

State and Federal Special Education Law



State and Federal Special Education Law- Cont'd

All eligible youth with disabilities, ages 3 through 21, are entitled to receive a free appropriate public education

- Individuals with Disabilities Education Act (IDEA)
 - [20 U.S.C. 1400-1482](#)
- Kansas Act for Exceptional Children
 - [K.S.A. 72-3403 to - 3481](#)
- Kansas State Board of Education Regulations
 - [K.A.R. 91-40-1 to -53](#)



IDEA Part C

All eligible children with disabilities, ages birth through 2, are also entitled to infant-toddler services. These requirements will not be covered in this presentation. Please visit the Kansas Department of Health and Environment website for more information on these requirements and services, <http://www.ksits.org/>.



How is Special Education Eligibility Determined?

- A two-pronged test for eligibility:
 - (1) whether the child is a child with an exceptionality (disability or giftedness); and
 - (2) by reason thereof, has a need for special education and related services



Whose Responsibility is it to Identify Children?

- Schools must have policies and procedures in effect to ensure that all children with exceptionalities (those who have disabilities and those who are gifted) and who are in need of special education and related services are identified, located, and evaluated.
- This includes children who attend public or private schools, who are home schooled; are highly mobile including migrant and homeless, or are in foster care.



Referral for Initial Evaluation

- A district may receive a referrals for an initial evaluation from a variety of sources. These include:
 - Early Childhood Screening
 - Part C Infant-Toddler Program
 - General Education Intervention Team or Grade/Content Area Collaborative Team
 - Parents
 - Self-referral by adult student
 - Guardians *ad litem*
 - Court Appointed Special Advocate
 - Caseworker



Referral for Initial Evaluation- Cont'd

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



Prior Written Notice and Request For Consent

- Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describe any evaluation procedures the school proposes to conduct (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)).
- The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct an initial evaluation) and the basis used for determining the action is necessary.
- (See Prior Written Notice for Evaluation or Reevaluation form at <https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice>)



How is Parent Defined in Special Education Law?

- School personnel must determine the appropriate person(s) to make educational decisions on behalf of the child.
- Those individuals have a right to receive notice, give or revoke consent, file formal complaints, request mediation, file for a due process hearing, give or deny permission for release of records, etc.
- In Kansas “parent” is defined as:
 - A natural (biological) parent;
 - An adoptive parent;
 - A person acting as a parent;
 - A legal guardian;
 - An officially appointed education advocate; or
 - A foster parent, if the foster parent has been appointed the education advocate of an exceptional child. (K.S.A. 72-3404(m))



Person Acting as a Parent

- “Person acting as a parent” means a person such as a grandparent, stepparent or other relative with whom a child lives, or a person other than a parent who is legally responsible for the welfare of a child.
 - KSDE interprets “legally responsible for the welfare of a child” to include a kinship placement.



Definition of Parent

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



Education Advocates

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



Education Advocates- Cont'd

- In Kansas, a foster parent may make educational decisions for an exceptional child only if the foster parent receives the required training and is appointed by the State Board as an education advocate.
- In other circumstances when a judge orders someone to serve as the child's legal education decision maker the district must follow the judge's orders.



Assigning Education Advocates

- KSDE contracts with [Families Together](#) (the Kansas Parent Training and Information Center) to:
 - provide training for potential education advocates,
 - receive referrals for students who need an education advocate,
 - match an education advocate to the student,
 - notify KSDE to appoint the education advocate, and
 - provide support for education advocates.



Assigning Education Advocates – Cont'd

- Education advocates are appointed for students ages 3 to 18 who are homeless youth, in the custody of DCF or the Kansas Department of Corrections, and who are receiving special education services or need an evaluation to determine eligibility for services; and:
 - (a) whose parents are unknown or unavailable;
 - (b) whose parent rights have been severed or relinquished; or
 - (c) whose parents have a court order of “no contact” against them and where the order states the parent is not allowed to know the whereabouts of the child.



