

### Special Education Regulations (2008)

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## SPECIAL EDUCATION REGULATIONS

**91-40-1. Definitions.** Additional definitions of terms concerning student discipline are provided in K.A.R. 91-40-33. (a) “Adapted physical education” means physical education that is modified to accommodate the particular needs of children with disabilities.

(b) “Agency” means any board or state agency.

(c) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term shall not include any medical device that is surgically implanted or the replacement of the device.

(d) “Assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include the following:

(1) Evaluating the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;

(2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) coordinating and using other therapies, interventions, or services with assistive technology devices, including those associated with existing education and rehabilitation plans and programs;

(5) providing training or technical assistance for a child with a disability or, if appropriate, that child’s family; and

(6) providing training or technical assistance for professionals including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child.

(e) “Audiology” means the following:

(1) Identification of children with hearing loss;

(2) determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) provision of habilitative activities, including language habilitation, auditory training, lip-reading, hearing evaluation, and speech conservation;

(4) creation and administration of programs for prevention of hearing loss;

(5) counseling and guidance of children, parents, and teachers regarding hearing loss; and

(6) determination of children’s needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(f) “Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance.

(g) “Blindness” means a visual impairment that requires dependence on tactile and auditory media for learning.

(h) “Board” means the board of education of any school district.

(i) “Business day” means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business day in a specific regulation.

(j) “Child find activities” means policies and procedures to ensure that all exceptional children, including exceptional children who are enrolled in private schools and exceptional children who are homeless, regardless of the severity of any disability, are identified, located, and evaluated.

(k) “Child with a disability” means the following:

(1) A child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services; and

(2) for children ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services.

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

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

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

(3) A parent understands the following:

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

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

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

(m) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(n) "Day" means a calendar day unless otherwise indicated as business day or school day.

(o) "Deaf-blindness" means the combination of hearing and visual impairments that causes such severe communication and other developmental and educational needs that the needs cannot be accommodated in special education programs solely for the hearing impaired or the visually impaired.

(p) "Deafness" means a hearing impairment that is so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification, and adversely affects the child's educational performance.

(q) "Developmental delay" means such a deviation from average development in one or more of the following developmental areas that special education and related services are required:

(1) Physical;

(2) cognitive;

(3) adaptive behavior;

(4) communication; or

(5) social or emotional development.

The deviation from average development shall be documented and measured by appropriate diagnostic instruments and procedures.

(r) "Department" means the state department of education.

(s) "Early identification and assessment of disabilities" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(t) "Educational placement" and "placement" mean the instructional environment in which special education services are provided.

(u) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(3) inappropriate types of behavior or feelings under normal circumstances;

(4) a general pervasive mood of unhappiness or depression; or

(5) a tendency to develop physical symptoms or fears associated with personal or school problems. The term shall include schizophrenia but shall not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(v) "Evaluation" means a multisourced and multidisciplinary examination, conducted in accordance with applicable laws and regulations, to determine whether a child is an exceptional child and the nature and extent of the special education and related services that the child needs.

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

(x) "Extended school year services" means special education and related services that are provided to a child with a disability under the following conditions:

(1) Beyond the school term provided to nondisabled children;

(2) in accordance with the child's IEP; and

(3) at no cost to the parent or parents of the child.

(y) “Federal law” means the individuals with disabilities education act, as amended, and its implementing regulations.

(z) “Free appropriate public education” and “FAPE” mean special education and related services that meet the following criteria:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) meet the standards of the state board;

(3) include an appropriate preschool, elementary, or secondary school education; and

(4) are provided in conformity with an individualized education program.

(aa) “General education curriculum” means the curriculum offered to the nondisabled students of a school district.

(bb) “Gifted” means performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields due to intellectual ability, when compared to others of similar age, experience, and environment.

(cc) “Hearing impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that does not constitute deafness as defined in this regulation.

(dd) “Homebound instruction” means the delivery of special education and related services in the home of a child with a disability.

(ee) “Hospital instruction” means the delivery of special education and related services to a child with a disability who is confined to a hospital for psychiatric or medical treatment.

(ff) “Independent educational evaluation” means an examination that is obtained by the parent of an exceptional child and is performed by an individual or individuals who are not employed by the agency responsible for the education of the child but who meet state and local standards to conduct the examination.

(gg) “Individualized education program” and “IEP” mean a written statement for each exceptional child that meets the requirements of K.S.A. 72-987, and amendments thereto, and the following criteria:

(1) Describes the unique educational needs of the child and the manner in which those needs are to be met; and

(2) is developed, reviewed, and revised in accordance with applicable laws and regulations.

(hh) “Individualized education program team” and “IEP team” mean a group of individuals composed of the following:

(1) The parent or parents of a child;

(2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment;

(3) at least one special education teacher or, if appropriate, at least one special education provider of the child;

(4) a representative of the agency directly involved in providing educational services for the child who meets the following criteria:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children;

(B) is knowledgeable about the general curriculum; and

(C) is knowledgeable about the availability of resources of the agency;

(5) an individual who can interpret the instructional implications of evaluation results;

(6) at the discretion of the child’s parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) whenever appropriate, the exceptional child.

(ii) “Individualized family service plan” and “IFSP” mean a written plan, in accordance with section 1436 of the federal law, for providing early intervention services to an infant or toddler with a disability and the infant’s or toddler’s family.

(jj) “Infants and toddlers with disabilities” means children from birth through two years of age who have been determined to be eligible for early intervention services under the federal law.

(kk) “Interpreting services” means the following:

(1) For children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, including communication access real-time translation (CART), C-Print, and TypeWell; and

(2) special interpreting services for children who are deaf-blind.

(ll) “Least restrictive environment” and “LRE” mean the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled, with this placement meeting the requirements of K.S.A. 72-976, and amendments thereto, and the following criteria:

- (1) Determined at least annually;
- (2) based upon the student's individualized education program; and
- (3) provided as close as possible to the child's home.

