursues mediation or due process to obtain agreement. The school shall document different ways they tried to reach the parents, such as phone calls, personal visits, mail, etc.

The procedures and requirements for a reevaluation are the same as for an initial evaluation.

Review of Existing Evaluation Data

As part of an initial evaluation, if appropriate, and any reevaluation, the IEP team and other qualified professionals will look at the assessment information that is already available, including evaluations and information from parents, current classroom-based assessments, and observations by teachers and related service providers. The

team will also identify what additional information, if any, is needed to decide:

- if the student has, or continues to have, an exceptionality;
- if the student needs, or continues to need special education and related services;
- the student's present levels of academic achievement and related developmental needs; and

The team may decide that it has enough information for the reevaluation without conducting additional assessments. In this case, the team will provide the appropriate notice to let the parent know they are requesting to conduct a reevaluation, but they have enough information for the reevaluation and will not conduct any more assessments. The parent may still request additional assessments be conducted if they think it is necessary to determine eligibility and the educational needs of the student.

Evaluations Before Change in Eligibility

The school staff will reevaluate a student with an exceptionality before deciding that the student no longer needs special education services. For example, a student may have accomplished the goals on the IEP and be doing well in the general education classroom. There may be no more need for special education services, but to be sure, the team does the reevaluation. However, a reevaluation is not needed when special education services will end due to graduation or because the student has reached age 21 and the current school year has ended.

Independent Evaluation

The parents of a student with an exceptionality may obtain an independent evaluation of their child or they may ask for an independent evaluation at school expense any time they disagree with the results of the evaluation done by the school. When the parents ask for an independent evaluation at school expense, the school must provide it or begin a due process hearing to show that its evaluation is appropriate. If the final decision

is that the school's evaluation is appropriate, the parent still has a right to an independent evaluation, but the school does not have to pay for it. The results of any independent evaluation must be considered by the school or hearing officer, or both, in decisions made about the student's special education services.

When an independent evaluation is done, the same requirements for evaluations done by school staff must be followed. The people who do the evaluation must meet the qualifications required by the school for its own evaluators. The school may not be responsible for the costs of unreasonably expensive evaluations when similar evaluations do not cost as much.

The school may limit costs for independent educational evaluations paid for by the school, if the limit is reasonable. When the cost of an independent evaluation is more than that limit, the school pays only the limited amount. However, the school may have to pay more than the limit if there is something very special that needs to be evaluated. If a hearing officer asks for an independent educational evaluation as a part of a hearing, the school pays for it.

QUESTIONS AND ANSWERS ABOUT INITIAL EVALUATION, REEVALUATION, AND ELIGIBILITY

1. How do you make a referral/ request for an initial evaluation?

Each school district has procedures for making a referral for an initial evaluation. This information should be available to parents and school staff. A parent may contact the school office or the teacher for this information. A request can usually be made by the parent either in writing or verbally to a school official.

A referral may be made by the school personnel when screening or general education interventions indicate a student may need special education services in order to make progress in the general education curriculum. If the parents ask for an evaluation before the general

education intervention process is finished, the intervention process may continue as part of the evaluation. Before age 3, the referral from the Part C Infant-Toddler program is a referral for an initial evaluation.

2. What can the school staff do to be sure evaluations do not discriminate?

All evaluation procedures must be conducted in the language the child uses or in the way the student communicates with others. For example, if a student is from a home where English is not used, the school staff decides what language the student understands the best. That is the language they use for the evaluation.

Also, each assessment and other materials are to be provided in the language and form most likely to provide accurate information on what the student knows and can do academically, developmentally, and functionally.

The evaluation or access to special education services can not be delayed because the student can not communicate effectively in English. Also, a student cannot be identified as a student with an exceptionality because of limited ability to speak English.

3. What are the qualifications of the people doing the evaluation?

All assessments that are part of the evaluation must be given by a professional certified or licensed to give and interpret that test or assessment.

4. What is required to be part of the initial evaluation?

The assessment must provide enough information to determine eligibility for special education and develop an IEP for the student. There must also be information related to enabling the student to make progress in the general education curriculum, or for preschool children, to participate in appropriate activities.

The student should be evaluated in all areas of concern. The team must assess the learning, behavior, physical and developmental areas, to the extent these are areas of concern.

The team must use a variety of assessments tools and strategies to gather functional, developmental and academic information, including assessments, observations, review of records and interviews with parents and others knowledgeable about the student. The team may include a process based on the student's response to scientific, research-based interventions and procedures. The team shall not be required to use a severe discrepancy between intellectual ability and achievement.

5. What is the timeline for an initial evaluation?

Each evaluation must be done within 60 school days from the date the school received written consent to conduct the evaluation from the parents. There are some situations where the timeline may be extended with agreement of the school and parent.

6. What if a student is not eligible for special education services?

If a student is evaluated and does not qualify for special education services, some other kinds of help may be needed. The Student Improvement Team may meet again to consider other resources or find out if the student is eligible for services under Section 504. (See <http://www.kansped.org/ksde/laws/504.doc>.)

7. What if a student transfers to another school district during the initial evaluation?

The two school districts are to share information and to be sure that the evaluation is completed as soon as possible. The new school shall make sufficient progress to ensure a prompt completion of the evaluation. The school and the parent should agree on a timeline for completion of the evaluation.

8. Why would a parent agree to not have a 3 year reevaluation?

A parent may agree to forgo a 3 year reevaluation if their student has been receiving special education services for many years, or if there is enough information available to determine the educational needs of the student and that the student continues to need special education services. Through annual IEP reviews, there should be continued assessment data reviewed by the IEP team of the student's progress in meeting the measurable annual goals.

Resources

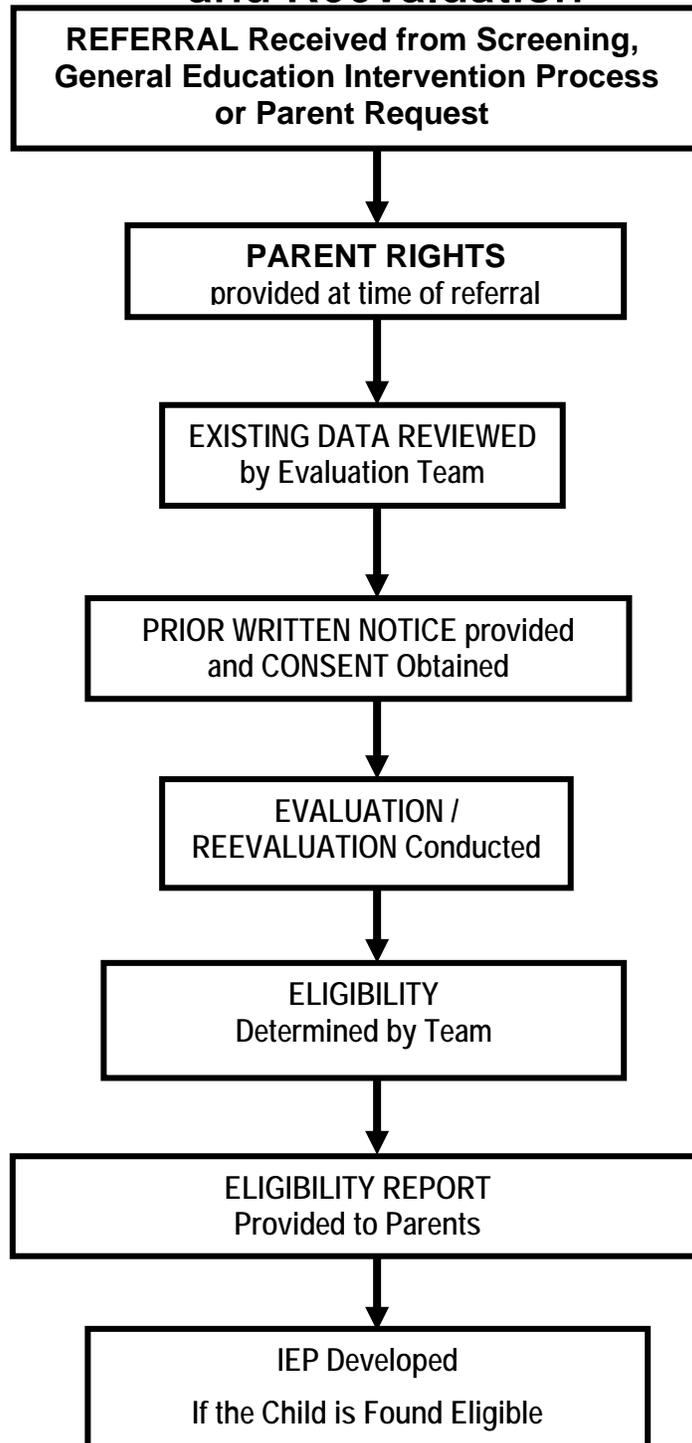
Kansas Special Education for Exceptional Children Act, 2006,
<http://www.kansped.org/ksde/laws/spedlaw.html>

Kansas Special Education Regulations, 2001,
<http://www.kansped.org/ksde/laws/art40/art40.pdf> .

Special Education Process Handbook, Kansas State Department of Education, Student Support Services. (Rev. 2001).
<http://www.kansped.org/ksde/ph01/process01.html> .

Table 5-1

INITIAL EVALUATION and Reevaluation



CHAPTER 6

Individualized Education Program (IEP)

Introduction

Many people have called the Individualized Education Program (IEP) the most important part of the Individuals with Disabilities Education Act (IDEA). The IEP is individualized so it is right for each student. It must be educational, that is, it must ensure the student receives a free appropriate public education. It is also a program, or a plan for the student's success in learning and for their future.

The parents of a student with an exceptionality are expected to be equal participants with school personnel, in developing, reviewing, and revising the IEP for their student. This is an active role in which the parents:

1. provide critical information regarding the strengths of their student and express their concerns for enhancing the education of their student;
2. participate in discussions about the student's need for special education and related services and supplementary aids and services; and
3. join with the other participants in deciding how the student will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the student and in what setting.

The IEP lays out how the student will receive a free appropriate public education in the

least restrictive environment. Among other components the IEP:

- describes the student's academic achievement and functional performance;
- describes how the student will be included in the general education curriculum;
- establishes annual goals for the student and describes how those goals will be measured;
- states what special education and related services are needed by the student;
- describes how the student will be appropriately included in state and district-wide assessments including through the use of alternate assessments; and
- determines what accommodations and/or modifications may be appropriate for the student's instruction and assessments.

THE IEP MEETING

Notification of Meeting

The school must schedule an IEP meeting at least annually. Parents are to be notified in writing at least 10 days before the date of the IEP meeting. The notice should tell the parent:

- the purpose of the meeting;
- the proposed meeting date, time and place it will be held;
- the positions of the people the school is asking to attend the meeting.

The meeting should be on a date, time and place that both the school and parents agree upon. If the parents ask for, or agree to meeting on an earlier date, the 10 days can be waived.

Parents may ask to have the meeting at a different date, time and place or to participate in the meeting through a conference call, video conference or other ways.

Who Are The IEP Team Members?

The required members of the IEP team include:

- the parents (or educational decision maker);
- not less than 1 of the student's general education teachers, if the student is or may be participating in the general education environment;
- not less than 1 of the student's special education teachers or special education providers;
- someone who understands how the evaluation results effect the instruction of the general curriculum for the student;
- a representative of the school who:
 - is qualified to provide or supervise specially designed instruction to meet the unique needs of students with exceptionalities;
 - knows about the general curriculum;
 - knows about the school's resources;
- at the discretion of the parent or school, others who have knowledge or special expertise about the student, including related services personnel; and
- the student at age 14 if appropriate (or earlier).

In addition, if the child has been in a Part C Infant-Toddler program, the parent can ask that an invitation be sent to that program.

If one of the purposes of the IEP meeting for a student age 14, or earlier if appropriate, is to discuss the goals for the student after high school and the transition services needed to help the child in reaching those goals, the following people must be invited:

- the student (if the student does not attend the IEP meeting, the school should be sure the student's preferences and interests are considered);
- a person from any agency likely to provide or pay for transition services.

General Education Teacher at the IEP Meeting

The role of the general education teacher is to assist in determining appropriate positive behavioral interventions, supports, and strategies; the determination of supplementary aids and services; the program modifications; and support for school personnel that will be provided to assist the student. The general education teacher is required to attend the IEP meeting unless the parent agrees to excuse the teacher.

Excusal From IEP Meeting

A member of the IEP team can be excused from all or part of the meeting if the parent and school agree in writing that they do not need to come because the member's area of the curriculum or related services is not being changed or discussed in the meeting.

A member of the IEP team may be excused from all or part of the IEP meeting when their area of the curriculum or related services is being discussed if the parents and school agree in writing and the team member submits written input into the development of the IEP before the meeting.

Parent Attendance at the IEP Meeting

It is important that parents are involved in the development of the IEP for their student and every effort should be made to have the parents attend the IEP meeting. Parents may be part of the meeting by use of a conference call, video conferencing or other ways.

However, the IEP meeting can be held without the parent if the school can show that they tried, but were unable to contact the parent, or the parents did not want to attend the meeting. Detailed records will be kept showing the date, time and person making telephone calls, visits to the home, correspondence and other attempts to contact the parents.

Who Else Can Come?

If they wish, the parents or the student may invite others to attend the IEP meeting. They may invite people they know who can provide useful information about the student, such as an advocate, or relatives. It is a good idea for parents to let the school know who is coming. In addition, other people who work with the student (for example, job coach, therapist, school nurse, bus driver, or paraeducator) may attend. If parents invite these people, the school does not have to release them from their responsibilities so they can attend. In addition, if parents invite people who charge a fee for their time, the school does not have to pay the fee.

The school should list all of the people, by position, they are inviting to the IEP meeting on the notice that is sent to the parents 10 days before the meeting is to be held.

How Often Do They Meet?

The meeting to develop a student's first IEP must be held within 30 calendar days after the team determines the student is eligible for special education services. It must also be within the 60 school days from when the school receives the parents' consent to the evaluation until the start of the services. After that, IEP meetings must be held at least every year to review the student's current IEP and revise it as appropriate. In addition, the parents or staff can ask for an IEP meeting any time during the school year if they feel there is a need for changes or discussion.

Changes to the IEP

Changes made to the IEP after the annual review of the IEP, may be made by all of the team members or, if the school and parent agree, can be made by an official representative of the school and the parent. The school will give the parent prior written notice of any changes made to the IEP and get consent from the parent if the changes are: more or less than 25 percent of the duration or frequency of a service (material change in

services); or more than 25 percent of the student's school day with regard to participation in a more or less restrictive environment (substantial change in placement). Parents may request a copy of the revised IEP. Changes made after the annual review do not change the annual IEP date.

When and Where?

IEP meetings are held at a time and place that are agreed upon by the parents and the school. Usually, meetings are at the student's school. When deciding the time and date for the meeting, the team must choose a time when all required IEP team members can attend either in person or through another way, such as conference a call.

What Is Discussed?

At an IEP meeting, the parents, the student if appropriate, and the school staff meet as a team to decide together:

- how the student learns best and the learning needs of the student;
- the concerns of the parents for the student to receive a good education;
- the results of the initial evaluation or reevaluation;
- the academic, developmental and functional needs of the student; and
- the services that will be provided to meet the student's needs.

When revising an IEP, the team will also consider if the annual goals are being achieved. The team also revises the IEP to address:

- any lack of expected progress toward the annual goals and in the general education curriculum;
- the results of any reevaluation;
- information provided by the parents;
- the student's anticipated needs;
- any other matters, as appropriate.

The parents should be aware of what is to be discussed at the IEP meeting. The notice of the IEP meeting should indicate the purpose of the meeting. If there is an agenda for the

meeting, the parents should have a copy before the meeting. Parents should have enough time to prepare for the meeting.

Figure 6-1 is an IEP Planning Tool that parents can use in preparing for the IEP meeting. It is important that the team considers the parents perspective on both the strengths and concerns of their student. This form assists parents in thinking about the learning and developmental needs of their student.

How long does the meeting take?

The length of an IEP meeting is different, based upon what needs to be discussed. On the average, the meeting may take one to two hours. The initial IEP meeting and meetings where transition issues are being discussed may require extra time.

THE IEP DOCUMENT

What goes into a student's IEP?

The IEP has several parts and must have certain information. In Kansas, each school decides how this information is presented. IEP forms vary from district to district. However, the main parts listed below must be included:

- present level of academic achievement and functional performance;
- measurable annual goals including academic and functional goals;
- benchmarks or short-term objectives if the student is participating in an alternate assessment aligned to alternate achievement standards;
- a description of how the student's progress toward meeting the annual goals will be measured and when periodic reports will be provided;
- special education and related services and supplementary aids and services, including the frequency, location and duration of the services;
- transition services and postsecondary goals(age 14, or earlier if needed);

- participation in district-wide and State assessments;
- consideration of special needs for, or to support, the student; and
- an explanation of the extent, if any, to which a student will not participate with general education students in classrooms or activities.