Assigning Education Advocates- Cont'd

- Like all other students with exceptionalities students in DCF or DOC custody, at age 18, become their own educational decision makers, unless a judge has determined that they are not capable of doing so and has appointed a guardian.
- For a 2-year-old who is transitioning from Infant-Toddler Services, if parents are unknown or unavailable, an education advocate may be appointed to provide consent to conduct a Part B evaluation, attend an IEP meeting, and be involved in other special education actions required.
- For more information about obtaining an education advocate, contact Families Together, 800-264-6343 or 785-233-4777, or the Kansas State Department of Education.



Department for Children and Families Responsibilities

- K.S.A. 38-2218 states that when DCF staff determine that a child in DCF custody appears to be a student with an exceptionality who may require special education services and the parents are unknown or unavailable as defined in such statutory provision.
- Per policy, DCF must document this in the case record and contact Families Together within three business days to request that an education advocate be appointed.



Department for Children and Families Responsibilities – Cont'd

- “Unavailable” is defined in K.S.A. 38-2218(a)(1)–(3) as follows:
 - (1) Repeated attempts have been made to contact the parent to provide notice of an IEP meeting and secure the parent's participation and such attempts have been unsuccessful;
 - (2) having been provided actual notice of an IEP meeting, the parent has failed or refused to attend and participate in the meeting; or
 - (3) the parent's whereabouts are unknown so that notice of an IEP meeting cannot be given to the parent.
- The child's DCF contracted Child Welfare Case Management Provider should have this information documented in the child's case file.



Timeline For Conducting the Initial Evaluation

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



Eligibility Determination

- Eligibility decisions are made by a team of qualified professionals and the parents of the child who has been evaluated (K.A.R. 91-40-10(a)(1)).
- The parents and qualified professionals review the results of the initial evaluation to determine:
 - (1) whether the child is a child with an exceptionality as defined in federal and state statutes and regulations (K.A.R. 91-40-1(k), (w); and
 - (2) the educational needs of the child (K.A.R. 91-40-10(a)(1); 34 C.F.R. 300.306(a)).



Independent Educational Evaluation

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



The Individualized Education Program (IEP)

- The Individualized Education Program (IEP) is defined as a written statement for each student with an exceptionality, which describes that child's educational program and is developed, reviewed, and revised in accordance with special education law.



Individualized Education Plan (IEP)

Individualized Education Plan (IEP)

- Revised 1 time/year
- Blueprint for special education services
 - *Annual Goals*
 - *What kind of services*
 - *Who will provide the services*
 - *How often will the services be provided*
 - *Other special accommodations*
 - i.e. Student has behaviors that impede the ability to learn...request that the IEP include a Behavioral Intervention Plan (BIP)



IEP Team

- In addition to the following listed members of the IEP team, if parents need a sign language or foreign language interpreter, the school must provide that service (K.S.A. 72-3404(u); K.A.R. 91-40-17(d); 34 C.F.R. 300.322(e); 34 C.F.R. 300.321).
 - *The student*
 - *The parents*
 - *The special education teacher(s) or provider(s)*
 - *The general education teacher(s)*
 - *The School Representative*
 - *A person who can interpret instructional implications* of any new evaluation or assessment results
 - *Others* include individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, and those who are invited by the parents or the school to attend the IEP meeting.



Notice of IEP Team Meeting

- The school must take steps to ensure that one or both parents are present at each IEP Team meeting or are otherwise afforded the opportunity to participate in the IEP Team meeting.
- The school must provide notice of an IEP Team meeting in writing at least 10 calendar days prior to the meeting (K.A.R. 91-40-17(a)(2)) and if the child is at least 14 years old, inform the parents that their child is invited to attend the meeting.
- (See Meeting Notice at <https://www.ksde.gov/policy-and-funding/special-education/special-education-law/notices-and-forms/notice-of-meeting-and-prior-written-notice>.)



When The IEP Must Be in Effect

- Each school district must make FAPE available to all eligible children beginning on their third birthday, and continuing until:
 - a reevaluation indicates the child is no longer eligible and the parents consent to termination of services;
 - the child graduated with a regular education diploma; or
 - the end of the school year in which the child reaches age 21.



Annual Review of the IEP

- The IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate.
- The review and revision of the IEP is to address:
 - any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;
 - the results of any reevaluation conducted;
 - information about the child provided by the parents;
 - the child's anticipated needs; and
 - any special factors present.