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

(nn) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(oo) "Mental retardation" means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(pp) "Multiple disabilities" means coexisting impairments, the combination of which causes such severe educational needs that those needs cannot be accommodated in special education programs solely for one of the impairments. The term shall not include deaf-blindness.

(qq) "Native language" means the following:

(1) If used with reference to an individual of limited English proficiency, either of the following:

(A) The language normally used by that individual, or, in the case of a child, the language normally used by the parent or parents of the child, except as provided in paragraph (1) (B) of this subsection; or

(B) in all direct contact with a child, including evaluation of the child, the language normally used by the child in the home or learning environment.

(2) For an individual with deafness or blindness or for an individual with no written language, the mode of communication is that normally used by the individual, including sign language, braille, or oral communication.

(rr) "Occupational therapy" means the services provided by a qualified occupational therapist and shall include services for the following:

(1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(2) improving the ability to perform tasks for independent functioning if functions are impaired or lost; and

(3) preventing, through early intervention, initial or further impairment or loss of function.

(ss) "Orientation and mobility services" means the services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to, and safe movement within, their environments at school, at home, and in the community. This term shall include teaching students the following, as appropriate:

(1) Spatial and environmental concepts and use of information received by the senses, including sound, temperature, and vibrations to establish, maintain, or regain orientation and line of travel;

(2) use of the long cane or a service animal to supplement visual travel skills or to function as a tool for safely negotiating the environment for students with no available travel vision;

(3) the understanding and use of remaining vision and distance low vision aids; and

(4) other concepts, techniques, and tools.

(tt) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance and includes impairments caused by any of the following:

(1) Congenital anomaly, including clubfoot or the absence of a limb;

(2) disease, including poliomyelitis or bone tuberculosis; or

(3) other causes, including cerebral palsy, amputation, and fractures or burns that cause contractures.

(uu) "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment and that meets the following criteria:

(1) Is due to chronic or acute health problems, including asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(2) adversely affects a child's educational performance.

(vv) "Parent" means any person described in K.S.A. 72-962(m) and amendments thereto.

(ww) "Parent counseling and training" means the following:

(1) Assisting parents in understanding the special needs of their child;

(2) providing parents with information about child development; and

(3) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(xx) "Physical education" means the development of the following:

(1) Physical and motor fitness;

(2) fundamental motor skills and patterns; and

(3) skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports. The term shall include special physical education, adapted physical education, movement education, and motor development.

(yy) "Physical therapy" means therapy services provided by a qualified physical therapist.

(zz) "Private school children" means children with disabilities who are enrolled by their parents in private elementary or secondary schools.

(aaa) "Recreation" means leisure education and recreation programs offered in schools and by community agencies. The term shall include assessment of leisure function and therapeutic recreation services.

(bbb) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term shall also include any vocational rehabilitation services provided to a student with a disability under any vocational rehabilitation program funded under the rehabilitation act of 1973, as amended.

(ccc) "Related services" means developmental, corrective, and supportive services that are required to assist an exceptional child to benefit from special education.

(1) Related services shall include the following:

(A) Art therapy;

(B) assistive technology devices and services;

(C) audiology;

(D) counseling services;

(E) dance movement therapy;

(F) early identification and assessment of disabilities;

(G) interpreting services;

(H) medical services for diagnostic or evaluation purposes;

(I) music therapy;

(J) occupational therapy;

(K) orientation and mobility services;

(L) parent counseling and training;

(M) physical therapy;

(N) recreation, including therapeutic recreation;

(O) rehabilitation counseling services;

(P) school health services;

(Q) school nurse services;

(R) school psychological services;

(S) school social work services;

(T) special education administration and supervision;

(U) special music education;

(V) speech and language services;

(W) transportation; and

(X) other developmental, corrective, or supportive services.

(2) Related services shall not include the provision of any medical device that is surgically implanted, including a cochlear implant, the optimization of the device's functioning, including mapping and maintenance of the device, and replacement of the device.

(ddd) "School age" means the following:

(1) For children identified as gifted, having attained the age at which the local board of education provides educational services to children without disabilities, through the school year in which the child graduates from high school; and

(2) for children with disabilities, having attained age three, through the school year in which the child graduates with a regular high school diploma or reaches age 21, whichever occurs first.

(eee) "School day" means any day, including a partial day, that all children, including children with and without disabilities, are in attendance at school for instructional purposes.

(fff) "School health services" means health services that are specified in the IEP of a child with a disability and that are provided by a school nurse or other qualified person.

(ggg) "School nurse services" means nursing services that are provided by a qualified nurse in accordance with the child's IEP.

(hhh) "School psychological services" means the provision of any of the following services:

(1) Administering psychological and educational tests, and other assessment procedures;

(2) interpreting assessment results;

(3) obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(4) consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests;

(5) planning and managing a program of psychological services, including psychological counseling for children and parents; and

(6) assisting in developing positive behavioral intervention strategies.

(iii) "School social work services" means services provided by a qualified social worker and shall include the provision of any of the following services:

(1) Preparing a social or developmental history on a child with a disability;

(2) group and individual counseling with the child and family;

(3) working in partnership with the parent or parents and others on those problems in a child's living situation, at home, at school, and in the community that affect the child's adjustment in school;

(4) mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and

(5) assisting in developing positive behavioral intervention strategies.

(jjj) "Services plan" means a written statement for each child with a disability enrolled in a private school that describes the special education and related services that the child will receive.

(kkk) "Special education" means the following:

(1) Specially designed instruction, at no cost to the parents, to meet the unique needs of an exceptional child, including the following:

(A) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education;

(2) paraeducator services, speech-language pathology services, and any other related service, if the service consists of specially designed

instruction to meet the unique needs of a child with a disability;

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

(4) travel training; and

(5) vocational education.

(lll) "Specially designed instruction" means adapting, as appropriate to the needs of each exceptional child, the content, methodology, or delivery of instruction for the following purposes:

(1) To address the unique needs of the child that result from the child's exceptionality; and

(2) to ensure access of any child with a disability to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children.