Present Level of Academic Achievement and Functional Performance

An important part of the student's IEP is the present level of academic achievement and functional performance. This is a description of the student's abilities and his/her behavior and should clearly describe the student's current academic and non-academic strengths, skills, talents, and needs. Also, the present levels should include how the student's exceptionality affects his/her ability to participate and progress in the general education curriculum. For preschool children, a description of how the child's disability affects participation in appropriate activities should be stated. If the student is 14 or older, the present levels should have information about transition needs.

The present level of academic achievement and functional performance establishes the starting point, or baseline, that will be used to develop the IEPs measurable annual goals and measure progress in meeting those goals.

Measurable Annual Goals

Another important part of the student's IEP is the measurable annual goals, including academic and functional goals. These goals help the student to participate and make progress in his/her areas of need that arise from the student's exceptionality, at the level that is appropriate for him/her. The goals must be measurable and must relate directly to his/her academic achievement and/or functional performance.

Measurable annual goals are statements describing what the student will learn in the next year. They should:

- relate directly to the needs described in the present levels of educational performance;
- be something that can be reasonably accomplished within the school year;
- allow the student to be involved in and progress in the general education curriculum; and
- be measurable to determine if the student is making progress.

An example of an annual goal is, “In 36 weeks, Andy will be able to rote count from 1 to 25 without prompts with 100% accuracy on at least 3 of 4 trials.”

Benchmarks or Short-Term Objectives

Benchmarks or short-term objectives are required only for students who will take an alternate state or district-wide assessment. Benchmarks and short-term objectives may be included in the IEP for other students if the IEP team chooses to use them as a way of describing how the student will make progress.

Benchmarks are major milestones along the way to completion of an annual goal. A benchmark is a step in the process, such as, “In 9 weeks, Andy will be able to rote count from 1 to 15 without prompts with 100% accuracy on at least 3 of 4 trials.”

Short-term objectives are instructional steps to achieve measurable annual goals. They are based on a step by step breakdown of the measurable annual goals. They can also help the teacher develop daily lesson plans.

Progress Reporting

The IEP should also describe how the student’s progress toward meeting the annual goals will be measured and when reports on the progress the student is making will be provided to the parents.

Special Education, Related Services and Supplementary Aids and Services

Each IEP must include the special education and related services as well as the supplementary aids and services to be provided to the student. These services are to be instruction and strategies known to be effective through research, as much as practical. The services should also include any needed accommodations, changes to the general education curriculum or supports for the teaching staff that will help them work with the student.

The special education services, related services and supplementary aids and services are put into place to help the student to:

- make progress toward meeting the annual goals;
- be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- be in the general education classroom and participate in other educational activities with other students without special needs.

Special education services are specially designed, individualized services that make it possible for the student to meet his/her academic and functional goals and needs provided in the location that is the best place for him/her to learn.

Related services are special services needed to support students’ special education services so they can make progress to meet their academic and functional goals. Related services can include services such as occupational therapy, physical therapy, speech-language therapy, counseling services, orientation and mobility services, and/or transportation services. Related services do not include a medical device that is surgically implanted, or the replacement of such a device, such as a cochlear implant. Related services also do

not include services provided by a medical doctor.

Supplementary Aids and Services are services, aids and other supports that are provided in general education classrooms or other education-related settings so that students with an exceptionality can participate with students without exceptionalities to the maximum extent appropriate. Some examples might be a paraeducator, an interpreter, a note-taker, modifications to the curriculum or an assistive technology device.

Frequency, Location and Duration of Services

Any special education, related service and/or supplementary aid or service that the student needs must be written into the IEP. This is true even if the service is not directly available from the school, and the service is provided by or contracted to another agency or provider. For each service the IEP should list:

- the type of service to be given (for example, speech therapy);
- the frequency and location (for example, individual speech therapy, 2 times per week during reading class or in the resource room);
- the date the service will begin and end; and
- the position of the person who will provide the service (for example, speech therapist or special education teacher).

Transition Services

When the student turns 14, the IEP team must plan for the student's life and activities after high school. This planning can start earlier if the team decides that it is necessary. At age 14, if not before then, the IEP must include measurable goals for what the student wants to do after high school. The goals should relate to the student's course of study based on his/her strengths, interests and preferences (for example, taking advanced placement courses or vocational education courses such as, welding, auto mechanics or early childhood

development). The IEP team will also discuss what services the student will need in order to meet the goals.

The student is to be assessed to help see what the student's strengths, interests and abilities are and to help in deciding what might be appropriate goals. The assessment should look at these areas:

- educational options,
- employment opportunities,
- independent living skills, if appropriate.

When the student is 17, the IEP must have a statement that the parent and student have been informed about the rights that will transfer to the student at age 18. (See Chapter 10, Transition.)

Participation in the General Education Curriculum and Environment

Each student's IEP must describe the time that the student will **not** participate in the general education environment and/or extracurricular and nonacademic activities with students not receiving special education services.

A statement of any changes to the student's curriculum or environment must be included in the IEP if necessary for the student to participate in the general education curriculum and environment. These changes might be accommodations (supplementary aids and services), modifications, or supports for school personnel. These will allow the student to:

- move ahead toward completing the annual goals;
- be involved and progress in the general curriculum; and
- participate in extracurricular and other nonacademic activities.

An **accommodation** is an aid, service or support that allows students to participate with general education students to the maximum extent appropriate. An accommodation may be made to provide an equal opportunity in a general education

environment, so the student can demonstrate what she/he knows and can do. An example of an accommodation is when a student is given more time to do a class assignment.

A **modification** is when the task is changed, sometimes a great deal, because the student is unable to do the task, even with accommodations. For example, if the student can not read, a class reading assignment would be changed for him/her. Perhaps someone reads the information to the student and asks questions.

State and District-wide Assessments

All students should participate in Kansas state assessments and district-wide assessments at the appropriate age when an assessment is given. The IEP team will include on the IEP any accommodations that the student may need when participating in the state or district-wide assessment.

The IEP team may decide that a particular state or district-wide assessment is not appropriate for a student and that the student will take an alternate assessment. Kansas has 3 assessment options for each student:

- the general assessment with or without accommodations;
- the Kansas Assessment of Modified Measures (KAMM); or
- the Kansas Alternate Assessment.

In order for a student to be eligible to take either the KAMM or the alternate assessment, the IEP team must decide if she/he meets the eligibility criteria. If the student is to take an alternate assessment the IEP must include:

- why the regular assessment is not appropriate for the student; and
- which assessment is appropriate for the student.

Examples of accommodations might be, that the student is allowed extra time to take the test, or have someone to write the answers that the student gives. If a student is to have an accommodation for the state or district-wide assessment, it should be included in the IEP

and should be something that is needed by the student for other daily learning needs.

The State has developed alternate state assessments for students who are not able to take the regular assessment. Local districts have alternate district-wide assessments for the student population that qualifies. Only a small number of students with disabilities will take the Kansas alternate assessments. (For more information on the Kansas state assessments see <http://www.kansped.org/ksde/assmts/ksstassmtsinfo.html> .)

Special Considerations

A student may have some needs that are very special. These special needs are to be looked at by the IEP team and included in the IEP if the student needs any of these special services. Some special situations are as follows:

- for behavior issues, consider strategies, including positive behavioral interventions, strategies, and supports;
- for a student with limited English proficiency, consider the language needs as they relate to the student's IEP;
- for a student who is blind or visually impaired, provide for instruction in Braille unless the IEP team decides it's not appropriate;
- for a student who is deaf or hard of hearing, consider the student's language and communication needs; and
- consideration of the need for assistive technology devices and services.

Graduation

When students are in high school, the IEP team should talk about when they will graduate. Most students will graduate with their class; however, students with disabilities may attend school until the end of the school year in which they reach the age of 21. The team should look at the classes required for graduation, and what the student's long-term goals are. These plans for graduation or completion of the program are closely tied to the transition plan in the IEP.

Implementing the IEP

As a member of the IEP team the parent will be asked to sign the IEP to indicate his/her attendance at the meeting. Once the IEP has been developed, the school will provide the parents with a prior written notice and ask the parent to provide written consent to begin providing the services on the IEP. The school cannot begin services until the parent gives consent.

Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it's the only thing that ever has.

Margaret Mead

QUESTIONS AND ANSWERS ABOUT THE IEP

1. How can parents be involved in the IEP meeting when they work during the day?

The IEP team should make every effort to have the parent attend the IEP meeting. Meetings can be held at a time convenient for the parent, such as, before the parent goes to work in the morning, or during lunch time. Parents can attend the IEP meeting from work by telephone or video conference.

2. What if the parents do not speak English?

In order to help the parent understand what is being proposed for his/her student during the IEP meeting, the school should provide a translator for parents who do not speak English.

3. Where do we get the information to describe the student's present level of educational performance?

Information is gathered during the general education interventions and/or the evaluation and by the teacher and others working with the student during the school year. Common sources of information include both formal and informal assessments of student

performance, observations of student behavior at home and school, student work samples, and any other input from parents and teachers that is relevant.

4. What should the IEP team consider when it decides how the student will participate in state or district-wide assessments?

The IEP team will decide if the student can participate in the general state or district-wide assessments or whether she/he meets the eligibility criteria to take either the KAMM or the alternate assessment. Here are some suggestions to consider when making participation decisions:

- what accommodations are needed during daily instruction;
- what is the intensity of individualized instruction and supports;
- what is the student's level of performance; and
- what content area of assessment is being administered.

5. What if the student/family transfers to another school district during the school year?

The new school will get copies of the records from the old school as soon as possible. The new school will provide the services on the IEP or services as similar as possible, until the new IEP team can meet to review the current IEP and adopt it or develop and implement a new IEP that better meets the student's needs. The school may ask the parents for consent to conduct a reevaluation.

6. How are the parents concerns for their child included in the IEP?

The IEP team is to ask for and discuss any concerns or information that the parent may have about the student's learning needs. This discussion may help the team decide on what should be included in the plan and to see what the teacher can do to help the student to learn and make progress in meeting his/her IEP goals. The parents

concerns may be included in the IEP or in the notes of the IEP meeting.

RESOURCES

Kansas Special Education for Exceptional Children Act, 2006,

<http://www.kansped.org/ksde/laws/spedlaw.html>

Kansas Special Education Regulations, 2001,

<http://www.kansped.org/ksde/laws/art40/art40.pdf>

Excusal from Attendance Form,

<http://www.kansped.org/ksde/laws/forms/ExcAttend.pdf>

IEP Amendment Form,

<http://www.kansped.org/ksde/laws/forms/lepAmend.pdf>

Special Education Process Handbook,

Kansas State Department of Education,
Student Support Services. (Rev. 2001),

<http://www.kansped.org/ksde/ph01/process01.html> .

Table 6-1 ***IEP Planning Tool***

Student:

Age:

Grade:

Your child's Present Levels of Academic Achievement and Functional Performance are the foundation upon which his/her IEP is built. Before a team can develop an IEP which meets your child's needs and provides the supports, services and specially designed instruction, the team must clearly identify your child's present levels. Your role in this process is to share what you see as your child's strengths, needs and dreams for the future. It is important to list both strengths and needs as the key to helping your child succeed.

My child's **strengths and needs** in the following areas:

- Physical (fine and gross motor)
- Communication (receptive language and expressive language, can others understand him/her, how does he/she follow directions, how does he/she communicate, use of language in social situations...)
- Thinking (cognitive) abilities: (academic performance)
- Social Skills (include any emotional concerns, anxiety...)
- Vision and hearing (delay in processing time...)
- Health (which may affect the school day)
- Behavior (behaviors which impede his/her learning, talking, attention concerns...)
- Self-help skills (using restroom, eating...)
- Vocational skills (age 14 and beyond) (job related...)
- Any other needs/strengths specific to your child

It is also important for the team to know your child's interests.

My child's interests: (he/she love to do, watch...)

My dream's for my child: (for this year and for the future...)

Other concerns:

The common traits of people who are successful supporting my child:

People, places, things or activities important to your child:

Families Together, Inc.

www.familiestogetherinc.org

CHAPTER 7

Special Education and Related Services

Introduction

This chapter will discuss what services a student may receive under the Individuals with Disabilities Education Act (IDEA). One of the most important things the Individualized Education Program (IEP) team must do is to decide what special education and related services the student needs and to include in the student's IEP. The special education and related services are to help the student:

- make progress on the goals in his/her IEP;
- participate and progress in the general education curriculum and environment, or appropriate activities for children ages 3-5; and
- learn in the same classroom with students without special needs as much as possible.

Each student with an exceptionality is to receive a free appropriate public education (FAPE). This means that students will receive special education and related services that:

- (a) are provided by the public schools, under public school supervision and direction, and without charge to the parents;
- (b) meet the standards of the state education agency;
- (c) include preschool, elementary school, or secondary school education in the State; and
- (d) are provided according to an IEP that meets the requirements of the law.

The services a student receives are based on his/her individual needs. This chapter discusses the following services:

- special education services;
- related services;
- supplementary aids and services;
- assistive technology devices;
- assistive technology services;
- transition services;
- extended school year services;
- private school services.

More complete information about special education and related services can be found in the *Special Education Process Handbook* <http://www.kansped.org/ksde/ph01/process01.html>

Parental Consent

The school must provide the parents prior written notice and request written consent before the services on the initial IEP can be provided. If the parents refuse to consent or fail to respond no services will be provided. The school cannot use due process or mediation to obtain agreement for services to be provided. The school shall document reasonable attempts to obtain parental consent.

Special Education

According to IDEA, the term **special education** means specially designed instruction, at no cost to parents, to meet the unique needs of a student with an exceptionality, including:

- instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- instruction in physical education.

Special education includes:

- speech-language pathology services, occupational and physical therapy, if the service is considered special education rather than a related service under Kansas State standards;
- travel training; and
- vocational education.

Physical education means the development of:

- physical and motor fitness;
- fundamental motor skills and patterns;

- skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
- includes special physical education, adapted physical education, movement education, and motor development.

Specially designed instruction means adapting, as appropriate to the needs of the student, the content, methodology, or delivery of instruction to:

- address the unique needs of the student that result from the student's disability; and
- ensure access of the student to the general education curriculum, so that s/he can meet the educational standards of the school district that apply to all students.

Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to:

- develop an awareness of the environment in which they live; and
- learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

Vocational education means

- organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, as well as for additional preparation for a career not requiring a baccalaureate or advanced degree; and
- includes vocational and technical education.

To determine what special education services will be provided to the child, the IEP team will look at the student's present levels of academic and functional performance, the measurable annual goals and, if appropriate, the short-term objectives or benchmarks that are included

in the IEP. The special education services are:

- to be based on the unique needs and abilities of the student; and
- to reasonably promote the student's educational success.

Related Services

Related services are the developmental, corrective, and supportive services required to assist a student with an exceptionality to benefit from special education services. The IEP team looks at each student's goals to decide what services and supports are needed to assist the student to achieve his/her goals. The term "related services" means developmental, corrective, and other supportive services including, but is not limited to:

- speech-language pathology;
- audiology services;
- psychological services;
- physical and occupational therapy;
- recreation, including therapeutic recreation;
- social work services;
- counseling services, including rehabilitation counseling;
- orientation and mobility services;
- interpreting services;
- school nurse services;
- counseling services;
- parent training;
- transportation, needed so that the student can participate in special education and related services at school or other places in the community. It may include travel to and from school, travel in and around school buildings and specialized equipment, such as lifts and ramps;
- medical services (for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education; and
- includes the early identification and assessment of disabling conditions in children.

It is important to point out the difference between medical services and school nurse/health services. Medical services are services that must be provided by a doctor. Services that require the skills of a medical doctor are related services only if they are performed for diagnostic or evaluation purposes. School nurse services are provided by a qualified school nurse or other qualified person and are to be provided to assist a student with a disability to benefit from special education and related services.

Supplementary Aids and Services

In addition to related services, some students may require additional help to support their learning. These supplementary aids and services (also referred to as “accommodations”) may include aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with exceptionalities to be educated with nonexceptional children to the maximum extent appropriate. Examples of these services might include a paraeducator, a sign language interpreter, a job coach, or a bi-lingual translator.

Assistive Technology Devices and Services

Most of us think of technology as equipment of some kind, usually something like a wheelchair or expensive like a computer-based communication device. Most assistive technology devices are fairly simple and inexpensive. The definition of assistive technology device in IDEA is very broad:

“The term ‘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 functional capabilities of a child with a disability”.