Amend the IEP

- Between annual IEP reviews, if the parent and school representative agree, changes can be made without an IEP Team meeting, by amending the IEP rather than by rewriting the entire IEP.
- If changes are made to the child's IEP without a meeting, the school must ensure that the child's IEP Team is informed of those changes (K.S.A. 72-3429(b)(4)(B); 34 C.F.R. 300.324(a)(4)).
- Even when using the IEP amendment process, the school must provide Prior Written Notice of any changes in the IEP and request parent consent when required.



Request by Parent or School Staff for IEP Meeting

- Although the school is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with an exceptionality have the right to request an IEP meeting at any time.
- The child's teacher or other school staff may also propose an IEP meeting at any time they feel the IEP has become inappropriate for the child and revision should be considered (K.S.A. 72-3429(f)).



Transfer Within the State

- When a child with an exceptionality transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous school district.
- Once the new district receives the current IEP the new school district may adopt the child's IEP from the previous school district or develop and implement a new IEP.
- When a student moves within the state, eligibility has already been established and a reevaluation is not required.



Transfer From Out-of-State

- When a child with an exceptionality, who has a current IEP in another state, transfers to a school district in Kansas, the new school district, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous school district until the Kansas school district either adopts the current IEP, or conducts an initial evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child.
- If the district elects to conduct an evaluation, the evaluation conducted by the new school district would be to determine if the child is a child with an exceptionality in Kansas and to determine the educational needs of the child.



What does a "free appropriate public education" or "FAPE" mean?

- The term "free appropriate public education" (FAPE) is defined in regulation as special education and related services that are provided at no cost to the parent and in conformity with an individualized education program (K.A.R. 91-40-1(z)).



What does a "free appropriate public education" or "FAPE" mean? – Cont'd

- In [Endrew F. v. Douglas County School District](#), 137 S. Ct. 988 (2017), the United States Supreme Court refined the legal standard for a free appropriate public education established in [Bd. of Educ. v. Rowley](#), 458 U.S. 176 (1982). The Court said in order to provide a free appropriate public education, "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."



Special Education and Related Services

- One of the most important considerations for IEP Teams is the special education, related services, and supplementary aids and services to be provided to the child or on behalf of the child. The IEP Team must also consider the program modifications or supports for school personnel that will be provided on behalf of the child. All services and supports are provided to enable the child:
 - To advance appropriately toward attaining the annual goals;
 - to be involved in and make progress in the general education curriculum, or appropriate activities for children ages 3–5;
 - to participate in extracurricular and other nonacademic activities; and
 - to be educated and participate with their nondisabled peers to the maximum extent appropriate, in all of these activities.



Transition Services

Beginning at age 14 – The IEP must include a statement of the transition service needs that focus on the child's courses of study (i.e. advanced placement courses, community experiences, or a vocational education program).



Extended School Year Services

- When the IEP is developed initially or reviewed annually, the IEP Team shall consider the need for extended school year (ESY) services for children with disabilities.
- ESY services are different from general education summer school.
- The reason for ESY is to ensure the provision of FAPE so that the child can make progress toward the goals specified on the child's IEP and to prevent regression, which would impede such progress.



Dispute Resolution

- There are three formal methods provided in special education law for resolving disputes at the local level:
 - Mediation,
 - Formal complaint, and
 - Due process hearing.
- To learn more about each of these options or to make a request please visit the KSDE website, <https://www.ksde.gov/policy-and-funding/special-education/special-education-law/dispute-resolution>.



Mediation

- The mediation process is voluntary for both the parents and the school.
- Mediation is conducted by a qualified, impartial mediator who is trained in effective mediation techniques.
- KSDE maintains a list of qualified mediators and appoints the special education mediator.
- KSDE is responsible for the costs of mediation.



Formal Complaint

- Any individual or organization may file a formal complaint if they believe that a school district is not complying with federal or state laws or regulations relating to special education.
- The formal complaint must be for a situation that occurred during the past year.



Due Process Hearing

- Either the school district or the parents of an exceptional child may initiate a special education due process hearing to resolve differences about a child's identification, evaluation, educational placement, or provision of a free appropriate public education.
- The problem about which the complaint is made must have occurred not more than two years before the date the parent or school knew or should have known about the alleged action that forms the basis of the due process complaint.