(mmm) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term shall not include learning problems that are primarily the result of any of the following:

(1) Visual, hearing, or motor disabilities;

(2) mental retardation;

(3) emotional disturbance; or

(4) environmental, cultural, or economic disadvantage.

(nnn) "Speech-language pathology services" means the provision of any of the following services:

(1) Identification of children with speech or language impairments;

(2) diagnosis and appraisal of specific speech or language impairments;

(3) referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(4) provision of speech and language services for the habilitation or prevention of communicative impairments; and

(5) counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(ooo) "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language

impairment, or a voice impairment, that adversely affects a child's educational performance.

(ppp) "State agency" means the secretary of social and rehabilitation services, the secretary of corrections, and the commissioner of juvenile justice.

(qqq) "State board" means the state board of education.

(rrr) "State institution" means any institution under the jurisdiction of a state agency.

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

(ttt) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, other education-related settings, and extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

(uuu) "Transition services" means a coordinated set of activities for a student with disabilities, designed within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to postsecondary activities, including postsecondary education, vocational education, integrated employment including supported employment, continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities shall be based on the individual student's needs, taking into account the student's preferences and interests, and shall include the following:

- (1) Instruction;
- (2) related services;
- (3) community experiences;
- (4) the development of employment and other postsecondary adult living objectives; and
- (5) if appropriate, acquisition of daily living skills and a functional vocational evaluation.

(vvv) "Transportation" means the following:

- (1) Travel to and from school and between schools;
- (2) travel in and around school buildings; and

(3) specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

(www) "Traumatic brain injury" means an acquired injury to the brain that is caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term shall apply to open or closed head injuries resulting in impairments in one or more areas, including the following:

- (1) Cognition;
- (2) language;
- (3) memory;
- (4) attention;
- (5) reasoning;
- (6) abstract thinking;
- (7) judgment;
- (8) problem solving;
- (9) sensory, perceptual, and motor abilities;
- (10) psychosocial behavior;
- (11) physical functions;
- (12) information processing; and
- (13) speech.

The term shall not include brain injuries that are congenital or degenerative or that are induced by birth trauma.

(xxx) "Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to perform the following:

- (1) Develop an awareness of the environment in which they live; and
- (2) learn the skills necessary to move effectively and safely from place to place within various environments, including at school, home, and work, and in the community.

(yyy) "Visual impairment" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term shall include both partial sight and blindness.

(zzz) "Vocational education" means any organized educational program that is directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. (Authorized by and implementing K.S.A. 2008 Supp. 72-963; effective May 19, 2000; amended March 21, 2008; amended July 23, 2010.)

**91-40-2. FAPE.** (a) (1) Each agency shall provide FAPE in accordance with K.S.A. 72-966 and amendments thereto, and with this article.

(2) Each agency's obligation to provide FAPE shall extend to exceptional children residing on Indian reservations, unless these children are provided FAPE by the secretary of the interior under federal law.

(b)(1) Each agency shall make FAPE available to each child with a disability residing in its jurisdiction beginning not later than the child's third birthday.

(2) An IEP or IFSP shall be in effect by the child's third birthday, but, if that birthday occurs during the summer when school is not in session, the child's IEP team shall determine the date when services will begin.

(3) If a child is transitioning from early intervention services provided under part C of the federal law, the agency responsible for providing FAPE to the child shall participate in transition planning conferences for the child.

(c) An agency shall not be required to provide FAPE to any child with a disability who is eligible for preschool services under the federal law but whose parent has elected to have the child receive early intervention services under the law.

(d)(1) Each agency shall make FAPE available to any child with a disability even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.

(2) The determination of whether a child who is advancing from grade to grade is a child with a disability shall be made on an individual basis in accordance with child find activities and evaluation procedures required by this article.

(e) Each agency shall provide special education and related services based upon the child's unique needs and not upon the child's area of exceptionality.

(f) An agency shall not be required to provide FAPE to a student aged 18 through 21 who meets the following criteria:

(1) Is incarcerated in an adult correctional facility; and

(2) in the student's last educational placement before incarceration, was not identified as a child with a disability and did not have an IEP.

(g) (1) An agency shall not be required to provide FAPE to any exceptional child who has graduated from high school with a regular high school diploma.

(2) Each exceptional child shall be eligible for graduation from high school upon successful completion of state and local board requirements and shall receive the same graduation recognition and diploma that a nonexceptional child receives.

(3) The IEP of an exceptional child may designate goals other than high school graduation.

(4) When an exceptional child enters high school, progress toward graduation shall be monitored annually and recorded on an official transcript of credits.

(5) As used in this subsection, the term "regular high school diploma" shall mean the same diploma as that awarded to nonexceptional students and shall not include any certificate of completion or any other certificate, or a general educational development credential (GED). (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-3. Ancillary FAPE requirements.** (a) Each agency shall ensure that children with disabilities have available to them the same variety of educational programs and services that are available to nondisabled children served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(b) (1) Each agency shall provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities, including the provision of supplementary aids and services as determined to be necessary by the child's IEP team.

(2) Nonacademic and extracurricular services and activities shall include the following:

(A) Counseling services;

(B) athletics;

(C) transportation;

(D) health services;

(E) recreational activities;

(F) special interest groups or clubs sponsored by the agency;

(G) referrals to agencies that provide assistance to individuals with disabilities; and

(H) employment of students, including both employment by the agency and assistance in making outside employment available.

(c) (1) Each agency shall make physical education services, specially designed if necessary, available to every child with a disability, unless the agency does not provide physical education to any children who are enrolled in the same grade.

(2) Each child with a disability shall be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless either of the following conditions is met:

(A) The child is enrolled full-time in a separate facility.

(B) The child needs specially designed physical education, as prescribed in the child's IEP.

(d) (1) Each agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education or related services, or the child's supplementary aids and services.