Assistive technology device does not include a medical device that is surgically implanted, or the replacement of such a device; such as a cochlear implant.

The definition of assistive technology service is also very general:

“The term ‘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 may include:

- (a) the evaluation of the needs of such child, including a functional evaluation of the child in the child’s customary environment;
- (b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;
- (c) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
- (d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) training or technical assistance for such child, or, where appropriate, the family of such child; and
- (f) 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 such child.”

In order to decide what kinds of devices or services might be helpful for a student in school, home, work, or the community, it is important to conduct an assistive technology evaluation. The team may list an assistive technology evaluation as a service on the IEP. (For more information on assistive technology see <http://atk.ku.edu/atiep.htm> .)

Transition Services

Transitions are a natural part of the educational experience for all students. Students move from infant-toddler to preschool, to kindergarten, to elementary school, middle school, and high school. There may be some transitions in between, especially if the family moves from one area to another. Both families and schools need to be aware if the student needs some special help to make these moves smoothly and without missing any services. The transition services required to be included in the IEP refer to those provided to a student to prepare them for life after leaving high school. When the student is age 14, the IEP team is to talk about what the future holds for them. What kind of classes should she/he take? What activities are of interest to the student and in what community-based activities does the student want to participate?

In developing the student's transition goals, the IEP team, including the student, must determine what instruction and educational experiences will help prepare him or her for a successful transition to life after high school. At age 14, if not before then, the IEP must include measurable goals for what the student wants to do after high school. The goals should relate to the student's courses of study based on his/her strengths, interests and preferences (for example, taking advanced placement courses or vocational education courses such as, welding, auto mechanics or early childhood development).

Then, at age 16, in addition to the measurable goals for after high school and the courses of study, the IEP team must develop a statement of the transition services needed to assist the student in reaching those goals. (See Chapter 10, Transition.)

Extended School Year Services

In order to ensure that all students with a disability learn and make progress in the general education curriculum and functional

activities, it is important that they are able to maintain what they have learned. The IEP team should look at any number of factors (such as the severity/intensity of the disability, health factors, and behavior) to determine what progress the child might lose over a school break, during or between school years, such as holidays or summer break. The IEP team may require services to be provided during these times.

"Extended school year services" means special education and related services that are provided to a student 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.

The school cannot limit extended school year services to certain categories of disabilities or limit the type, amount, or length of time of the services that the IEP team decides is what the student needs. (See Special Education Process Handbook, Chapter 5, Special Education and Related Services.)

Services for Students Placed by Their Parents in Private Schools

The local school district is required to carry out child find activities to locate (screen) and identify (evaluate) students attending the private schools in their district. Kansas law requires that students in private schools receive a free appropriate public education (FAPE) if the parent requests all of the services identified by the IEP team as needed by the student. Parents of students in private schools have a choice to access all or part of the services identified.

The local school district first uses the required amount of federal funds to provide IEP services to the students attending private schools in their district. When those funds have been used, a student may continue to be served by the district where the student lives.

Services can be provided at the private school or students may be transported to the public school or community setting to receive services. How and where services are provided are determined by the school in consultation with representatives of the private schools and representatives of parents of students with disabilities in private schools. (See Special Education Process Handbook, Chapter 15, Children in Private Schools.)

Timelines for Implementing Services

In most cases, services on the IEP should be in place within 60 school days from the date the school received written consent from the parent to do an evaluation.

Special education services for each student will look different because not every student needs the same thing. The IEP will include how much time will be given to each service. The amount of time must be:

1. appropriate to the specific service and needs of the student; and
2. stated in the IEP so that it is clear to all IEP team members including parents, service providers and administrators.

Conclusion

One of the purposes of the law is to ensure that all children with exceptionalities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. The IEP team must carefully consider

what services are necessary for a student so that s/he can learn and progress in reaching their goals. If a student is not making meaningful progress it is possible to change the student's program any time. School staff or a parent may call for the IEP team to meet again to review and, if necessary, revise the IEP so that the needs of the student are addressed appropriately.

RESOURCES

Special Education Process Handbook, Kansas State Department of Education, Student Support Services. (Rev. 2001), <http://www.kansped.org/ksde/ph01/process01.html> .

OSEP Memorandum on Parentally Placed Private School Students, <http://www.kansped.org/ksde/laws/osepprivschls.pdf>

CHAPTER 8

Least Restrictive Environment

Introduction

When deciding where the services on the IEP should be delivered, the IEP team will always start by thinking about how the student's goals can be met in the general education classroom. What special education services, related services, or supplementary aids and services will it take for that to happen? Some examples might include some modification to the classroom environment for the student or specialized training for the teacher; an assistive technology evaluation may indicate the need for an assistive technology device; or maybe the student can be successful in controlling his behavior with some instruction in a small group.

Only when there is evidence that, even with the use of supplemental aids and services, education in a regular classroom will not be successful, would the team consider taking the student out of the general education classroom. The expectation is to continue work in the general education curriculum and to have high expectations for students, so that they can be successful. If there is proof that a more restrictive environment is needed, the placement may be changed. However, there should always be a plan to move back to the more inclusive, less restrictive setting.

The least restrictive environment (LRE) requirement does not apply to students that are identified as gifted.

What is the Least Restrictive Environment?

The least restrictive environment (LRE) means, that to the maximum extent

appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled. Also, students with disabilities are to be removed from the general education environment only when the nature or severity of the needs of the student is such that education in a general education classroom with the use of supplementary aids and services cannot be achieved satisfactorily.

When developing the IEP, the IEP team must include a statement of the program modifications and supports that will be provided for school personnel and for the student so that the student can:

- advance appropriately toward attaining the annual goals;
- be involved and progress in the general curriculum;
- participate in extracurricular and other nonacademic activities; and
- be educated and participate with other students with disabilities and students without disabilities.

The IEP must also include an explanation of how much time, if any, the student will not participate with students without disabilities in the general education class and in extracurricular and other nonacademic activities.

The IEP team, which includes the parents and other people who know about the student, the meaning of the evaluation data, and the placement options will make the decisions about where the student will receive services. Schools are to be sure that parents participate in all decisions concerning the educational placement of their student.

Considerations for Educational Placement

The team that is making the decisions about where the student will receive the services identified on the IEP must consider several

requirements in the law. The educational placement for each student is to:

- be determined at least annually;
- be based on the student's IEP;
- be as close as possible to the student's home; and
- consider any potential harmful effect on the student or on the quality of services needed.

Unless the IEP team determines some other placement, services are to:

- be provided in the school that the student would normally attend;
- be provided in the general education classroom;
- include supplementary aids and services to support the student in the general education classroom;
- be provided, as necessary, during nonacademic and extracurricular activities, including meals, recess, and other school activities;
- be provided with nondisabled students to the maximum extent appropriate.

The Continuum of Placements

All decisions about a student's placement are to be made by looking at the individual needs of that student and how the services on the IEP can be provided, to the extent appropriate, in the student's general education class with other students who are not disabled.

Each student's needs may require different settings where services are to be provided. The school is to make sure that whatever placement setting is necessary, is made available for the student. This may include settings such as: special education instruction in the general education classroom, instruction in separate classes, special schools, home instruction, and instruction in hospitals and institutions. The school must provide for supplementary services such as a resource room or itinerant instruction to be provided along with the general education classroom.

If it is appropriate for a student to receive services in a separate facility, the facility must be:

- comparable to those for students without disabilities; and
- appropriate to the age of the student and the instructional program being provided.

LRE for Preschool

Many school districts do not operate general education preschool programs for children without disabilities. Therefore, the law allows schools to use a variety of options to meet the LRE requirements for preschool age children. These may be community-based preschool programs such as a Head Start program or a child care center where the child may already be attending. For districts that operate a 4-year-old at-risk program or other preschool program, children with disabilities could be included in these programs. Again, this decision is made by the team and is based on the child's individual needs.

LRE for Secondary Transition

When a student reaches age 14, the IEP must begin to address the needs of the student related to employment, training, education and independent living skills. In some cases the team may decide that the most appropriate setting for the services to be provided would be in the community where the student can learn on-the-job skills. The supplementary supports might be a job coach to accompany the student in the community setting. In such cases, the community setting would be considered the least restrictive environment for the student.

Private School Placement

If the team, including the parent, decides that the most appropriate placement for a student is in a private school, the school continues to be responsible for making sure that the student receives the special education and related services included in the student's IEP and that those services are provided at no cost to the parents.

The district is to make sure that the education provided meets the standards that apply to other students with disabilities and that the student and parents continue to have all the same rights that other students with disabilities and their parents have.

The IEP team, with all of the appropriate members including the parent, and someone from the private school will all be part of each IEP meeting. They may be part of the meeting through a conference call or other ways.

Enrolled in Private School by the Parent

Districts are to consult with representatives of parents of students with disabilities enrolled in private schools and representatives of the private schools in their district to make decisions about how and where students with disabilities enrolled in private schools will receive services. Services can be provided at the private school or students may be transported to the public school or community setting to receive services. Students in private schools are to receive special education services in the least restrictive environment to the extent appropriate.

Conclusion

Years of research on the application of the LRE principle have contributed to our knowledge of how to include students with disabilities more successfully in general education settings at all age levels. This research has guided what teachers and administrators need to know about curricular modifications and other accommodations, outcomes associated with including students with disabilities, their social acceptance by schoolmates, and support systems to strengthen inclusive practices.

In their Policy Statement on LRE, the Federal Office of Special Education Programs has identified practices for schools in carrying out the LRE principal.

Program options in general education environments are available at local neighborhood schools.

1. Special education programs, as much as possible, and appropriate to student needs, are in the district's schools and located throughout the district.
2. The physical location of the student encourages social interaction with students without disabilities.
3. Students with disabilities have equal access to all general education activities, programs, and facilities at school and participate in those activities as appropriate to their needs.
4. Administrative policies and procedures encourage close cooperation of all school personnel so there is social interaction between students with disabilities and students without disabilities.
5. Administrative policies and procedures allow students with disabilities as much access as possible to appropriate general education academic programs. School personnel are given the necessary support to be sure the student can succeed.
6. Long-range plans and commitments for children with disabilities to be in the district's schools are made to avoid changing where programs or services are offered.
7. Through long-range commitments to be in the district's schools, students with disabilities have a chance to develop and maintain continuing relationships with students without disabilities.

QUESTIONS AND ANSWERS ABOUT LRE

1. What if the student can not benefit academically from instruction in the general education class?

The fact that a student with disabilities will learn differently from his or her peers within the general education classroom does not justify exclusion from that environment. The team is to consider whether the student's IEP goals and objectives could be met in the classroom by changing the curriculum, or by providing supplementary aids and services. Students with disabilities may require and be entitled to substantial curriculum changes to be sure they benefit from being in the general education class.

2. What are supplementary aids and services that would help the student in the general education classroom?

The IEP team should consider a range of supplementary aids and services in light of the student's abilities and needs. The determination of what supplementary aids and services are needed must be made on an individual basis. Some aids and services which have been successfully used include, but are not limited to:

- modifications to the regular class curriculum,
- assistance of an itinerant special education teacher,
- special education training for the regular teacher,
- use of computer-assisted devices,
- provision of note takers, and
- the use of a resource room.

Any supplemental aids and services must be listed on the student's IEP.

3. If the student is not in a general education classroom, does the district have any other LRE responsibilities?

Even if the student is not in a general education classroom, the school district

must still find ways for the student to be with students without disabilities as much as is appropriate to the student's needs. Where a placement other than a general education classroom is recommended by the team, the notice form and request for parent consent must list other placement ideas that were considered and the reasons why they were rejected. Also, the IEP team must write in the IEP the reasons for this more restrictive placement — the evidence of previous experiences, for example, even with a series of supports, supplementary aids, and special education services in the general education classroom. The student's placement is to be reviewed annually for possible placement in a less restrictive environment.

4. 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 of the student's disability, severity of the disability, the choices available for placement, the availability of educational or related services, space available, or administrative convenience.

5. If the student is not included in the general education classroom, can she/he be in other school programs?

Yes. The law is clear that students with disabilities have the right to an equal opportunity to participate in nonacademic and extracurricular services and activities. Therefore, school districts must provide these activities in a way that gives students with disabilities an equal opportunity to participate. Such services and activities include:

- lunch,
- recess,
- counseling services,
- athletics,
- transportation,
- health services,
- recreational activities,
- special interest groups or clubs, and
- employment opportunities.

6. Can the nature or severity of a student's disability be used to justify a segregated educational setting?

The law says that sometimes the nature or severity of a student's exceptionality may justify removing the student from the general education class, particularly when the student is disruptive to the other students in the classroom. However, total removal may not be needed. The school district should still provide time for the student to be with students without disabilities in extracurricular or nonacademic settings when appropriate.

7. Should the general education staff cooperate in providing students with opportunities for being included?

The IEP team lists the supplementary aids and services needed to be sure a student can participate in the general education classroom. Some examples are:

- special seating arrangements,
- curriculum changes,
- paraeducators to support the student,
- adaptive equipment, and
- accommodations on tests based on the student's individual needs.

These ideas can be used in any class, including classes like physical education, art, music, and vocational education. The IEP is binding for the school district. That means it applies to both special and general education teachers.

The IEP team must include at least one of the student's general education teachers, if the student is or may be participating in general education classes. The general education teacher must, as much as appropriate, help write the IEP. This would mean helping to decide appropriate positive behavior interventions and strategies, supplementary aids and services, program modifications, and support for school staff in providing the supplementary aids and services and program modifications.

The general education teacher must also help review and revise the IEP. The IEP team should also have a school person who knows about the general curriculum and what resources are available in the district.

8. What if the school district has a policy that related services are available only at a separate location?

The location where the services will be provided will be decided by the IEP team individually for each student. Consideration of any harmful effects of moving or removing a student to a separate location must be made in deciding if the location is appropriate for the student. The location of the services must meet the student's needs and enable him/her to make progress in the general education curriculum.

9. Does LRE apply to preschool?

Yes, LRE requirements apply to children receiving early childhood special education services. A few schools in Kansas offer preschool for 3- and 4-year-old children without disabilities, but most do not. The team should consider where the child would be if she/he did not have a disability. Some settings for LRE for preschool are:

- Head Start,
- community preschool,
- child care,
- home, and
- play groups,.

RESOURCES

Special Education Process Handbook, Kansas State Department of Education, Student Support Services. (Rev. 2001), <http://www.kansped.org/ksde/ph01/process01.html> .

CHAPTER 9

Early Childhood Special Education

Introduction

The education community has long recognized the importance of early identification and early intervention for young children with special needs. The IDEA required services be provided to young children beginning at birth through age 5, in the 1986 reauthorization of the law. Kansas State Department of Education (KSDE) has mandated early childhood special education services (ECSE) through the public schools for children beginning at age 3. The Kansas Department of Health and Environment (KDHE) provides early intervention services to children beginning at birth through age 2, through the Part C Infant-Toddler Services program (see <http://www.kdheks.gov/its/>). The public preschool programs work closely with the Infant-Toddler programs to ensure a smooth transition for young children and their families between service delivery systems.

Early Childhood Screenings

The law requires that all schools locate, identify and provide service to children with a disability or developmental delay beginning at age 3. Schools are to make public announcements of screening availability for children for whom there may be a concern. Young children's needs should be identified as soon as possible so that early intervention may be provided.

Early childhood screenings are conducted as Child Find for children from birth to age 5. Screenings may include observations, instruments, measures, and techniques that indicate potential developmental delays in the areas of communication, cognitive development, social-emotional development, self help/adaptive behavior, and/or physical development.

In Kansas, early childhood screenings are often provided for children from birth to 5 through collaboration with providers in the Part C Infant-Toddler Services program, Medicaid, Head Start, Parents as Teachers, and other early childhood providers. If a child has been screened by one agency the results are made available to school personnel, and it is not necessary for the school staff to screen a child again. No child should have to wait more than 30 calendar days for a screening. Additionally, children who have participated in the Part C Infant and Toddler program are not required to participate in the screening process prior to conducting an initial evaluation.

Referral for Initial Evaluation

Preschool-aged children may be referred to the school for an initial evaluation when:

1. screening indicates a concern in one or more of the developmental areas;
2. the Part C Infant-Toddler program believes the child continues to need special education services; or
3. parents have a concern about their child's development.

If parents have a concern about their child's development, they should contact the school or district office, or talk to the child's teacher and request their child be screened or referred for an initial evaluation.