Suspension and Expulsion of Children with Disabilities for Disciplinary Violations

- When a child with a disability violates a school's code of conduct, that behavior could result in suspension or expulsion.
- Such removals from school are subject to the disciplinary provisions of special education law.
- When proposing a short-term suspension for a child with a disability, school officials must also consider the provisions of the Kansas Pupil Suspension and Expulsion Act, K.S.A. 72-6114 to-6121. This law requires (1) providing notice, and (2) the opportunity for an informal hearing before a child is removed from school.



Short Term Removals

- School officials may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.
- The school need not provide educational services during the first 10 days of removal in a school year, unless it provides educational services to a child without disabilities who is similarly removed.



Subsequent Short-term Removals

- When the total number of school days of suspension in a school year reaches 11, and the current removal is for not more than 10 consecutive school days and is not a change of placement, the school must begin providing special education and related services to enable the child to:
 - participate in the general education curriculum, although in another setting; and
 - to progress toward meeting the goals set out in the child's IEP.



Long-term Removals

- Removal of a child with a disability is a change of placement when:
 - the removal is for more than 10 consecutive school days; or
 - the removal is one of a series of short-term removals that constitutes a pattern of removals.
- Note that **partial days count as full school days**. In each case, determining if a pattern has occurred will rest on the unique facts.



Long-term Removals – Cont'd

- On the date the decision is made to make a removal that constitutes a change of placement of a child with a disability the school must notify the parents of that decision, and provide the parents with a copy of the Parent Rights notice (K.S.A. 72-3433(d)(1)).
- On the 11th cumulative school day of removal resulting from disciplinary action, the school must begin providing appropriate special education and related services.



Long-term Removals – Manifestation Determination Part 1 of 3

- The school, the parent and relevant members of the child's IEP team (as determined by the parent and the school) must determine if the child's violation of the school's code of student conduct was a manifestation of his or her disability.



Long-term Removals – Manifestation Determination: part 2 of 3

- If the school, the parent and other relevant members of the IEP Team determine that the child's behavior was a manifestation of the disability, the IEP Team must:
 - Return the child to the placement from which the child was removed, unless the parent and the school agree to a change of placement; and
 - Either:
 - Conduct a functional behavioral assessment, unless the school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.



Long-term Removals – Manifestation Determination Part 3 of 3

- If the IEP Team determines the behavior was NOT a manifestation of the child's disability, the district may proceed with suspension and expulsion proceedings under K.S.A. 72-6114 to-6121,
- Using these proceedings, school officials may order a change in placement of a child with a disability to an appropriate interim alternative educational placement for not more than 186 school days.



Children Not Yet Eligible For Special Education

- Special education law affords protections to children not determined eligible only if a school district had knowledge that a child was a child with a disability before the behavior which precipitated the disciplinary action occurred.
- A school district is deemed to have such knowledge if:
 - the parents of the child have expressed concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services;
 - the parents of the child have requested an evaluation of the child; or
 - the teacher of the child or other school personnel expressed specific concern about a pattern of behavior demonstrated by the child directly to the special education director or other supervisory school personnel.



Additional Discipline Requirements

- For additional information on discipline requirements review Chapter 13 of the Kansas Special Education Process Handbook on the KSDE website, <https://www.ksde.gov/policy-and-funding/special-education/special-education-law/process-handbook>.
- Includes:
 - Removals for 45 School Days to an Interim Alternative Educational Setting for weapons, drugs, or serious bodily injury
 - Special education expedited due process hearing:
 - Appeal a discipline decision
 - When returning the child to the setting specified in the child's IEP would be substantially likely to result in injury to the child or others



Family Educational Rights and Privacy Act (FERPA)

- Without parental consent or a court order, a school cannot give a student's educational records to a guardian *ad litem*, CASA, or foster parent by virtue of their working on behalf of the student.
- Pursuant to the Uninterrupted Scholars Act enacted into law in 2014, FERPA was amended to allow for disclosure of educational records of children/youth to a caseworker or other representative of a child welfare agency (DCF) or tribal organization 'when such agency or organization is legally responsible ... for the care and protection of the student.' A DCF contractor may access the student's educational records if DCF specifically authorizes the contractor to access educational records and notifies the school in writing to ensure the person requesting the records has the legal right to do so.





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