(2) Each agency, on a case-by-case basis, shall allow the use of school-purchased assistive technology devices in a child's home or in other settings if the child's IEP team determines that the child needs access to those devices at home or in other settings in order to receive FAPE.

(e) (1) Each agency shall ensure that extended school year services are available as necessary to provide FAPE to a child with a disability.

(2) An agency shall be required to provide extended school year services only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.

(3) An agency shall neither limit extended school year services to particular categories of disabilities nor unilaterally limit the type, amount, or duration of those services.

(f) (1) Each agency shall ensure that hearing aids worn in school by children with hearing impairments or deafness are functioning properly.

(2) Each agency shall ensure that the external components of surgically implanted medical devices of children with disabilities are functioning properly. However, an agency shall not be responsible for the maintenance, programming, or replacement of any surgically implanted medical device or any external component of the device.

(g) Each gifted child shall be permitted to test out of, or work at an individual rate, and receive credit for required or prerequisite

courses, or both, at all grade levels, if so specified in that child's individualized education program.

(h) Any gifted child may receive credit for college study at the college or high school level, or both. If a gifted child chooses to receive college credit, however, the student shall be responsible for the college tuition costs. Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 200; amended March 21, 2008.)

**91-40-4 FAPE for exceptional children housed and maintained in certain state institutions.** (a) Subject to K.S.A. 72-1046 and amendments thereto, each state agency shall provide FAPE to exceptional children housed and maintained at any facility operated by the agency. All educational programs shall comply with the requirements of state special education laws and regulations.

(b) State schools.

(1) The procedures for placing Kansas residents into the Kansas state school for the blind and the Kansas state school for the deaf shall meet the following requirements:

(A) Admission procedures shall be initiated by the child's home school district and by the child's parent or parents.

(B) Placement of any child in a state school shall be made only after the local school district and the child's parent or parents have considered less restrictive placement options.

(C) Placement shall be based on a child's IEP, which shall indicate a need for educational services provided at the state school.

(D) Any agency may refer a child to a state school for a portion or all of the child's evaluation. In such a case, a representative or representatives from the agency shall be included in any meeting at which the child's eligibility for services or placement is determined.

(E) If the initial evaluation and staffing are conducted by any local school district and if one of the state schools is proposed as a placement for the child, a representative or representatives from the state school shall be included in the meeting at which placement for the child is determined.

(2) Personnel from the child's home school district, as well as personnel from the state school and the child's parent or parents, shall be afforded an opportunity to participate in any IEP meeting for the child. Placement of the child in the home school district shall be considered at each annual IEP meeting.

(3) Each state school shall attempt to make arrangements so that each child enrolled in the state school has access to the educational programs in the local school districts near the location of the school, on either a part-time or full-time basis.

(4) If a state school determines that its program is not appropriate for a student and it can no longer maintain the student in its program, the state school shall give the district of

residence of the student at least 15-day notice of this determination.

(c) Unless otherwise expressly authorized by state law, when a student transfers from a state school to a school district or from one school district to another, the most recent individualized education program, as well as any additional educationally relevant information concerning the child, shall be forwarded immediately to the receiving school district.

(d) SRS institutions and facilities.

(1) In accordance with K.S.A. 72-8223 and amendments thereto, and subject to the provisions of K.S.A. 72-970 and 72-1046 and amendments thereto, provision for FAPE shall be made by the secretary of social and rehabilitation services for each exceptional child housed and maintained at any institution or facility under the jurisdiction of the secretary.

(2) The requirements in this article concerning placement and LRE may be modified in accordance with the child's need for maintenance at the state institution or facility. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-966 and 72-970; effective May 19, 2000.)

**91-40-5. FAPE for detained or incarcerated children with disabilities. (a) Local detention facilities.**

(1) Subject to the provisions of K.S.A. 72-1046 and amendments thereto, each board shall provide FAPE to each child with a disability detained or incarcerated in a local juvenile or adult detention facility located within its jurisdiction.

(2) The requirements in this article concerning placement and LRE may be modified in accordance with the child's detention or incarceration.

(b) State juvenile correctional facilities.

(1) The commissioner of the juvenile justice authority shall make provision for FAPE for

each child with a disability detained or incarcerated in any state juvenile correctional facility or other facility at the direction of the commissioner.

(2) The requirements in this article concerning parental rights, placement, and LRE may be modified in accordance with state and federal laws and the child's conditions of detention or incarceration.

(c) State adult correctional facilities.

(1) Except as otherwise provided in this regulation, provision for FAPE shall be made by the secretary of corrections for each child with a disability incarcerated in any state correctional institution or facility.

(2) In making provision for FAPE under paragraph (1) of this subsection, compliance with state or federal laws or regulations relating to the following shall not be required of the secretary of corrections:

(A) Participation of children with disabilities in state or local assessments; and

(B) transition planning and services with respect to any disabled child whose eligibility for special education services will end, because of the child's age, before the child is eligible to be released from the secretary's custody based on consideration of the child's sentence and eligibility for early release.

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

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

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

(4)(A) Except as otherwise provided in paragraph (4)(B) of this subsection, the IEP team of a child with a disability incarcerated in a state adult correctional institution or facility may modify the child's IEP or placement if personnel of the correctional institution or facility demonstrate a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(B) An IEP team of a child with a disability incarcerated in a state adult correctional institution or facility shall not modify the following requirements:

(i) That any decision regarding modifications to, and reviews and revisions of, any IEP shall be made by the IEP team; and

(ii) that, except as otherwise expressly provided in paragraph (c)(2), each IEP shall have the content specified in K.S.A. 72-987 and amendments thereto. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-6. Reserved.**

**91-40-7. Child find.** (a) Each board shall adopt and implement policies and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction, including children with exceptionalities who meet any of the following criteria:

- (1) Attend private schools;
- (2) are highly mobile, including migrant and homeless children; or
- (3) are suspected of being children with disabilities even though they are advancing from grade to grade.

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

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

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

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

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

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

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

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

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

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

(D) The assessment results indicate that an evaluation is appropriate.