Preschool Special Education Services for Children Ages 3-5

The Individuals with Disabilities Education Act (IDEA) includes services for children with disabilities from 3 through 5 years of age. In Kansas, children ages 3 through 5 (and may include 2-year-olds who will be turning 3 during the school year) must first be evaluated. After the evaluation, the team members review the information about how the child is developing in the following areas:

- cognitive development (e.g., thinking and learning);
- adaptive development (e.g., dressing, eating, toileting);

- communication (e.g., hearing, speaking, language skills);
- motor development (e.g., physical development, large and small muscle development);
- social-emotional development (e.g. relating with adults and other children).

The child is eligible for early childhood special education (ECSE) services if team members agree the evaluation information indicates the child meets one of the disability categories or has a significant delay in one or more areas of development and needs special education and related services in order to learn and be part of the general education classroom. Children ages 3 and 4 cannot be identified as eligible in the category of gifted.

Placement

The special education services for preschool children should be provided in settings where the child would naturally be during the day and where she/he can learn and make progress.

Services for young children are to be provided in the “least restrictive environment,” which means that young children should be with other children of the same age who do not have special needs, as much as possible. This could be in the home or in the preschool program the child is already attending, a school-based program, Head Start, child care, community or church preschool, mother’s-day-out program, or play group. In coming together, the team talks about the individual child’s needs and the type of services and setting(s) that best fits those needs.

Schools should work with their community programs, agencies, and providers to meet the needs of preschool children in their district. They should make agreements with child care centers, school and community preschool programs, Head Start, and other services in the community. In doing so, schools will be ready to work with different

programs to serve the child in the place that best meets the child’s needs.

Role of Parents

Parents are to be involved in making all the decisions for their child. They must give permission to send information about their child from the Part C Infant-Toddler Services and other programs or providers to the school district and to share records with the school. Parents must give written consent to have their child evaluated. When the eligibility meeting is held, parents are to be invited. If the child is found to be eligible for services, parents are a part of the team that writes the plan for special education services. And finally, parents are a part of the placement team, and must give their consent for the placement of their child at age 3, or whenever the child is determined to be eligible.

Parents play an important role as “teachers” of their children; therefore it is important that when an IFSP or IEP is written, the concerns of the parent are considered. (See IEP Planning Tool, Table 6-1, Chapter 6, Individualized Educational Program.)

Transition at Age 3

When children are receiving services from a Part C Infant-Toddler program, parents and staff from the Part C Infant-Toddler program meet with staff from the preschool program to develop a transition plan. The transition plan should make it clear what will happen, who is responsible, and when services will stop in one program and start in the other program. The plan will include activities that will happen until the child turns 3 years old and when preschool services will begin. The activities will include:

- obtaining parental consent for sharing information between programs;
- providing prior written notice and obtaining written parental consent to conduct an initial evaluation from the school;

- provide parents with a copy of their Parents Rights for the preschool program;
- conducting an initial evaluation to see if the child is eligible for ECSE services; and
- other activities to help make the move from one program to the other as smooth as possible for the child.

The preschool staff will do an initial evaluation to see if the child is eligible for ECSE services. Parents must be provided with prior written notice and be asked to give consent for the initial evaluation. If the child is eligible for special education services, the team will write a plan for the child. This plan must be in place by the child's 3rd birthday. The team may use an Individualized Family Service Plan (IFSP) as they did in Infant-Toddler Services or an Individualized Education Program (IEP) like school-aged children have. The parents must also consent to the initial services for their child and for the placement (where the services will take place).

The school must invite staff from the Part C Infant-Toddler program to attend the initial IEP meeting if the parents ask the school to invite them.

Table 9-1 shows the differences between the Part C Infant-Toddler Program and the Part B Early Childhood Special Education Program.

IFSP or IEP

An IFSP may be used for a preschool age child if the school and the parents agree. If the school and the parent want to use an IFSP, the parents must be informed of the differences between an IFSP and an IEP, and the parent must give consent for an IFSP to be used.

Kindergarten Transition

Children are eligible for kindergarten when they are 5 years of age by August 31. The kindergarten classroom is usually the best placement for the child so that they can be with his/her same age peers. The year before the

child's 5th birthday, the IEP/IFSP team will want to meet to discuss how the child is developing and how she/he can be part of the kindergarten classroom. The kindergarten teacher should be invited to these meetings so that she/he can get to know the child and be ready for the child to attend in the fall.

General Education Teacher at the IEP Meeting

The role of the general education teacher is to assist in determining appropriate positive behavioral interventions and supports, and other strategies; and the determination of supplementary aids and services, program modifications, and support for school personnel.

If the child is, or may be, attending a school-based preschool program, such as a 4-year-old at-risk program, the school will invite the preschool teacher. The teacher is required to attend the IEP meeting unless the parent provides written consent to excuse the teacher from the IEP meeting.

If the preschool age child is attending and/or receiving special education services in a general education community-based preschool program, the school will invite the teacher of the community-based preschool program to attend the IEP meeting. The school should try several different ways to encourage attendance of the preschool teacher. The school can hold the IEP meeting without the community-based preschool teacher, but should be able to show that they tried to reach the teacher but she/he did not attend. (See *Regular Education Preschool Teacher at the IEP Meeting*, KSDE, 2004, <http://www.kansped.org/ksde/cim/reptmtg.doc>)

**Table 9-1
Differences between Infant-Toddler Services and
Early Childhood Special Education**

Area	IDEA Part C Infant-Toddler	IDEA Part B Early Childhood Special Education
Age range	0-2	3-5
Written Plan	IFSP	IFSP or IEP
Focus	Family	Child
Expectations	Major outcomes	Measurable annual goals
Services	Early intervention	Special education and related services
Setting	Natural environment	Least restrictive environment
Eligibility	Developmentally delayed	Developmentally delayed or disability category
Agency Responsible	Health & Environment	Department of Education

Chapter 10

Transition: Planning for Your Child's Future

Introduction

This chapter is primarily for middle school and high school students and their parents. It provides important information about the transition services that must be a part of IEPs for all students with exceptionalities who are age 14 or older. Kansas continues to require transition services to be included in the student's IEP beginning at the age of 14, even though the federal law does not require transition planning until age 16. Transition planning is crucial to students' success after high school. Because students with exceptionalities often experience limited success after leaving high school, many new IDEA 2004 provisions seek to improve transition planning so that students with exceptionalities can be more successful in their adult lives.

Sometimes parents fail to take an active role in their student's transition planning. This may be due to lack of information available to parents or misunderstanding of their role in this process. Parents can take an active role by working with the school to plan the supports and services that will lead to success. Parents can also help their children to define goals and aspirations for life after high school. Both parents and students need to make sure that transition planning starts early enough for adequate preparation, which should begin by age 14 or earlier.

Transition Services

Transition services are a coordinated set of activities that:

- Improves the academic and functional skills of the student in order to ease the student's movement from school to post-

school activities such as postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation

- Is based on the individual student's needs, taking into account his or her strengths, preferences and interests
- Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, the acquisition of daily living skills. Transition services often include a functional vocational evaluation.

Who should be involved?

Schools are responsible for bringing in representatives from other agencies, such as vocational rehabilitation agency or post-school education, to be part of the planning for transition services. The school is to obtain parent consent prior to inviting any other agency to the IEP meeting. The IEP meeting notice must indicate the individuals from other agencies who have been invited to attend the student's IEP meeting. These agencies may also be responsible for the delivery of some of the needed transition services. To ensure that transition services are provided, the school must find alternative ways to meet the transition objectives for the student if these agencies do not provide the services for which they are responsible.

In Kansas, the Social and Rehabilitation Services (SRS) provides direct and indirect services to youth with disabilities as they transition from school to work, in order to maximize their employability. They offer a set of services to individuals with disabilities designed to enable participants to attain skills, resources, attitudes, and expectations needed to compete in the interview process, get a job, and keep a job.

In addition to other agency representatives, the student should be included in the IEP meeting

when planning for transition services begins. If the student cannot or does not attend the meeting, the school district shall take other steps to ensure that his or her preferences and interests are considered in the planning of transition services.

The student can be part of the IEP team long before transition planning begins. The parents and school should work together to determine the best time to begin including the student as part of the team. As full and equal partners in the IEP team, parents should advocate for transition planning for their child at an early age and ensure that services in the IEP directly support post-secondary goals.

Transition Planning Requirements

The IEP team must develop appropriate, measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. There are age-appropriate transition assessments such as personal interest inventories that could be given to the student to help identify his or her individual special talents and interests. The student is to be assessed to help see what the student's strengths, interests and abilities are and to help in deciding what might be appropriate goals. Assessment can be formal (standardized) or informal (e.g., observations and interviews). The assessment may include these areas:

- educational options
- employment opportunities
- independent living skills
- community participation
- recreation and leisure
- social relationships

In developing the student's goals for after high school, the IEP team, including the student, must determine what instruction and educational experiences will help prepare him or her for a successful transition to life after high school. At age 14, if not before, the IEP must include measurable goals for what the student wants to do after high school. The

student's course of study (classes) should assist the student in reaching his/her post-school goal and be based on his/her strengths, interests and preferences (for example, taking advanced placement courses or vocational education courses such as, welding, auto mechanics or early childhood development).

Then, at age 16, in addition to the measurable goals for after high school and the courses of study, the IEP team must develop a statement of the transition services needed to assist the student in reaching those goals.

Special education services are to be provided to eligible students until they either graduate with a regular diploma or through the school year in which the student turns 21. The IEP team decides when it is appropriate for a student to exit special education.

The statement of transition services should relate directly to the student's post-school goals, and should:

- define every activity that must occur;
- identify who has primary responsibility for each activity;
- specify the dates and order that each activity will begin and end, and where it will take place;
- motivate the student to complete his or her education and minimize the risk of dropping out prior to graduation.

Transitions Considerations Checklist

Use this checklist to determine if your child's transition planning includes all of the components needed.

Transition Planning for students age 14 and older

- Have your child's strengths and interests been adequately identified?
- Can your child's strengths and interests generate ideas for realistic goals or directions for the future?
- Can your child expect to graduate with a regular high school diploma?
- What would your child need to learn or be able to do in order to meet his or her goals? (If a student's goal is to attend a program to become an auto mechanic and an assessment of the student indicates that s/he may need more math skills in order to be successful in that training program, the student's IEP should address the student's need to complete additional math courses.)
- Does your child's courses of study contribute to meeting these goals?
- Is self-advocacy training included in your child's program?
- If needed, are functional skills (e.g., working with or managing money, shopping, using public transportation, and knowing how to be safe at home and in the community) included in your child's program?

Transition Planning for students age 16 and older

All of the above questions are still relevant and additional ones need to be addressed:

- Can your child explain the specific nature of his or her disability? Does your child know when it is appropriate to disclose and discuss this disability and explain the accommodations it requires?

- Does your child know his or her legal rights?
- Have you and your child established working relationships with professionals from community service agencies who will be providing services after your child leaves high school?
- Are there natural supports available in your community (friends, clubs, religious organizations, etc.) to meet your child's needs and interests?
- If your child has been using assistive technology or software, what arrangements have been made to ensure that these will be available to him or her after high school?
- If your child has reached your state's age of majority, has he or she received a notice of the rights that transfer?

Coming of Age

Another important aspect of transition planning is the requirement to notify the student one year before he or she reaches the "age of majority" under state law (18 years of age in Kansas). At that time, the IEP must include a statement that the student has been informed of his or her rights under the law that will transfer from the parent to the student upon reaching that age.

This is an important event in the life of a student. Under state laws, when the student reaches the age of majority, he or she is presumed to be capable of making his or her own decisions – including educational decisions. That does not mean that the parent cannot continue to be involved in the student's education. It just means that, by law, schools must respect the educational decisions of every adult student, unless that person has been determined to be incapable of making decisions.

The rights that will transfer from the parent to the student upon reaching the age of majority include:

- notification of meetings;
- notification and consent for evaluation;

- consent for participants who attend IEP meetings; and
- consent for services in the IEP.

For those students who may be unable to make important life decisions, schools should provide parents with the information necessary to begin guardianship proceedings with local district courts.

Prepare Students to Understand Their Rights

- Students should understand their disability and be able to advocate for themselves.
- Students should understand why they receive special education services.
- Students should receive written and/or oral notification of meetings.
- Students should be notified of changes in placement with explanations of why those changes occurred. This notification should be in the communication mode best suited for each individual student.
- Students should participate and assist in the IEP meetings.
- Students should receive explanations of the type and purpose of all evaluations.
- Students should be given the opportunity to review their educational records.
- Students should participate in self-advocacy and self-determination training.

Next steps

When a student graduates with a regular diploma or reaches the maximum age for receiving special education services during the school year in which the student reaches age 21, the school district is not required to perform a reevaluation. Instead, the school district must provide a summary of the student's academic and functional performance.

The summary of performance must include recommendations for helping the student

meet his or her goals after high school. The summary of performance is a description of the student's academic achievement and functional performance that includes recommendations to assist him or her in meeting post-school goals. The summary should include the information and documentation of the student's abilities and disabilities that will be necessary to access supports and services in post-school activities, such as higher education. It should provide specific, meaningful and understandable information to the student, the family, and any agency, including postsecondary schools that may provide services to the student after high school.

The student and family may want to check with the Disability Services Office at postsecondary schools and with community services agencies to identify any specific information or documentation needed to qualify for support services.

While schools are not required to conduct any new tests or evaluations in order to provide the summary of performance, the parent and student should work with the school so that the information provided will assist the student in meeting the disability documentation required to qualify as a person with a disability under other federal laws such as the Americans with Disabilities Act <http://www.usdoj.gov/crt/ada/pubs/ada.txt> and Section 504 of the Rehabilitation Act of 1973 <http://www.kansped.org/ksde/laws/504.doc> .

The IEP team should discuss what needs to be included in the student's summary of performance prior to termination of special education services. It is important to ensure that the information provided in the summary will assist the student's in meeting his or her post-school goals. The parent and student may request any needed information that is not provided.

Summary of Performance Checklist

Does the student's summary of performance include accurate and understandable descriptions of:

- academic achievement;
- functional performance, including independent living abilities;
- recommendations that will realistically help the student to meet postsecondary education, training, employment and independent living goals?

RESOURCES

Adapted from National Center for Learning Disabilities, IDEA Parent Guide and IDEA Toolkit;

<http://www.nclد.org/content/view/900/456084/>

<http://www.nclد.org/content/view/915/456098/>

Student Support Services, KSDE, Transition information

<http://www.kansped.org/ksde/resources/trans/transres.html>

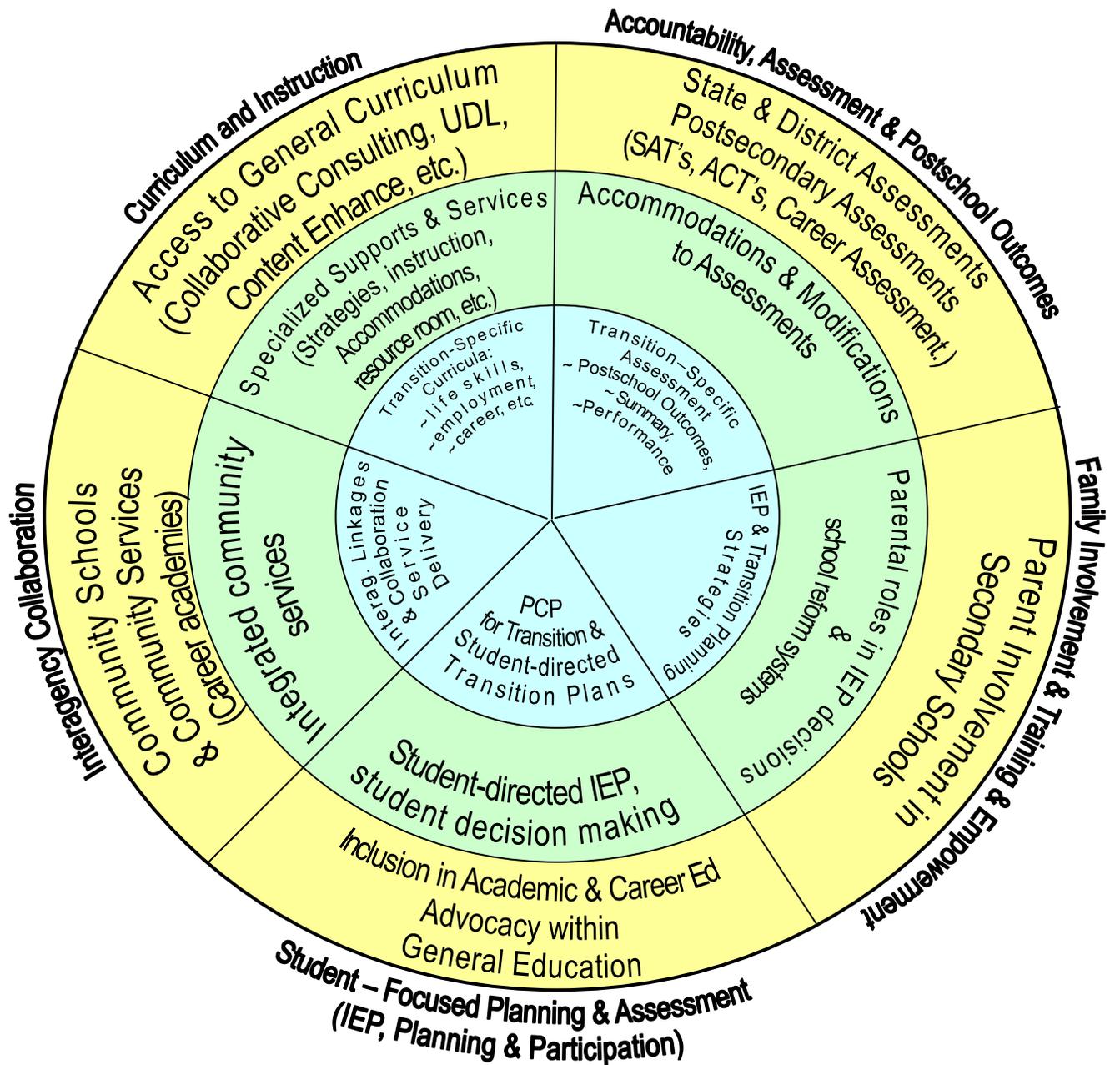
The Commission finds students with disabilities are significantly unemployed and underemployed upon leaving school compared to their peers who do not have disabilities.