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

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

(e) Each agency shall ensure that the collection and use of data under this regulation are subject to the confidentiality requirements of K.A.R. 91-40-50. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-8. Evaluations.** (a) Each agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services. Each evaluation shall include procedures to determine the following:

(1) Whether the child is an exceptional child; and

(2) what the educational needs of the child are.

(b) In implementing the requirements of subsection (a), the agency shall ensure that the following conditions are met:

(1) The evaluation is conducted in accordance with the procedures described in K.A.R. 91-40-9 and, if applicable, K.A.R. 91-40-11.

(2) The results of the evaluation are used by the child's IEP team to develop the child's IEP.

(3) The evaluation is conducted before the initial provision of special education and related services to the child.

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

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

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

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

(C) observations by teachers and related services providers.

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

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

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

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

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

(d) The team described in subsection (c) may conduct its review without a meeting.

(e) (1) If the team described in subsection (c) determines that additional data is required to make any of the determinations specified in paragraph (2) of subsection (c), the agency, after giving proper written notice to the parent and obtaining parental consent, shall administer those tests and evaluations that are appropriate to produce the needed data.

(2) If the team described in subsection (c) determines that no additional data is needed to make any of the determinations specified in paragraph (2) of subsection (c), the agency shall give written notice to the child's parent of the following information:

(A) The determination that no additional data is needed and the reasons for this determination; and

(B) the right of the parent to request an assessment.

(3) The agency shall not be required to conduct any additional assessments unless requested to do so by a parent.

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

(1) Conduct the evaluation of the child;

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

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

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

(1) The parent or parents of the child who is to be evaluated repeatedly fail or refuse to produce the child for the evaluation.

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

(h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-986; effective May 19, 2000; amended March 21, 2008.)

**91-40-9. Evaluation procedures.** (a) If assessment instruments are used as a part of the evaluation or reevaluation of an exceptional child, the agency shall ensure that the following requirements are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Health;

(B) vision;

(C) hearing;

(D) social and emotional status;

(E) general intelligence;

(F) academic performance;

(G) communicative status; and

(H) motor abilities.

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

(c) If a child is suspected of having a specific learning disability, the agency also shall follow the procedures prescribed in K.A.R. 91-40-11 in conducting the evaluation of the child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-10. Eligibility determination.** (a) (1) After completion of appropriate evaluation procedures, a team of qualified professionals and the parent of the child who has been evaluated shall prepare a written evaluation report that includes a statement regarding each of the following matters:

(A) The determination of whether the child has an exceptionality;

(B) the basis for making the determination;

(C) the relevant behavior noted during the observation of the child;

(D) the relationship of that behavior to the child's academic functioning;

(E) educationally relevant medical findings, if any; and

(F) if the child was evaluated for a specific learning disability, the additional information specified in subsection (e).

(2) Each team member shall certify in writing whether the report reflects the member's conclusion. If the report does not reflect that member's conclusion, the team member shall submit a separate statement presenting the member's conclusion.

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

(c) An evaluation team shall not determine a child to be an exceptional child if the

determinant factor for that eligibility determination is the child's lack of appropriate instruction in reading or mathematics or limited English proficiency, and if the child does not otherwise qualify as a child with an exceptionality.

(d) Each evaluation team, in determining whether a child is an exceptional child and what the educational needs of the child are, shall meet the following requirements:

(1) The evaluation team shall draw upon information from a variety of sources, including the following:

- (A) Aptitude and achievement tests;
- (B) parent input;
- (C) teacher recommendations;
- (D) physical condition;
- (E) social or cultural background; and
- (F) adaptive behavior.

(2) The evaluation team shall ensure that the information obtained from all of the sources specified in paragraph (1) of this subsection is documented and considered.

(e) If the evaluation team and the parent determine the parent's child to be a child with a specific learning disability, the evaluation team and the parent shall prepare a written evaluation report that includes a statement regarding each of the following matters:

(1) An indication of whether the child has a specific learning disability;

(2) the basis for making the determination, including an assurance that the determination has been made in accordance with applicable laws and regulations;

(3) the relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) educationally relevant medical findings, if any;

(5) an indication of whether the child meets the following criteria:

(A) Does not achieve adequately for the child's age or meet state-approved grade-level standards; and

(B)(i) Does not make sufficient progress to meet age standards or state-approved grade-level standards; or

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

(6) the determination of the team concerning the effect of the following factors on the child's achievement level:

(i) Visual, hearing, or motor skills disability;

(ii) mental retardation;

(iii) emotional disturbance;

(iv) cultural factors;

(v) environmental or economic disadvantage; and

(vi) limited English proficiency.

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

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

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

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

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

(C) the right of a parent to request an evaluation.

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

(2) An agency shall not be required to conduct a reevaluation of a child with an exceptionality before terminating special education or related services to the child if the reason for termination of services is due to either of the following:

(A) The child has graduated from high school with a regular high school diploma.

(B) The child has reached the age of 21 years.

(3) An agency shall provide prior written notice before terminating special education services for either of the reasons stated in paragraph (g)(2).

(h) An agency shall not be required to classify children with disabilities according to their categories of disabilities if each child with a disability is regarded as a child with a disability and is provided FAPE.

(i) With regard to children ages three through nine who are determined to need special education and related services, an agency shall use one or more of the categories of disabilities described in the definition of the term "child with a disability" or the term "developmental

delay.” (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

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

(a) If a child is suspected of having a specific learning disability and believed to need special education services because of that disability, the agency shall ensure that the evaluation of the child is made by the child’s parent and a group of qualified professionals, including the following individuals:

(1)(A) The child’s regular education teacher or, if the child does not have a regular education teacher, a regular classroom teacher qualified to teach a child of the child’s age; or

(B) for a child of less than school age, an individual who is qualified to teach a child of the child’s age; and

(2) at least one person qualified to conduct individual diagnostic examinations of children, including a school psychologist, speech-language pathologist, or remedial reading teacher.

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

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

- (i) Oral expression;
- (ii) listening comprehension;
- (iii) written expression;
- (iv) basic reading skill;
- (v) reading fluency skills;
- (vi) reading comprehension;
- (vii) mathematics calculation; and
- (viii) mathematics problem solving; and

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

(ii) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development that is determined by the group conducting the evaluation to be

relevant to the identification of a specific learning disability, using appropriate assessments.

(2) A child shall not be determined to be a child with a specific learning disability unless the group evaluating the child determines that its findings under paragraphs

(b)(1) (A) and (B) are not primarily the result of any of the following:

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

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

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

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

(B) have at least one member of the group conduct an observation of the child’s academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986; effective May 19, 2000; amended March 21, 2008.)

**91-40-12. Right to independent educational evaluation.**

(a) (1) Subject to the conditions specified in this regulation, a parent of an exceptional child shall have the right to request an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the agency.

(2) The parent shall be eligible for only one independent educational evaluation at public expense in response to an evaluation conducted by the agency.

(b) If a parent requests an independent educational evaluation of the child, the agency, without unnecessary delay, shall take one of the following actions:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) (A) Provide information to the parent about where an independent educational evaluation may be obtained and the agency criteria prescribed under subsection (g) that apply to independent educational evaluations; and

(B) take either of the following actions:

(i) Pay the full cost of the independent educational evaluation or otherwise ensure that the evaluation is provided at no cost to the parent; or

(ii) initiate a due process hearing to show that the evaluation obtained by the parent does not meet agency criteria.

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

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

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

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

(g) (1) Subject to the provisions of paragraph (2) of this subsection, each agency shall adopt criteria for obtaining an independent educational evaluation at public expense. The criteria may include the qualifications of the examiner and the location of the evaluation, but shall not impose other conditions or timelines for obtaining the evaluation.

(2) The criteria adopted by an agency under paragraph (1) of this subsection shall be the same as the criteria that the agency uses when it conducts an evaluation, to the extent that those criteria are consistent with the parents' right to

obtain an independent educational evaluation. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-986 and 72-988; effective May 19, 2000; amended March 21, 2008.)

**91-40-13. Reserved.**

**91-40-14. Reserved.**

**91-40-15. Reserved.**

**91-40-16. IEP requirements.** (a) Each agency shall be responsible for initiating and conducting meetings to develop, review, and revise the IEP of each exceptional child served by the agency.

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

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

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

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

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

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

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

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

(c)(1) If an agency and a child's parent agree, an IFSP that meets the requirements of the federal law and that is developed in accordance with this article may serve as the IEP of a child with a disability who is two years old but will reach three years of age during the next school year or who is three, four, or five years of age.

(2) Before using an IFSP as an IEP, each agency shall meet the following requirements:

(A) The agency shall provide to the child's parent or parents a detailed explanation of the differences between an IFSP and an IEP.

(B) If an IFSP is chosen, the agency shall obtain written consent from the parent for use of the IFSP as the child's IEP. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-987; effective May 19, 2000; amended March 21, 2008.)

**91-40-17. IEP team meetings and participants.**

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

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

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

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

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

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

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

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

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

(4) The notice shall inform the parent that the parent has the right to invite to the IEP team meeting individuals whom the parent believes to

have knowledge or special expertise about the child.

(c) If a parent of an exceptional child cannot be physically present for an IEP team meeting for the child, the agency shall attempt other measures to ensure parental participation, including individual or conference telephone calls.

(d) An agency shall take action to ensure that parents understand the discussions that occur at IEP team meetings, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

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

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

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

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

(C) copies of correspondence sent to each parent and any responses received; and

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

(f)(1) An agency shall invite a child with a disability, regardless of the child's age, to attend any IEP team meeting for the child if a purpose of the meeting is consideration of the child's postsecondary goals and transition services needs.

(2) If the child with a disability does not attend the IEP team meeting, an agency shall take other steps to ensure that the child's preferences and interests are considered.

(g) If a purpose of any IEP team meeting for a child with a disability is consideration of the postsecondary goals of the child and the transition services needed to assist the child to reach those goals, the agency, with the consent of a parent or the child if the child is at least 18 years old, shall invite a representative of any

other agency that is likely to be responsible for providing or paying for transition services.

(h) A regular education teacher of an exceptional child, as a member of an IEP team, shall participate to the extent appropriate in the development, review, and revision of the child's IEP. This participation shall include assisting in making the following determinations:

(1) The appropriate positive behavioral interventions and strategies for the child;

(2) the supplementary aids and services needed by the child; and

(3) the program modifications or supports for school personnel that will be provided to assist the child.

(i) If qualified to do so, an agency member of the IEP team may serve in the role of two or more required members of a child's IEP team.

(j) In asking individuals with knowledge or special expertise about a child to be members of the child's IEP team, the party asking the person to participate shall have the sole discretion in determining whether the invited person has knowledge or special expertise regarding the child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-987; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-18. IEP development and content.** (a) In developing or reviewing the IEP of any exceptional child, each agency shall comply with the requirements of K.S.A. 72-987 and amendments thereto, and, as appropriate, shall consider the results of the child's performance on any general state or district-wide assessment programs.

(b) If, as a result of its consideration of the special factors described in K.S.A. 72-987(c) and amendments thereto, an IEP team determines that a child needs behavioral interventions and strategies, accommodations, assistive technology devices or services, or other program modifications for the child to receive FAPE, the IEP team shall include those items in the child's IEP.

(c) Each agency shall ensure that the IEP of each exceptional child includes the information required by K.S.A. 72-987(b) and amendments thereto.

(d) Each agency shall give the parent a copy of the child's IEP at no cost to the parent.

(e) At least one year before an exceptional child reaches 18 years of age, the agency providing services to the child shall ensure that

the child's IEP includes a statement the student has been informed of rights provided in the federal law, if any, that will transfer to the child on reaching 18 years of age. (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000 Supp. 72-987; effective May 19, 2000; amended May 4, 2001.)