Source: A New Era: Revitalizing Special Education for Children and their Families, July 2002

Table 10-1

Kansas Transition Model

- Secondary Ed Systems
- SPED & Services with Secondary Ed
- Transition – Specific Outcomes



CHAPTER 11

Parent and Student Rights

Introduction

Parents and students have many rights under the special education law. It is important that parents and students understand their rights and it is the responsibility of the school to provide parents with notice of their rights in understandable language. Parents also have a responsibility to participate in the education of their student through the participation in meetings about their student and by providing consent to allow the school to provide the support and services that the parents and school agree are necessary for the student to be successful.

Definition of Parent

School personnel must determine the appropriate person(s) to make educational decisions on behalf of the student. Those individuals are to receive notice, give consent, file formal complaints, request mediation, file due process, give or refuse to give permission for release of records, and all other requirements. A resource (foster) parent does not have authority to make educational decisions for a foster child in their care unless they have received training and have been appointed the education advocate for the foster child. The State definitions of "parent," "person acting as a parent," and "education advocate," are as follows:

- "Parent" means a natural parent, an adoptive parent, a person acting as a parent, a legal guardian, an education advocate, or a foster parent, if the foster parent has been trained and appointed the education advocate of an exceptional child.

- "Person acting as parent" means a person such as a grandparent, a stepparent or other relative with whom the child lives or a person other than a parent who is legally responsible for the welfare of a child.
- "Education advocate" means a person appointed by the state board in accordance with the provisions of KSA 38-1513a, 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.

Parent Participation

Parents are to be included as members of any decision making team for their student, including decisions about eligibility, initial evaluation and reevaluation, development of an individualized education program (IEP) for the provision of a free appropriate public education (FAPE), and educational placement. This requirement does not include informal or unscheduled meetings involving school personnel and meetings on issues such as teaching methods, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include the preparation of a proposal or response to a parent proposal that will be discussed at a later meeting.

If neither parent can be present in a meeting about educational decisions for their student, the school must use other methods to ensure their participation. These methods could include individual or conference telephone calls, or video conferencing. If the school cannot reach the parent, or if the school

cannot convince the parents that they should come to the meeting, the meeting can be held without the parent, but the school must document at least two attempts by two methods to reach the parent.

Compulsory attendance for a child with a disability may begin as early as age 3. Parents are to see that their student with a disability is provided the special education and related services on the IEP, either in the public school or privately.

The involvement of parents in all decisions about their student will help result in services that are individualized to meet the unique needs of students and in the development of a closer, more collaborative relationship with schools. The contributions that parents make to the process are important because they help ensure the educational success of the student.

Parent Rights Document

The Parent Rights in Special Education (Parent Rights) notice provides the foundation for ensuring that the student with an exceptionality has access to a free appropriate public education. The Parent Rights notice provides the parents with the opportunity to understand their rights, the rights of their child and the procedures for resolving differences. Hopefully, this document will also help to facilitate communication between parents and school personnel.

The Parent Rights notice outlines all of the rights and safeguards available to parents of students with exceptionalities and students who are their own decision maker. A copy of the Parent Rights must be given to the parents at least one time per year. Additionally, a copy of the Parent Rights notification must also be given upon:

- initial referral or parental request for evaluation;
- receipt of the first request for a due process hearing;
- a disciplinary removal of a student from school that would constitute a change of placement; and

- parental request.

The Parent Rights 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 (such as Braille or sign-language), unless it is clearly not feasible to do so. If necessary, the school will translate the notice orally or by other means so that the parent understands the content of the notice. Parents may elect to receive required notices by electronic mail (email), if the school makes that option available.

Summary of Parent Rights

Parents of students who are, or may be, exceptional, have certain rights or procedural safeguards under federal and state laws. These rights are listed in the statement of Parent Rights in Special Education. This list of parent rights is to be given to the parents in their native language or in a communication method they can understand. If parents would like a more detailed explanation of these rights, they can contact the principal at their student's school, a school administrator, the local special education director, the Kansas State Department of Education (KSDE), 120 SE 10th Avenue, Topeka, KS 66612; phone (800) 203-9462, Families Together, Inc. (785) 233-4777 or (800) 264-6343 or Keys for Networking (785) 233-8732. Copies of these rights in Braille, audiotape, and other languages are available from the school upon request.

The following is a summary of the content of the Parent Rights document. For more details see

<http://www.kansped.org/ksde/laws/prights/prights.html>

Opportunity to Examine Records

As the parent of a child with an exceptionality, you must be allowed an opportunity to inspect and review all education records with respect to:
Identification (process to determine eligibility);
Evaluation (nature and scope of assessment procedures);

Placement (educational placement of your child); and

FAPE (the provision of a free appropriate public education to your child).

Independent Educational Evaluation

You have the right to get an independent educational evaluation of your student if you disagree with the school's evaluation. The school must provide you, upon request for an independent evaluation, information about where an independent educational evaluation may be obtained, and the criteria applicable for independent educational evaluations.

Prior Notice by the School

Your school will inform you of actions being proposed about your student by giving you written notice before the school proposes or refuses to initiate or change the:

- Identification (process to determine eligibility);
- Evaluation (nature and scope of assessment procedures);
- Educational Placement (educational placement of your child including graduation); or
- FAPE (the provision of a free appropriate public education to your child).

Parent Consent

The school is required to obtain informed written consent for any action requested. You must understand that consent is voluntary and may be revoked at any time, also that withdrawal of consent does not apply to any action that has already taken place. Consent is required for the following actions:

- Request for consent to conduct an initial evaluation;
- Request for consent to conduct a reevaluation;
- Request for consent for the initial provision of services on the IEP;
- Request for consent to make a substantial change in placement (more than 25 percent of the child's school day);

- Request for consent to make a material change in services (25 percent or more of any one service);
- Request for consent to add a new service, or to delete a service completely (100 percent).

Voluntary Mediation

Mediation is a way to discuss and resolve disagreements between you and the school with the help of a trained, impartial third person.

Impartial Due Process Hearing

Parents may request a due process hearing regarding any matter related to the identification, evaluation or placement of their child or the provision of special education and related services to their child.

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the school must convene a meeting with the parents and IEP team members, with specific knowledge, to discuss the facts of the due process complaint, so that the school has an opportunity to resolve the dispute.

Change of Placement for Disciplinary Removals for Children with Disabilities

State and federal laws have special provisions that control what happens if your child violates a school rule or does something that caused, or could easily have caused, an injury to him/herself or someone else. These special provisions say what action the school can take and what your rights are as the child's parent. The possible actions by the school and your rights in these matters are explained in the document.

Placement of Children by Parents in Private Schools When FAPE is at Issue

If I place my child in a private school, who is responsible to pay for the costs? Except as may be otherwise provided by state law, the school is not required to pay for the cost of education, including special education and related services for your child at a private

school, if the school made a free appropriate public education available to your child, but you elected to place your child in a private school.

State Complaint Procedures

Parents may file a formal complaint with the Kansas State Department of Education (KSDE). A formal complaint investigation is a procedure to determine whether the school is complying with federal or state laws and/or regulations regarding the provision of special education and related services to children with exceptionalities. This investigation is conducted by the KSDE.

Confidentiality and Access to Educational Records

Schools must maintain the confidentiality of information in your child's educational records. The school can assume that both parents of a child have authority to inspect/ review the child's records unless the school has been notified in writing that a parent's rights to see the records have been terminated by a court order.

Reimbursement for Services

If a public agency other than an educational agency fails to provide or pay for the special education and related services in your child's IEP, the school district (or other state agency responsible for developing the child's IEP) shall provide or pay for these services to your child in a timely manner. The school district or state agency may then claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency shall reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism recognized for payment.

Parent Rights for Gifted

Kansas also mandates that students meeting the requirements of giftedness to receive special education services. The term "exceptional students" includes students who are gifted and students with disabilities. Accordingly, parents of

students with giftedness as their only exceptionality (do not also have a disability) have the same rights as parents of students with disabilities, with the following exceptions:

- There are no rights for students who are gifted under the discipline provisions;
- Preschool children under the age of 5 are not eligible to receive gifted services;
- Students who are gifted and who are in the custody of the Department of Corrections are not entitled to a free appropriate public education;
- Students who are gifted do not have the same considerations for least restrictive environment (LRE) as students with disabilities, but the IEP team must make decisions based on their individual needs;
- The alternate assessment or Kansas Assessment of Modified Measures (KAMM) would not be available to students who are gifted;
- Extended school year services would not be provided to students who are gifted; and
- Special education services are not compulsory for students who are gifted.

At age 18, students become their own educational decision makers, unless a court decides they are not able to make these decisions. On or before the student's 17th birthday, the school is to inform the parents or legal educational decision maker, and the student, that at age 18, the student attains the age of majority in Kansas and will become their own educational decision makers. Schools may also inform parents of other options. For example, it may be that for some students, a guardianship or a more limited form of transfer of rights would be necessary. Therefore, beginning at age 18, the school is to send all notices to both the parent and the student, but the student will provide informed written consent for any action requested by the school.

Before age 18, students may be involved in IEP meetings, this occurs usually by age 14 or before. Parents and others may decide if the involvement of the student would be meaningful or helpful. At age 18, the student or school may invite the parents to the IEP meeting.

In disciplinary situations, students have the right to tell their side of the story, and be given the chance to explain what happened. School staff and parents should help students understand their rights under the law.

Confidentiality

Confidentiality is one of the rights afforded to parents in the Parent Rights document (procedural safeguards). Confidentiality of educational 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, which applies to all students, not only those with exceptionalities <http://www.kansped.org/ksde/laws/ferpa.html> .

All school personnel (including contracted employees) are governed by confidentiality requirements and should receive training and information regarding the law. Written and dated parental consent must be obtained before personally identifiable information is disclosed to unauthorized individuals, organizations or agencies unless authorized to do so under FERPA.

Personally identifiable information includes:

- the name of the student, student's parents, or other family member;
- address;
- personal identifier such as the student's social security number or student number; or
- list of personal characteristics or other information that would make it possible to identify the student.

• FERPA allows parents to inspect and review all education records of their student maintained by an educational agency that receives federal funds. This includes all public schools and most private schools. The school must comply with a request to inspect records within a reasonable time, not to exceed 45 calendar days.

Medication for Students

Parents shall not be required by school personnel to obtain a prescription for a controlled substance as a condition of attending school, receiving services or receiving an evaluation to determine eligibility for special education services.

RESOURCES

Student Support Services, Kansas State Department of Education, 1-800-203-9462, www.kansped.org

Families Together, Inc.,
Garden City – 1-888 820-6364
Kansas City – 1-913 384-6783
Topeka – 1-800 264-6343
Wichita – 1-888-815-6364

<http://www.familiestogetherinc.org/>

Keys for Networking, a parent organization providing information, support, and training to families whose children who have educational, emotional, and/or behavioral problems, 1-785-233-8732, www.keys.org

Disability Rights Center of Kansas (DRC), 1-877-776-1541

Parent Rights in Special Education,
<http://www.kansped.org/ksde/laws/prights/prights.html>

Kansas Special Education Process Handbook, (Rev. 2001)
<http://www.kansped.org/ksde/ph01/process01.html>

Family Educational Rights and Privacy Act (FERPA),
<http://www.kansped.org/ksde/laws/ferpa.html>

Section 504 of Rehabilitation Act of 1973,
<http://www.kansped.org/ksde/laws/504.pdf>

Kansas Special Education for Exceptional Children Act, 2006
<http://www.kansped.org/ksde/laws/spedlaw.html>

Kansas Special Education Regulations, 2001
<http://www.kansped.org/ksde/laws/art40/art40.pdf>

Consent for Release of Information (Foster Care Issues),
<http://www.kansped.org/ksde/laws/coinfo072203.pdf>

CHAPTER 12

Education Advocates

Introduction

Parent involvement in the educational process is especially important for students with exceptionalities. A partnership between parents and the school is necessary to continually plan and check on the student's individualized education program (IEP). However, the law recognizes that not all students have parents available. These students need someone to represent them when educational decisions are made. In those cases, the Kansas State Department of Education appoints an education advocate to make decisions about all special education actions and related activities. Education advocates are trained volunteers.

Kansas has more than 850 students with exceptionalities who need someone to represent them in special education decisions. In these situations:

- The parents are unknown.
- The parents have a court order of no contact between them and their child(ren).
- The court has terminated their parent rights (meaning the parents no longer have the right to make decisions for the student).
- The parent is unavailable.

The Kansas State Department of Education (KSDE) and the Department of Social and Rehabilitation Services (SRS) have developed the Education Advocate program to meet this need. State law gives authority to KSDE to appoint someone to be an education advocate for students who need one. KSDE contracts with Families Together, Inc., the Kansas Parent Training and Information Center to:

- track students whereabouts and status;

- provide training for potential education advocates;
- receive referrals for students who need an education advocate
- match an education advocate to the student;
- refer to KSDE to make an official appointment of an education advocate;
- provide support for education advocates; and
- maintain current information/data.

Who Needs an Education Advocate?

- Exceptional students from age 3 through 18 (or through age 21) who are in SRS or JJA custody; and
- are receiving special education services or need an evaluation to determine eligibility for services; and
- whose parents are unknown or unavailable, whose parent rights have been terminated, or whose parents have a court order of "no contact" between them and their child(ren).

Definition of Parent

School personnel must identify the appropriate person(s) to make educational decisions on behalf of the student. Those individuals have the right to receive notice, give or revoke consent, file formal complaints, request mediation, file due process, give or deny permission for release of records, and act on behalf of the student. Resource (foster) parents do not have authority to make educational decisions for a foster child in their care unless they have received training and have been appointed as the education advocate for the foster child. The state may not act as the parent in the special education process. The state definitions of "parent," "person acting as a parent," and "education advocate," are as follows:

- "Parent" means a natural parent, an adoptive parent, a person acting as a parent, a legal guardian, or an education advocate, or a foster parent, if the foster

parent has been appointed the education advocate of an exceptional child.

- "Person acting as parent" means a person such as a grandparent or a stepparent with whom the child lives or a person other than a parent who is legally responsible for the welfare of a child (not the state).
- "Education advocate" means a person appointed by the state board of education in accordance with the provisions of KSA 38-1513a, 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.

Appointing an Education Advocate

An education advocate is appointed for any student who has or may have an exceptionality, when the court has terminated the parents rights, or the legal guardian is unknown or unavailable.

If the student's legal custodian is the Secretary of SRS, the Department of Corrections (DOC), or the Juvenile Justice Authority (JJA), and the student has or may have an exceptionality and requires special education services, JJA, DOC, or SRS or its contractors immediately informs Families Together and the school district that the student needs an education advocate. Families Together, under the authority of KSDE, appoints the education advocate. The appointment is to be completed within 3 business days of receipt of request for the education advocate.

KSDE notifies the education advocate, special education director, building principal and primary caseworker of the appointment.

Families Together maintains the record of all current appointments and cancellations.

Rights of an Education Advocate

An education advocate has the same rights as parents under IDEA. (See Chapter 11, Parent and Student Rights and *Parents Rights in Special Education*.) These rights include:

1. Receive prior written notice when a school plans a special education action;
2. Review all educational records about the identification, evaluation, placement, and provision of a free appropriate public education for the student;
3. Give consent or refuse consent for the school to release educational records;
4. Give consent or refuse consent for the school to do an evaluation, place a student in special education services, or make a substantial or material change in the placement or services for the student;
5. Be informed of and attend IEP meetings;
6. Resolve differences through mediation, formal complaint or due process hearing; and
7. Be informed if the student receives a long-term or short-term suspension or expulsion.

Qualifications of an Education Advocate

Education advocates must:

- be 18 years or older;
- have knowledge and skills to adequately represent the student;
- provide three references for appointment as an education advocate; and
- complete a training program offered and/or approved by the State Board of Education.

Education advocates cannot be:

- an employee of the district required by law to provide special education services,
- an employee of KSDE or any agency directly involved in providing educational services for the student, or

- a person with a professional or personal interest that would conflict with the student's best interests.

SRS subcontracting agency caseworkers, resource (foster) parents, group home workers, professionals (such as teachers, school administrators, school nurses, school psychologists, counselors, and social workers), and local community volunteers may be education advocates if s/he has been trained and appointed.

Training for an Education Advocate

KSDE and Families Together have developed a five-hour training session about the education advocate's roles and responsibilities. This training covers the identification, evaluation, free appropriate public education, placement for students receiving special education services and discipline processes under the Individuals with Disabilities Education Act (IDEA). This training gives education advocates the skills they need to represent the student.

Families Together offers training sessions throughout Kansas during the school year. These are open to all interested persons. Parents, guardians, step parents, resource (foster) and adoptive parents, persons acting as parents, and volunteers are encouraged to attend. SRS/JJA/DOC caseworkers are encouraged to attend to gain information about special education requirements. People who want to be an education advocate **MUST** attend this training before they can be appointed.

Responsibilities of an Education Advocate

The education advocate represents the student in all aspects related to the identification, evaluation, educational placement, and provision of a free appropriate public education. An education advocate has no financial responsibility or other responsibility for the day-to-day care of the student. The education advocate must:

- protect the student's rights in the educational and decision making processes including the identification, evaluation, and placement of the student;
- follow confidentiality requirements of the state and federal laws;
- use discretion in the sharing of information;
- participate in developing the student's IEP; and
- exercise other rights given to parents under IDEA and the Kansas special education law.

Canceling the Appointment of an Education Advocate

Education advocate appointments will be canceled when:

- the parent becomes available;
- the student moves to a new location (if the new placement isn't within a reasonable driving distance from the education advocate's home);
- students are 18 years old and have legal rights themselves (parental rights transfer at age 18 even if custody of a state agency continues unless the student is deemed incapable of making their own decisions.);
- the education advocate resigns his or her appointment;
- the student is legally adopted, placed in a "relative placement," or the court appoints a legal guardian; or
- the student no longer receives special education services; or does not qualify following an evaluation.

School Responsibilities

Before taking any special education action for students receiving special education services, the school must identify the student's legal guardian:

- Try to find the natural parent at the last known address for a student who isn't living with a natural parent, step parent, or guardian and who isn't in SRS, DOC or JJA custody.
- If these attempts fail, the school must contact the SRS (area office) or JJA (area

office) to see if the student is in their custody which may require an education advocate.

- The school must keep a log of phone calls, visits, and copies of letters to show attempts to contact or locate the student's parents.

If the student is living with a "person acting as a parent," that person is the student's legal guardian, and an education advocate doesn't need to be appointed.

If the student is in SRS, JJA or DOC custody, the school should work with the student's primary caseworker to determine if the student needs an education advocate. The caseworker will then contact Families Together to ask for an education advocate to be appointed.

Sometimes it is difficult to determine the situation with parents. There is a difference between "unavailable" and "uncooperative." An uncooperative parent is not necessarily unavailable. A parent who can be located by mail, personal visits, or phone is not unavailable, even though she/he doesn't respond to the school's attempts to involve him or her in the student's education. This is especially true when the school needs the parent's consent. If a parent refuses to give consent, the school may try to mediate or ask for a due process hearing. If a parent does not respond to the school's request for consent to conduct a reevaluation, make a substantial change in placement or material change in services, the school will document attempts to obtain consent, but may proceed without parental consent.

Tips for Education Advocates

People who volunteer to be an education advocate may be assigned to represent a student they don't know. The education advocate will need to take some time learning about the student and his or her educational history. Here are some suggestions:

- Ask questions about anything you don't understand. Be familiar with all aspects of

the student's educational needs to become an effective and informed education advocate.

- Know the law and be prepared to participate actively as the student's educational decision maker.
- Review evaluation procedures used in the student's most recent assessment. Ask for a copy of the results. Be sure the assessment is current and complete. Ask for the results to be explained clearly in understandable language.
- Review the student's most recent IEP.
- Attend all parent/school meetings and conferences to plan and/or review the student's IEP and plan to talk regularly with the school.
- Participate in the development of the student's IEP and provide consent for the delivery of special education services agreed to in the IEP meeting.
- Contact the resource (foster) parents and contract worker to ask about the student's progress, needs, strengths, and what they feel needs to be addressed in the student's program.
- Meet the student. Ask questions about the school program, their likes and dislikes, what they would like to see in their program, and, if appropriate, what their dreams and goals are for their future after school.
- Observe the student in the school program and talk with the teachers and service providers.
- Learn about the student's exceptionality.
- Introduce yourself as the student's education advocate to all professionals who work with the student — teachers, therapists, social workers, caseworkers, and supervisors. Communicate with them about the student's abilities and needs.

- Keep a file of all written and verbal contacts about the student.

Contact Families Together, Inc., or KSDE if you need help understanding your rights or have questions about the special education process.

QUESTIONS AND ANSWERS ABOUT EDUCATION ADVOCATES

1. Do education advocates have a choice in choosing the students they represent?

Education advocates have some limited ability to choose the student. For instance they can ask to be appointed for a student with a certain exceptionality or a certain age group, or for a student residing in their home.

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

In Kansas, students from age 18 through 21 years have attained the “age of majority,” and so they are their own advocates. If a student is a ward of the state and is in SRS or JJA custody, she/he could have an education advocate appointed for them if the student is legally deemed unable to make his or her own decisions.

3. Are education advocates appointed for a student who is or may be gifted?

Yes. In Kansas, all students with exceptionalities are entitled to an education advocate, including those who are gifted.

4. What should, or shouldn't, an education advocate sign?

Education advocates may be provided prior written notice and be asked to provide written consent for an evaluation, reevaluation, provision of services, substantial change in placement or material change in services. They should sign if it seems that the action proposed is right for

the student. If there are questions, advocates should ask for more information or discussion until they are comfortable with the decision.

An education advocate may be asked to provide consent for services in an IEP already written by the school team. An IEP meeting may have already been held to plan for the student's program. To participate actively in the student's IEP process, the education advocate should take time to review information about the student before she/he provides consent for services in the IEP.

The education advocate shouldn't sign something she/he would be liable for, such as permission for school fees, field trips, etc. This type of permission should be signed by the student's contract worker, resource (foster) parent, or other person responsible for the student's care.

5. Can an education advocate visit the student's classroom?

Observing a student in the classroom may help to become familiar with his/her needs, and check on the student's progress in school. Education advocates should ask about visiting policies at the school. Separate appointments may be needed with other staff, such as the speech/language therapist, adaptive physical education teacher, etc.

6. Can an education advocate get more involved with the student, beyond participating in the school program?

Some volunteer education advocates choose to become more involved by visiting the student at home or going on outings together. This decision is made jointly by the education advocate and the home provider. However, the education advocate can be effective, even if she/he isn't involved outside the area of education.

7. After an education advocate is appointed, where can she/he go for answers to questions?

The education advocate may contact the student's teacher, principal, or other school staff who work with the student. Other sources of support are Families Together, Education Advocate Program Coordinator; the Kansas State Department of Education, Student Support Services Team; and the student's SRS, JJA, DOC or caseworker.

8. What is the education advocate's role at the student's place of residence?

The education advocate has authority only to participate in decisions about the student's educational program. However, it is important to talk to all people involved with the student, especially in the home environment, to get a full picture of the student's needs. Case workers, resource (foster) parents and others need to understand the education advocate's role and to cooperate in getting the information to help make educational decisions for the student.

9. What is the time commitment in being assigned as an education advocate?

It takes time to gather information and get to know the student. The main responsibility of an education advocate is to participate fully in developing the student's annual IEP, provide consent for education actions to ensure FAPE, and to check on the student's progress at school. The actual amount of time for each student will vary, depending on each individual situation.

RESOURCES

Student Support Services, Kansas State Department of Education, 1-800-203-9462, www.kansped.org

Families Together, Inc.,
Garden City – 1-888 820-6364
Kansas City – 1-913 384-6783
Topeka – 1-800 264-6343
Wichita – 1-888-815-6364
<http://www.familiestogetherinc.org/>

Kansas Special Education for Exceptional Children Act, 2006
<http://www.kansped.org/ksde/laws/spedlaw.html>

Kansas Special Education Regulations, 2001
<http://www.kansped.org/ksde/laws/art40/art40.pdf>

Consent for Release of Information (Foster Care Issues),
<http://www.kansped.org/ksde/laws/coinfo072203.pdf>

CHAPTER 13

Discipline

Introduction

There are specific procedures for schools to use when they discipline students receiving special education services. The provisions regarding student discipline are complex and sometimes confusing. If your child becomes the focus of a disciplinary action, seek information and guidance from an expert resource such as your school administrator, Families Together, Keys for Networking or the Kansas State Department of Education.

In this chapter, the term “discipline” refers only to suspensions, expulsions or other removals of students for disciplinary reasons. We will use charts, different scenarios, and a question and answer section to explain the discipline procedures in IDEA. Figure 13-1 shows the procedures if the student does something that violates, or goes against, the school’s code of conduct. Figure 13-2 is a flow chart that shows the suspension or expulsion procedures when a student has a weapon or drugs at school or inflicts serious bodily injury on another person.

Disciplinary Actions of 10 School Days or Less

A student with a disability, who has an IEP in effect, can be disciplined like any other student for 10 consecutive school days or less if he or she violates the school’s code of conduct. All schools in Kansas have a code of conduct or school rules. Usually there is a handbook or some other list of school rules that is handed out at enrollment or when students come to school in the fall. Parents, students, educators, and administrators need to know what the rules are. Students who receive special education services should be

expected to follow the rules, just like the rest of the students in school.

Disciplinary Actions Beyond 10 Days

For students with a disability whose disciplinary action exceeds 10 consecutive school days in the same school year, or when frequent disciplinary actions add up to more than 10 school days in a school year and clearly indicate a pattern that is a change in placement, the IEP team must determine appropriate services that allow the student to:

- continue to participate in the general education curriculum, although in another setting; and
- progress toward meeting the goals outlined in the student’s IEP.

After a student has been removed for 10 school days in the same school year and a current removal is not for more than 10 consecutive days and is not a change of placement, then the school administrator, the director of special of education and at least one of the student’s special education teachers, shall determine the extent to which appropriate services are needed.

If school officials want to suspend the student from school for more than 10 school days in a row, or to have the student’s educational setting changed to an interim alternative educational setting for up to 45 school days for weapon or drug possession or for infliction of serious bodily injury on another person, school officials must notify the parents immediately of what they intend to do.

When determining whether to change the placement of a child with a disability who violates a school code of conduct school personnel can consider any unique circumstances on a case-by-case basis.

Manifestation Determination

Within 10 school days from the beginning of a disciplinary action that either exceeds 10 school days in a row or that constitutes a pattern of removals (a change in placement),

the student's IEP team must meet to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability or if the conduct was the direct result of the school's failure to implement the student's IEP, including a behavior intervention plan. This is referred to as a "manifestation determination."

In making this determination, the IEP team will review:

- the student's IEP;
- the student's behavior intervention plan (if any);
- any relevant teacher observations; and
- any other relevant information provided by the parents.

If the team finds that the student's behavior was caused by or had a direct and substantial relationship to the disability, or the conduct of the student was the direct result of the school's failure to implement the IEP, the student is returned to the original education setting described in his/her IEP, unless (a) the student has been placed in an alternative educational setting; or (b) the parents agree to a new placement, as part of the behavior intervention plan.

If the behavior was a result of the student's disability, and the student does not have a behavior intervention plan, the IEP team must conduct a functional behavioral assessment and implement a behavioral intervention plan.

If the student already has a behavioral intervention plan, the IEP team must meet to review the plan, and, modify the plan, as necessary, to address the behavior.

If, on the other hand, the team finds that the student's behavior was not directly related to the disability, the same disciplinary actions can be imposed on the student with a disability as those imposed on a non-disabled student. Such action could include expulsion. However, if the student is expelled from school, the student must

continue to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting the goals set out in the IEP. In addition, if deemed appropriate by the IEP team, a functional behavioral assessment should be conducted and a behavior intervention plan developed. (See Figure 13-1)

Special Offenses

Certain serious behavior problems can lead to a student being moved to an interim alternative educational setting for up to 45 school days even if the conduct is determined to be related to the student's disability. Removing a student for these offenses does not require parent consent or agreement, nor does it require any involvement by a hearing officer or other impartial third party. These offenses are:

Weapons: If a student carries or possesses a weapon:

- to or at school
- on school premises
- at a school function

Drugs: If the student knowingly possesses or uses illegal drugs or sells or solicits the sale of illegal drugs while at school or at a school function

Serious bodily injury: If a student has inflicted serious bodily injury upon another person while at school, on school premises or at a school function.

Additionally, a school may seek to remove a student to an interim alternative educational setting for up to 45 school days for creating a dangerous situation. The school must do this by making a request to a hearing officer. (See Figure 13-2 and *Parent Rights in Special Education*.)

Appeal by the Parent

Parents have the right to challenge any decisions made regarding the 45 school day interim alternative educational setting or the

determination regarding the “manifestation determination” by asking for a due process hearing. Schools can also request a hearing if school personnel feel that returning a student to the original educational setting is likely to result in injury to the student or to others.

In either case, the hearing must be held within 20 school days of the date requested and the hearing officer must make the decision within 10 school days after the hearing.

During the appeal process, the student remains in the interim alternative educational setting, unless the parent and the school agree otherwise.

Students Not Yet Eligible for Special Education

Under certain circumstances, the protections available to students with disabilities who are already receiving services under IDEA may also be available to students who do not have an IEP in effect. These circumstances may apply to any students, including those receiving early intervening services, if, before the behavior that resulted in disciplinary action:

- The child’s parent had expressed concern in writing to supervisory or administrative school personnel, or to a teacher of the child, that their child may be in need of special education;
- The child’s parent had requested an evaluation as provided for by IDEA;
- The child’s teacher or other school personnel had expressed specific concerns about a pattern of behavior that might call for a referral for evaluation directly to the director of special education or other supervisory personnel.

Certain exceptions apply to the above circumstances. They include:

- If the child’s parent had not allowed an evaluation of the child or had refused special education services that had been offered as required by IDEA

- If the child had been evaluated as required and was not found eligible for special education.

If a request is made to evaluate a student during the time period of the disciplinary action, the school must complete the evaluation in an expedited manner. During the evaluation, the student remains in the disciplinary setting.

Scenarios

Several different scenarios are provided to help clarify the disciplinary procedures.

- ▶ ***SCENARIO I.*** A student with a disability does something that is against the school rules, or code of conduct. The school is thinking about suspending the student for 5 days. The student has not been suspended during the school year, so the total number of days suspended is not more than 10.

In this scenario, the school may suspend the student, if this discipline is the same as for students without disabilities. If the student is suspended, the school must follow all procedures in federal and state laws. (See Figure 13-1.) During the suspension, the school is not required to provide special education services to the student. The IEP team should review this situation carefully. It may need to change the student’s program.

- ▶ ***SCENARIO II.*** A student with a disability breaks a school rule (code of conduct). The school is thinking about suspending the student for 5 days. Unfortunately, the student has already been suspended twice before, each time for 3 days, during this school year. That means the total number of days of suspension would be more than 10 for the same school year.

In this scenario, the school may suspend the student. However, school personnel must determine what educational services, if any, the student needs to continue to participate in the

regular education curriculum although in another setting, and to progress toward meeting the goals in the IEP.

► **SCENARIO III. A student with a disability violates a school rule. The principal is thinking about suspending the student for 15 days.**

In this scenario, the discipline the school wants is a change of placement according to IDEA. This means that the school must notify the parents of that decision, and also give them a copy of all procedural safeguards. (See Figure 13-1.)