**91-40-19. IEP liability.** (a) Each agency, teacher, and related services provider shall provide special education and related services to an exceptional child in accordance with the child's IEP and shall make a good faith effort to assist the child to achieve the goals and objectives stated in the IEP.

(b) An agency, teacher, or related services provider that complies with subsection (a) of this regulation shall not be held liable or accountable if a child does not achieve the growth projected in the goals and objectives stated in the child's IEP.

(c) Nothing in this regulation shall limit a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent believes that the efforts required in subsection (a) of this regulation are not being made. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-987; effective May 19, 2000.)

**91-40-20. Reserved.**

**91-40-21. Educational placement.** (a) Each agency shall ensure that the children with disabilities served by the agency are educated in the LRE.

(b) Each agency shall ensure that a continuum of alternative educational placements is available to meet the needs of children with disabilities. These alternative educational placements shall meet the following criteria:

(1) Include instruction in regular classes, special classes, and special schools; instruction in a child's home; and instruction in hospitals and other institutions; and

(2) make provision for supplementary services, including resource room and itinerant services, to be provided in conjunction with regular class placement.

(c)(1) In determining the educational placement of a child with a disability, including a preschool child with a disability, each agency

shall ensure that the placement decision meets the following requirements:

(A) The decision shall be made by a group of persons, including the child's parent or parents and other persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

(B) The decision shall be made in conformity with the requirement of providing services in the LRE.

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

(d)(1) Each agency shall give notice to the parents of any meeting to discuss the educational placement of their child. The notice shall meet the requirements of K.A.R. 91-40-17.

(2) If a parent cannot participate in person at a meeting relating to the educational placement of the child, the agency shall offer to use other methods to allow the parent to participate, including conference calls and video conferencing.

(3) An agency may conduct a meeting to determine the appropriate educational placement of a child with a disability without participation of a parent if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.

(4) If an agency conducts a meeting to determine the appropriate educational placement of a child without the participation of a parent, the agency shall have a record, as prescribed in K.A.R. 91-40-17(e)(2), of the attempts that the agency made to contact the parent.

(5) An agency shall take action to ensure that parents understand, and are able to participate in, any discussions concerning the educational placement of their children, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(e) Each agency shall ensure that each exceptional child's placement meets the following criteria:

(1) Is determined at least annually;

(2) is based on the child's IEP; and

(3) for a child with a disability, is as close as possible to the child's home.

(f) Unless the IEP of a child with a disability requires some other arrangement, the agency

shall ensure that the child is educated in the school that the child would attend if nondisabled.

(g) In selecting the LRE for a child with a disability, the persons making the educational placement decision shall give consideration to any potential harmful effect on the child or on the quality of services that the child needs.

(h) An agency shall not remove a child with a disability from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(i) (1) In providing, or arranging for the provision of, nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic services and activities, each agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(2) Each agency shall ensure that each child with a disability receives the supplementary aids and services specified in the child's IEP as being appropriate and necessary for the child to participate in nonacademic settings.

(j) If it is determined that the placement in a specialized public or private school or facility is necessary to provide FAPE to a child with a disability in accordance with the child's IEP, the agency shall provide for the placement, including nonmedical care and room and board, at no cost to the parent or parents of the child.

(k) Each agency that operates any separate facility for the education of children with disabilities shall ensure that the facility meets the following requirements:

(1) Each facility shall be comparable to those operated for nonexceptional children.

(2) Each facility shall be appropriate to the chronological ages of the students and the instructional program being provided. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-976; effective May 19, 2000; amended March 21, 2008.)

**91-40-22. Agency placement in private schools or facilities.** (a) If an agency places a child with a disability in a private school or facility as a means of providing FAPE to the child, the agency shall remain responsible for ensuring that the child is provided the special education and related services specified in the child's IEP and is afforded all the rights granted by the law.

(b)(1) Before an agency places a child with a disability in a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(c)(1) After a child with a disability enters a private school or facility, the agency responsible for providing FAPE to the child may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility.

(2) If the private school or facility initiates and conducts these meetings, the agency shall ensure that a parent and an agency representative are involved in any decision about the child's IEP and shall agree to any proposed changes in the IEP before those changes are implemented. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-976; effective May 19, 2000; amended March 21, 2008.)

**91-40-23. Reserved.**

**91-40-24 Educational advocates.** (a) (1) Before taking any special education action in regard to any child, an agency shall attempt to identify the parents of the child and the parent's current whereabouts. parents'

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

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

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

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

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

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

(1) Be at least 18 years of age;

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

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

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

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

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

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

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

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

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

(4) exercise all the rights given to parents under the special education for exceptional children act. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-963c; effective May 19, 2000.)

**91-40-25. Opportunity to examine records and participate in meetings.**

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

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

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

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

(2) providing prior written notice of any meeting, in accordance with subsection (c) of this regulation, to the parents of the child.

(c) The notice required in subsection (b) of this regulation shall indicate the purpose, time, and location of the meeting and the titles or positions of the persons who will attend on behalf of the agency or at the agency's request.

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

(e) As used in this regulation, a meeting shall not include the following:

(1) Informal or unscheduled conversations involving agency personnel and conversations on issues including teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP; and

(2) preparatory activities that agency personnel engage in to develop a proposal or response to a parent's proposal that will be discussed at a later meeting. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-988; effective May 19, 2000.)

**91-40-26. Notice requirements.** (a) In providing any notice to the parent or parents of an exceptional child in accordance with K.S.A. 72-990 and amendments thereto regarding any action proposed or refused by an agency, each agency shall ensure that the notice includes the following information:

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

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

(b) The notice shall be written in language understandable to the general public and provided in the native language of the parent or

other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of a parent is not a written language, the agency shall take steps to ensure all of the following:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.

(2) The parent understands the content of the notice.

(3) There is written evidence that the requirements of paragraphs (1) and (2) of this subsection have been met.