When the school wants to suspend the student and the total number of days of the suspension is more than 10 school days, the school must conduct a manifestation determination review. The meeting is set as soon as possible, but no more than 10 school days after the date when the school decided to discipline the student.

At this meeting, the relevant members of the IEP team review all relevant information, including evaluation results, information from the parents, observations of the student, the student's IEP, and current placement. The team will then decide if the behavior was caused by, or had a direct and substantial relationship to the student's disability, or if the school failed to implement the student's IEP and that failure to implement the IEP directly resulted in the behavior for which the student is being disciplined.

If the team finds that the student's behavior was caused by or had a direct and substantial relationship to the disability, or that the student's behavior was the direct result of the school's failure to implement the IEP, the student is returned to the original education setting specified in the IEP unless the parents agree to a new placement, as part of the behavior intervention plan.

If the behavior was a result of the student's disability and the student does not have a behavior intervention plan, the IEP team must conduct a functional behavioral assessment and implement a behavioral

intervention plan. If the student already has a behavioral intervention plan, the IEP team must meet to review the plan and its implementation, and, modify the plan and its implementation, as necessary, to address the behavior.

If the IEP team decides the behavior was not related to the student's disability, then the school may suspend the student and must notify the parents and provide them with a copy of their procedural safeguards. The parents also have the right to (1) challenge the manifestation determination, and (2) challenge the change of placement.

To challenge the manifestation determination or the change of placement, the parents ask for a due process hearing. The school then arranges for an expedited due process hearing. The student will stay in the disciplinary placement until the due process hearing officer makes a decision. The IEP Team will determine what services the student will need in the disciplinary setting to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the student's IEP goals. The student will also receive, if appropriate, a functional behavioral assessment and a behavior intervention plan.

► **SCENARIO IV. A student with a disability takes a weapon to school or a school function (or the student knowingly has or uses illegal drugs, or sells or tries to sell a controlled substance while at school or a school function or the student inflicts serious bodily injury on another person). The school decides how to discipline the student.**

In this scenario, the school's proposed discipline may include sending the student to an interim alternative educational setting up to 45 school days. This is a change of placement under IDEA. (See Figure 13-2.) The school must notify the parents of the disciplinary action considered and their procedural safeguards. The school would follow the same procedures as in SCENARIO

III, except that the student is not returned to the IEP placement upon a determination that the behavior being disciplined was a manifestation of the student's disability.

- If the parents ask for a due process hearing to challenge the manifestation determination or change of placement, the student stays in the interim alternative educational placement until the due process hearing officer makes a decision, or until the 45 school days is up, whichever is first, unless the parents and school agree otherwise.
- If the parents don't request a due process hearing, the student stays in the interim alternative educational setting for the 45 school days.

At the end of 45 school days, the IEP team may recommend that the student go back to the previous placement. The IEP team may also recommend another change of placement after the 45 school days. If the parents agree to the new change of placement, it may start immediately. If the parents disagree with the new placement, they have a right to refuse to give consent for the change. If the parents refuse to consent to the school's proposed change of placement, the school may ask for a due process hearing. During the time the school is pursuing the proposed change in placement, the student stays where they were before the interim alternative educational setting (the placement specified in the student's IEP).

- ▶ **SCENARIO V. The school personnel believe that the student's behavior is such that keeping the student in the current placement is very likely to cause an injury to the student or to others.**

In this scenario, the school should first ask for parent consent to change the student's placement to a more appropriate educational setting. If the parents agree to the proposed change of placement, it may start immediately. (See Figure 13-2.)

If the parents refuse to consent to the proposed educational setting, a special education due process hearing officer may order a change of placement to an interim alternative educational setting for 45 school days or less. For the due process hearing officer to order the change of placement, the school must prove that:

- the current placement is substantially likely to result in injury; and
- the proposed interim alternative educational setting would enable the student to participate in the general curriculum, and would have services to enable the student to progress toward meeting her or his IEP goals.

If the due process hearing officer gives the order, the student goes to the interim alternative educational setting. The parents still have the right to challenge any proposed change of placement. If they challenge a proposed change of placement, the school may start an expedited due process hearing. The student stays in the interim alternative educational setting until the due process hearing officer makes a decision or the 45 school days pass.

When the 45 school days pass, the school may repeat the process described above by initiating another expedited due process hearing. If school personnel believe that returning the student to the educational placement specified in the IEP is substantially likely to result in injury to the student or to others.

If the due process hearing officer doesn't give the order for the student to be placed in an interim alternative educational placement, the school may ask a court for a temporary restraining order for the placement. If the restraining order is given, the student will go to the interim alternative educational setting. If the temporary restraining order isn't given, the student will go back to the previous placement (as specified in the IEP).

QUESTIONS AND ANSWERS ABOUT DISCIPLINARY PROCEDURES IN IDEA

1. What is the definition of a suspension?

Suspension usually means that educational services are stopped, either on a short-term or long-term basis.

2. What due process rights do all students have when they are suspended?

The student must be advised of the reasons for the proposed suspension and given a chance to explain his/her version of the situation that caused the suspension. The parents should also be given prompt notice of the suspension and the reason for it. Last, the suspended student or the parents may appeal the suspension to the local Board of Education. The appeal only applies to extended term, suspension or expulsion.

3. What is the definition of an extended term (long-term) suspension or expulsion for students with disabilities?

Long-term suspension usually means when educational services are stopped for more than 10 consecutive school days. Under IDEA, after the first 10 days, educational services for students with disabilities must be provided during long-term suspension. The law says the school must still provide the student with a free appropriate public education during an extended term suspension. This would include transportation and other related services, if deemed necessary by the IEP team.

4. Can a student be removed to an interim alternative educational setting for dangerous behavior?

Yes. A hearing officer may order a change in placement to an interim alternative educational setting for up to 45 school days for very dangerous behavior if the hearing officer—

- Decides that the school has proved that keeping the current placement is very likely to result in injury to the student or others;
- Decides that the interim alternative educational setting meets the requirements in IDEA.

5. May the parents appeal the hearing officer's decision?

Yes. The parents may appeal the hearing officer's decision to the state review officer. The student would remain in the interim alternative educational setting during the first 45 school days. Then the student would be returned to the original IEP setting unless the school seeks another order from a hearing officer for an additional 45 school days in the interim alternative educational setting, or the school and the parent agree on a placement.

6. May the school appeal the hearing officer's decision?

Yes. The school may also appeal the hearing officer's decision to the state review officer.

7. Should law enforcement officials be told of criminal activity of a student with a disability?

IDEA does not keep the school or another agency from reporting criminal acts committed by a student with a disability. School officials should follow state and federal laws for mandatory reporting. When the school or another agency reports a crime committed by a student with a disability, copies of the student's special education and disciplinary records are sent to the authorities (if permitted by the Family Educational Rights and Privacy Act (FERPA)).

8. Must the parent agree to have a resolution meeting?

The resolution meeting will take place unless the parent and school agree in writing to waive the meeting or the parent and the school agree to use mediation. If the LEA has not resolved the complaint within 30 days the due process hearing may occur.

9. What is a "controlled substance"?

A "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 (21U.S.C. §12(c)). This is a federal law.

10. What is an "illegal drug"?

An "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 the Controlled Substances Act or under any other provisions of federal law.

11. What is a "weapon"?

A "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of Title 18, United States Code. This federal law defines a weapon as "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 this term does not include a pocket knife with a blade of less than 2.5 inches in length."

12. What is "serious bodily injury"?

"Serious bodily injury" means bodily injury which involves:

- a substantial risk of death;
- extreme physical pain;
- protracted and obvious disfigurement; or
- protracted loss of impairment of the function of a bodily member, organ, or mental faculty.

13. What is "serious bodily injury"?

"Serious bodily injury" means bodily injury which involves:

- a substantial risk of death;
- extreme physical pain;
- protracted and obvious disfigurement; or
- protracted loss of impairment of the function of a bodily member, organ, or mental faculty.

RESOURCES

Kansas Special Education for Exceptional Children Act, 2006

<http://www.kansped.org/ksde/laws/spedlaw.html>

Kansas Special Education Regulations, 2001
<http://www.kansped.org/ksde/laws/art40/art40.pdf>

Manifestation Determination Review Form,
<http://www.kansped.org/ksde/laws/forms/ManifestationRev.pdf>

Figure 13-1
DISCIPLINE PROCEDURES INVOLVING VIOLATIONS OF A CODE OF STUDENT CONDUCT

LENGTH OF REMOVAL	SERVICES REQUIRED	IEP MEETING REQUIRED	SERVICES DETERMINED BY WHOM	IF CHALLENGED, STAY PUT
1. Short term Removals, not exceeding ten consecutive school days, and not cumulating to more than 10 school days. K.S.A. 72-8902	None C.F.R. 300.530(d)(3)	No, but if a long term suspension or expulsion is anticipated, conduct a manifestation determination within 10 days, and prior to formal disciplinary hearing. See row 4.	N/A	N/A
2. Next short term removal which includes the 11 th cumulative day (but does not constitute change of placement)	Those, if any, which are necessary to enable the child to: 1) Participate in the general curriculum (although in another setting; and 2) Progress toward meeting the goals in the IEP and the location of the services. C.F.R.300.530(b)(2), C.F.R. 300.530(d)(4)	No. No manifestation determination is required. 300.530(e) - Also see row 4 if long term suspension/expulsion is anticipated.	School officials, (General. Ed. Administrator, Director. of Sp. Ed. and the child's special education teacher). C.F.R. 300.530(d)(4). K.A.R. 91-40-33 K.A.R. 91-40-36	N/A
3. Each subsequent short-term removal (but still not constituting a change in placement).	Same as above. C.F.R. 300.530(b)(2) and C.F.R. 300.530(d)(4)	No. Also see row 4 if long term suspension/expulsion anticipated.	Same as above. 300.530(d)(4) K.A.R. 91-40-33 K.A.R. 91-40-36	N/A
4. 1) A long term suspension or expulsion for more than 10 consecutive school days. C.F.R. 300.536(a); or 2) another removal that cumulates to more than 10 school days, and shows a pattern constituting a change of placement. C.F.R. 300.536(a)(2)	Same as above except that there is no option to withhold services, and, if appropriate, a FBA and BIP. C.F.R. 300.121(d)(2)(i), C.F.R. 300.530(d)(5)	Yes, to: 1) Make a manifestation determination* (Notice of action and procedural safeguards immediately, and meeting within 10 school days.) C.F.R. 300.530(e), C.F.R. 300.530(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 or the student is in an AES. C.F.R. 300.530(f)	IEP Team determines services and place where the services will be provided. C.F.R. 300.530(d)(5)	Disciplinary Placement. C.F.R. 300.533
5. 45 day alternative educational settings	Not an option	Not an option	Not an option	Not an option

Figure 13-2

DISCIPLINE PROCEDURES RELATING TO WEAPONS, DRUGS, SERIOUS BODILY INJURY OR DANGEROUS BEHAVIOR -

LENGTH OF REMOVAL	SERVICES REQUIRED	IEP MEETING REQUIRED	SERVICES DETERMINED BY WHOM	IF CHALLENGED, STAY PUT
1. First 10 school days	None 300.530(d)(3). However , if this removal includes the 11 th cumulative day (and any subsequent day) of removal in a school year, required services are those which are necessary to enable the child to: 1) Participate in the general curriculum, although in another setting; and 2) Progress toward meeting the goals in the IEP. C.F.R. 300.530(b)(2), C.F.R. 300.530(d)(4)	No, BUT ALSO SEE ROW 2	If removal includes the 11 th day, or any subsequent day, school officials (LEA admin., sp. ed. director, and sp. teacher). C.F.R. 300.530(d)(4) K.A.R. 91-40-33 K.A.R. 91-40-36	N/A
2. A removal for: 1) more than 10 consecutive days, C.F.R. 300.536(a)(1) or 2) another removal that cumulates to more than 10 school days, and shows a pattern constituting a change of placement. C.F.R. 300.536(a)(2)	Those services necessary to enable the child to: 1) Participate in the general curriculum, although in another setting; and 2) Progress toward achieving the goals in the IEP and, if the behavior is a manifestation of the disability or it is otherwise appropriate, an FBA and BIP designed to address the behavior so it does not recur. C.F.R. 300.530(d)(5)	Yes, to: 1) Make a manifestation determination. (Notice of action and procedural safeguards immediately, and meeting within 10 school days.) C.F.R. 300.530(e), C.F.R. 300.530(h) 2) If the behavior is a manifestation of the disability or if otherwise appropriate develop a FBA plan and BIP, or review existing BIP and its implementation, and make any changes needed to address behavior. C.F.R. 300.530(f)	IEP Team determines services and place where the services will be provided. C.F.R. 300.530(d)(5)	Disciplinary Placement. C.F.R. 300.533
3. 45 day alternative educational setting (weapons, drugs or serious bodily injury) C.F.R. 300.530(g)	Same as above and 300.530(d)(1)	Yes. Same as above, and determine the alternative educational setting. C.F.R. 300.531	IEP Team. C.F.R. 300.530(d)(5)	Alt Ed Set pending H.O. decision or end of 45 school days, or by agreement.. C.F.R. 300.533. Process may be repeated. C.F.R. 300.532(b)(3)
4. 45 day alternative educational setting ordered by the hearing officer (Dangerous behavior). C.F.R. 300.532(a), C.F.R. 300.532(b)(2)(ii)	Same as above.	Yes. Same as above.	Proposed by school officials. (LEA admin., sp. ed. director, and sp. ed. teacher). Review by Hearing Off. C.F.R. 300.532(b)(2)(ii)	Same as above

CHAPTER 14

RESOLVING DISPUTES

Introduction

Special education laws and regulations include many important rights for parents of children with exceptionalities. Among these, are the right to be a part of the team of persons who will develop an individualized education program (IEP) for their child. As part of their child's IEP team, parents have the opportunity to: (a) provide input to the team; (b) make proposals regarding services and placement; and (c) grant or withhold consent when the team proposes an initial placement, a material change of services or a substantial change of placement.

This process for developing a child's IEP sometimes includes spirited negotiations, which can lead to disagreements among team members. At times these disagreements may become intense and result in deep frustrations, misunderstandings and hard feelings on the part of all involved. When this happens, the IEP team (which includes the parents) is encouraged to continue to work toward resolving their differences.

However, when multiple attempts have been made to resolve disagreements without success, a parent should know that there are other, more formal, options available to help them resolve special education disputes. The special education laws and regulations provide three formal dispute resolution processes for use by parents. These three formal processes are: (1) Mediation; (2) Formal Complaint; and (3) Due Process Hearing.

FORMAL RESOLUTION PROCESSES

Briefly, the three special education dispute resolution processes are:

Mediation:

In this process, a professional mediator is assigned by the Student Support Services Team, at the Kansas State Department of Education (KSDE), to act as a facilitator of discussion between the parents and the school district. The mediator attempts to keep the focus of discussion on working toward solutions rather than dwelling on problems, and helping the parties to reach agreement. If the parties reach agreement, the mediator puts the agreement in writing and asks the parties to sign the agreement. A mediator does not have authority to make any decision with regard to the final resolution of the dispute. However, if the mediator believes the dispute cannot reasonably be resolved, the mediator may declare an impasse and halt mediation. The mediator is provided to the parties by the KSDE at no cost to the parent or the school district. Mediation is a voluntary process and is available only when both parties agree to participate.

Formal Complaint:

In this process, a parent completes a formal complaint form and sends it to the Student Support Services Team at the Kansas State Department of Education. A formal complaint must allege that the school has violated a special education law or regulation. When Student Support Services receives a formal complaint, it assigns the complaint to a trained investigator. The investigator conducts an investigation and issues a written report which is provided to both the parent and the school district. The report indicates whether the investigator found a violation of special education laws or regulations. If a violation of special education laws or regulations is found, the report will include corrective action for the school district. The formal complaint investigation is conducted at no cost to the parent or the school district.

Due Process Hearing:

In this process, the parent or the school district sends the other party a Due Process Complaint Notice, and sends a copy of that notice to the Kansas State Department of Education. The school and parent hold a resolution meeting to resolve the dispute. A due process hearing officer is appointed and he/she contacts the parties to set up a pre-hearing, at which the hearing officer attempts to clarify the issues and determine how much evidence will be presented and how much time will be needed for the hearing. The hearing officer sets the date for the hearing. Although the rules of evidence usually do not apply to due process hearings, the hearing is very much like a trial. The party challenging the IEP or the status quo has the burden of proof and begins the hearing by presenting its evidence through documents or sworn testimony, or both. The other side has an opportunity to object to the introduction of evidence and to cross examine witnesses.

When the party with the burden of proof is finished presenting evidence, the other party presents its evidence. After hearing all the evidence, the hearing officer makes a final decision and issues an order reflecting that decision.

Each party then has a right to appeal the hearing officer's decision to a state review officer. Each party may also appeal the decision of the state review officer to a state or federal court. The school district pays the costs of the hearing, including the cost of the hearing officer and the court reporter. Otherwise, each party pays its own expenses. If a parent is a prevailing party, the parent may ask a court to order the school district to pay the parent's attorney's fees.

MEDIATION

Initiating Mediation

Mediation of special education disputes is available, at no cost, to school districts and

parents of children with disabilities. However, mediation is voluntary on the part of both the parents and the school district. Therefore, the first step in initiating a special education mediation is to ask the other party if it is willing to mediate the disputed issues.

If the other party is willing to mediate, the second step in initiating a special education mediation is to complete the required mediation forms. The three forms (which are available from the school district special education office or at <http://www.kansped.org/ksde/laws/mediation/mediation.html>) that must be completed by both parties are:

(1) Agreement to Mediate: This is a 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) Confidentiality Pledge: This one page form indicates that both parties: (a) understand and agree that discussions during mediation are confidential; (b) agree not to call the mediator or anyone associated with the mediator as a witness in any judicial, administrative or arbitration proceeding regarding the mediated dispute; (c) agree not to subpoena or demand the production of any records, notes, work product or other written information of the mediator; (d) agree that if a party does subpoena a mediator or a mediators records, the mediator will contest the subpoena and the requesting party agrees to reimburse the mediator for all expenses related to contesting the subpoena, including attorney fees plus the mediator's hourly rate; and

(3) 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 Kansas State Department of Education (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.

Scheduling Mediation

When the Kansas State Department of Education 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 should be acceptable to everyone. If the mediator is not familiar with neutral locations in the area where the mediation will be, she/he will usually ask the school representative for suggestions (such as a room in a county courthouse or public library). In some cases where neutral sites are not readily available, unless the parents object, mediations are held on school property.

Participants in Mediation

Mediation is a somewhat informal process. The parents and school personnel, are, of course the main participants. Generally, the likelihood of reaching an agreement is enhanced by keeping the number of participants to a minimum. However, if either or both sides want an outside advocate

involved, they may invite them to join the mediation. If parents are unable to participate fully, and need help to do so (because of reasons such as not speaking English or having a disability such as a hearing impairment), they may ask another person, such as an advocate, relative or friend to attend the mediation. In addition, the Kansas State Department of Education will provide an interpreter at a mediation session for a parent who requests one.

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.

Mediation Process

Although mediation is informal, it has structure with a beginning, middle, and end. The mediator will guide the parties through the steps in the process.

Mediators use a variety of techniques. However, a mediation conference usually has the following six steps:

1. *Introduction/Opening Statement* by the mediator;
2. *Discovering issues* in which each party has an uninterrupted statement of the issue(s) in disagreement, additional information about the issue(s), the strengths and needs of the student, options to resolve the concerns, and each party's preferences;
3. *Collaboration* in which the mediator helps the participants discuss their feelings and concerns, and identify and discuss areas of agreement as well as possible solutions;
4. *Caucusing* in which the mediator meets individually with each participant to further clarify their concerns and possible solutions;
5. *Re-convening* the joint session;

6. *Concluding* the mediation with resolution in which both the family and the school write an agreement (which should be incorporated into the IEP, if appropriate), or reach an impasse.

Note: If caucusing is not used, Steps 4 and 5 are usually replaced with a *Group Meeting* to clarify concerns and identify possible solutions.

The mediation process emphasizes open communication and problem-solving. In this process, the mediator helps the family and school representative clarify issues in disagreement and find solutions that are satisfactory to both. The mediator serves as:

Convener—by assisting in 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 enable each party to be 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.

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 the parties. If issues prove to be irresolvable, the mediator will declare that an impasse has been reached and the mediation will be terminated.

At the end of mediation, the mediator sends a report to the mediation coordinator at the

Kansas State Department of Education, listing names of the parties, date(s) of mediation meeting(s), result of mediation (agreement or impasse), and a copy of the mediated agreement.

Costs of mediation

Fees of the mediator for special education disputes are paid by the Student Support Services Team of the Kansas State Department of Education. These costs are not the responsibility of the parents or of the school district or special education cooperative.

Benefits of mediation?

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.

Length of mediation sessions

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.

Responsibilities of the mediator

The mediator should:

- make the conference arrangements;
- confirm the conference time and place with both parties;
- conduct and facilitate the conference;
- write the agreement reached through mediation;
- assure that copies of the agreement are given to both parties; and
- inform parties of their options if an agreement is not reached.

For more information or to request mediation?

Contact the mediation coordinator on the Student Support Services Team of the Kansas State Department of Education:

Address: 120 S.E. 10th Avenue
Topeka, KS 66612
Phone: (800) 203-9462 or
(785) 296-5478
Fax: (785) 296-6715
Website: www.kansped.org

FORMAL COMPLAINT

Filing a Formal Complaint

Any individual or organization may file a formal complaint with the state department of education if they believe that a local school district is not following the requirements of special education laws and regulations. You may obtain a form for filing a formal complaint electronically at www.kansped.org, or by contacting the Student Support Services Team of the Kansas State Department of Education:

Address: 120 S.E. 10th Avenue
Topeka, KS 66612
Phone: (800) 203-9462 or
(785) 296-5478
Fax: (785) 296-6715
Website: www.kansped.org

A formal complaint must be in writing and signed by the person or organization making

the complaint. It must state that the school district or other agency has not followed the requirements of: (a) the IDEA; (b) the Kansas Special Education for Exceptional Children Act, or federal and/or state special education regulations. The complaint must also give the facts upon which the complaint is based. Other requirements are:

1. The name, address, and telephone number of the person filing the complaint.
2. The name, address, and telephone number of the school against whom the complaint is made.
3. The name and address of the student involved, if applicable.
4. Applicable law(s) or regulation(s), if known.
5. A statement that efforts have been made to clarify the concern(s) with local school officials.
6. A statement of the proposed resolution of each concern.
7. The signature of the person filing the complaint.

The requirements for formal complaints are in the Kansas Administrative Regulations at K.A.R. 91-40-51.

Investigating the Complaint

The Student Support Services Team must resolve a formal complaint within 30 calendar days from the date the complaint is received in the office, unless exceptional circumstances exist.

After a formal complaint is received, an investigator will be appointed by the KSDE to investigate the complaint. The investigator will contact the parent and relevant school personnel, 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 issue a report with findings and conclusions regarding the complaint allegations. A copy of the report is sent to the school district and to the parents. If the investigator determines that a violation of

special education laws or regulations has been substantiated, the report will specify corrective action that the school must take.

Following Up on the Complaint

If the report requires corrective action(s), the school must, within 10 calendar days of the date of the report, send to the Director of Student Support Services one of the following:

1. a statement indicating that it accepts the required action(s) specified in the report;
2. a written request for more time to complete the required action(s), with reasons for this request; or
3. a written notice of appeal.

When corrective action has been completed, the Kansas State Department of Education will confirm the completion by notifying the school district in writing that the corrective action has been completed. A copy of the completion notice will also be sent to the parents.

Appealing the Decision

Either the school district or the person making the complaint may appeal the findings or conclusions in the report. To enter an appeal, a party must send a written notice of appeal within 10 calendar days from the date of the final report. The appeal must be sent to the: Kansas Commissioner of Education, Kansas State Department of Education, 120 SE Tenth Avenue, Topeka, KS 66612.

DUE PROCESS HEARING

Defining the Due Process Hearing

When parents and school personnel disagree about a student's special education program, they should try to resolve their differences informally through IEP meetings, or other negotiations, including mediation. A due process hearing is very much like a trial. Each party presents its evidence and the other side has an opportunity to object to the evidence presented and to cross examine the witnesses of the other party. This is a very adversarial process and can often result

in severely damaged relationships. Therefore, it is recommended that a due process hearing be considered only as a last resort, when all other avenues of resolution have been exhausted.

Timelines for a Due Process Hearing

The timelines for a due process hearing begin on the date that a party receives a notice for a due process hearing from the other party.

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the school must convene a meeting with the parents and IEP team members, with specific knowledge, to discuss the facts of the due process complaint, so that the school has an opportunity to resolve the dispute.

The next important timeline is the timeline for selecting a hearing officer and the second important timeline is the time in which each party must complete certain activities.

- (1) The timeline for selecting a hearing officer is as follows:
 - (a) Within 5 business days of receipt of a complaint notice for a due process hearing, the school must furnish the parents with a list (usually not more than two or three) of qualified hearing officers and notify the parents that they have a right to disqualify any or all of the hearing officers on the list.
 - (b) The parent has 5 calendar days to notify the school of the names on the list to be disqualified (if any). The school may select from the names of any hearing officers left on the list. If all hearing officers on the list are disqualified by the parents, the school has 3 business days to notify the state department of education and request that agency to appoint a hearing officer.
 - (c) The state department of education then has 3 business days in which to appoint a hearing officer and mail a

notice to the parties identifying the name of the hearing officer.

- (d) The hearing officer will make timely contact with the parties to begin the proceedings.
- (2) The timeline for other activities is as follows:
 - (a) Within 10 days of the receipt of a notice for a due process hearing, the party receiving the notice must send a response to the other party regarding the issues identified in the notice for due process.
 - (b) For cases in which the parent requested a due process hearing, the school must schedule a resolution session within 15 days of receiving the complaint notice for a due process hearing, unless the resolution session is waived by both parties or both parties agree to mediate.
 - (c) If a party believes that a notice of due process it has received is legally insufficient, it may submit to the 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 (and the hearing officer has an additional 5 days to determine whether or not the original complaint notice is sufficient).
 - (d) Within five business days prior to a hearing, each party must disclose to the other party all evaluations and recommendations based on the evaluation that they intend to use at the hearing.
 - (e) Not less than 5 days prior to the hearing, a party may request that the hearing officer allow it to amend its notice of complaint.
 - (f) If the school has not resolved the issues within 30 days of the date the notice of due process was received, the hearing may begin.
 - (g) The hearing must be completed within 35 days of the receipt of the

notice of due process, except that a hearing officer may grant specific extensions of time if requested by either party. The hearing officer has another 10 days after the close of the hearing in which to issue a written decision.

- (h) For an expedited hearing (relating to issues regarding a substantial likelihood of injury, a manifestation determination or a disciplinary setting), the hearing must occur within 20 school days of the date the hearing was requested, and the hearing officer has another 10 days in which to mail a written decision to the parties. A hearing officer may not grant an extension of time in an expedited hearing.
 - (i) Under some circumstances, such as amendment of a due process hearing complaint notice, the timelines start over.
 - (j) The notice for a due process hearing must relate to facts giving rise to the complaint that occurred not more than two years prior to the notice. There are some exceptions to this timeline, including when a school has misrepresented that it has resolved the problem or the school has withheld information that it was legally required to give to the parent.

The timelines for due process hearings can be complicated, and, under some circumstances, have exceptions which may or may not have been included here. If you are in a due process hearing or are considering initiating a due process hearing, please review the statutes and regulations pertaining to such hearings or consult with a knowledgeable attorney or advocate. (For due process forms see <http://www.kansped.org/ksde/laws/dueproc/dueprocess.html>)

Parent Rights in a Due Process Hearing

Some of the most important rights of parents regarding a due process hearing are the right to:

1. Ask for an impartial due process hearing regarding any matter related to identification, evaluation, or placement of the student, or to question the school's provision of special education and related services (a free appropriate public education).
2. Be advised of any free or low-cost legal and other relevant services available in the area.
3. Have the hearing conducted by a hearing officer who does not work for the school, is not involved in the student's education, and doesn't have any personal or professional interest in the hearing.
4. Have an attorney during the hearing, and be accompanied and advised by persons with special knowledge or training in special education issues.
5. Have the student present, if appropriate.
6. Have the hearing open or closed to the public.
7. Present evidence, and to confront, and cross-examine witnesses.
8. Ask the hearing officer to not allow any evidence at the hearing that has not been disclosed to you at least 5 calendar days before the hearing.
9. Have a record of the hearing.
10. Receive a copy of the written decision mailed within 10 days after the close of the due process hearing.
11. Have a hearing at a time reasonably convenient for the parents and the school.
12. Have the student stay in the current educational placement specified by the student's IEP during the hearing, unless the parents and the school agree otherwise (there are exceptions to this provision if the

hearing involves issues related to behavior substantially likely to result in injury, a manifestation determination or a disciplinary placement).

13. Appeal a decision from the hearing officer to the Kansas State Department of Education and to further appeal a decision from the state review officer to a state or federal court.

Appealing the Decision

Either party to a due process hearing may appeal the decision to a state review officer by filing a written notice of appeal with the Commissioner of Education, 120 SE 10th Ave., Topeka, Kansas 66612 within 30 calendar days after the date of the postmark on the hearing officer's written notice of the results of the hearing

RESOURCES

For more information about parent and student rights in special education you may contact any of the following:

Student Support Services, Kansas State Department of Education, 1-800-203-9462, Mediation forms
<http://www.kansped.org/ksde/laws/mediation/mediation.html>

Formal Complaint forms
<http://www.kansped.org/ksde/laws/frmlcomp/fcform04.doc>

Due Process forms
<http://www.kansped.org/ksde/laws/dueproc/duprocess.html>

Families Together, Inc.,
Garden City – 1-888 820-6364
Kansas City – 1-913 384-6783
Topeka – 1-800 264-6343
Wichita – 1-888-815-6364
<http://www.familiestogetherinc.org/>

Keys for Networking, a parent organization providing information, support, and training to families whose children who have educational, emotional, and/or behavioral problems, 1-785-233-8732, www.keys.org

Disability Rights Center of Kansas (DRC), 1-877-776-1541

Parent Rights in Special Education,
<http://www.kansped.org/ksde/laws/prights/prights.html> .

Kansas Special Education Process Handbook,
<http://www.kansped.org/ksde/ph01/process01.html>

Family Educational Rights and Privacy Act (FERPA)

<http://www.kansped.org/ksde/laws/ferpa.html>

Kansas Special Education for Exceptional Children Act, 2006

<http://www.kansped.org/ksde/laws/spedlaw.html>

Kansas Special Education Regulations, 2001

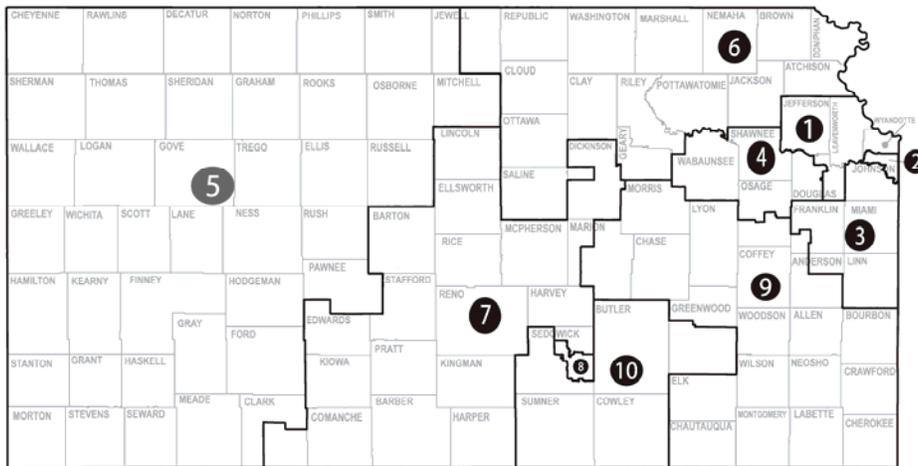
<http://www.kansped.org/ksde/laws/art40/art40.pdf>

Education Priorities for a New Century

To assist in fulfilling its responsibility to provide direction and leadership for the supervision of all educational interests under its jurisdiction, the Kansas State Board of Education has adopted as its mission promoting student academic achievement through vision, leadership, opportunity, accountability and advocacy for all. The State Board believes that the key to ensuring the fulfillment of its mission lies in helping schools work with families and communities to prepare students for success.

With that in mind, the State Board has established the following priorities to guide its work in the next century:

- Ensure that all students meet or exceed academic standards by:
 - Redesigning the delivery system to meet our state's changing needs,
 - Providing a caring, competent teacher in every classroom,
 - Ensuring a visionary leader in every school,
 - Improving communication with all constituent groups.



Kansas State Board of Education

Kansas State Education Building
120 S.E. 10th Avenue Topeka, Kansas 66612-1182

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