(d) The agency shall be required to provide a parent with a copy of the procedural safeguards available to parents only one time during each school year, except that a copy shall also be provided to the parent in the following circumstances:

(1) Upon initial referral of the child for an evaluation or upon parental request for an evaluation;

(2) upon receipt by the state department of education of the first complaint filed with it by the parent;

(3) upon receipt by an agency of the first due process complaint filed against it by the parent;

(4) upon the parent's child being subjected to disciplinary removal from the child's current placement; and

(5) at any time, upon request of the parent.

(e) The agency shall inform the parent of any free or low-cost legal or other relevant services available in the agency's area if the parent requests the information or the parent or agency initiates a due process complaint involving the parent's child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-988; effective May 19, 2000; amended March 21, 2008.)

**91-40-27. Parental consent.** (a) Except as otherwise provided in this regulation, each agency shall obtain parental consent before taking any of the following actions:

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

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

(3) making a material change in services to, or a substantial change in the placement of, an exceptional child, unless the change is made under the provisions of K.A.R. 91-40-33 through

91-40-38 or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The agency shall not use the procedures in K.S.A. 72-972a or K.S.A. 72-996, and amendments thereto, or K.A.R. 91-40-28, including the mediation procedures and the due process procedures, in order to obtain an agreement or a ruling that the services may be provided to the child;

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

(4) The agency shall not be required to convene an IEP team meeting or develop an IEP under K.S.A. 72-987, and amendments thereto, or K.A.R. 91-40-16 through K.A.R. 91-40-19 for the child for further provision of special education, related services, and supplementary aids and services.

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

(k) If a parent revokes consent for the continued provision of particular special

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

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

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

(1) If a parent who revoked consent for all special education, related services, and supplementary aids and services, under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP. (Authorized by K.S.A. 2008 Supp. 72-963; implementing K.S.A. 2008 Supp. 72-988; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008; amended July 23, 2010.)

**91-40-28. Special education mediation and due process hearings.** (a) If a disagreement arises between a parent and an agency concerning the identification, evaluation, or educational placement of the parent's exceptional child, or the provision of FAPE to the child, the parent or the agency, or both, may request mediation or initiate a due process hearing.

(b) (1) If mediation is requested by either party, the provisions of K.S.A. 72-996 and amendments thereto shall be followed, together

with the requirement in paragraph (2) of this subsection.

(2) When agreement is reached to mediate, the agency shall immediately contact the state board or its designee. A mediator shall be appointed by the state board from its list of qualified mediators, based upon a random or other impartial basis.

(c) If a disagreement as described in subsection (a) arises, the parent or the agency, or both, may initiate a special education due process hearing by filing a due process complaint notice. Each due process hearing shall be provided for by the agency directly responsible for the education of the child.

(d)(1) If a special education due process complaint notice is filed, the provisions of K.S.A. 72-972a through 72-975 and amendments thereto shall be followed, together with the requirements in this subsection.

(2) Not more than five business days after a due process complaint notice is received, the agency providing for the hearing shall furnish to the parent the following information:

(A) The agency's list of qualified due process hearing officers;

(B) written notification that the parent has the right to disqualify any or all of the hearing officers on the agency's list and to request that the state board appoint the hearing officer; and

(C) written notification that the parent has the right, within five days after the parent receives the list, to advise the agency of any hearing officer or officers that the parent chooses to disqualify.

(3) (A) If a parent chooses to disqualify any or all of the agency's hearing officers, the parent, within five days of receiving the list, shall notify the agency of the officer or officers disqualified by the parent.

(B) An agency may appoint from its list any hearing officer who has not been disqualified by the parent.

(4) Not more than three business days after being notified that a parent has disqualified all of the hearing officers on its list, an agency shall contact the state board and request the state board to appoint a hearing officer.

In making this request, the agency shall advise the state board of the following information:

(A) The name and address of the parent;

(B) the name and address of the attorney, if any, representing the parent, if known to the agency; and

(C) the names of the agency's hearing officers who were disqualified by the parent.

(5) Within three business days of receiving a request to appoint a hearing officer, the parent and agency shall be provided written notice by the state board of the hearing officer appointed by the state board.

(e) If a due process hearing is requested by a parent or an agency, the agency shall provide written notice to the state board of that action. The notice shall be provided within five business days of the date the due process hearing is requested.

(f) (1) Unless the agency and parent have agreed to waive a resolution meeting or to engage in mediation, the agency and parent shall participate in a resolution meeting as required by K.S.A. 72-973 and amendments thereto. The parent and agency shall determine which members of the IEP team will attend the meeting.

(2) If a parent who files a due process complaint fails to participate in a resolution meeting for which the agency has made reasonable efforts to give the parent notice, the timelines to complete the resolution process and begin the due process hearing shall be delayed until the parent attends a resolution meeting or the agency, at the end of the 30-day resolution period, requests the hearing officer to dismiss the due process complaint.

(3) If an agency fails to hold a resolution meeting within 15 days of receiving a due process complaint or to participate in a meeting, the parent may request the hearing officer to begin the due process hearing and commence the 45-day timeline for its completion.

(g) The 45-day timeline for completion of a due process hearing shall start on the day after one of the following events occurs:

(1) Both parties to the due process proceedings agree, in writing, to waive the resolution meeting.

(2) The parties participate in a resolution meeting or in mediation but agree, in writing, that resolution of their dispute is not possible by the end of the 30-day resolution period.

(3) Both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30-day resolution period, but later one or both of the parties withdraw from the mediation process. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-963a, 72-973, and 72-996; effective May 19, 2000; amended March 21, 2008.)

#### **91-40-29. Qualifications of special education mediators and due process hearing officers.**

(a) To initially qualify as a special education mediator, a person shall meet the following requirements:

(1) Have passed a written examination prescribed by the state board concerning special education laws and regulations; and

(2) have completed a program sponsored or approved by the state board concerning effective mediation techniques and procedures, and the role and responsibilities of a mediator.

(b) (1) Except as otherwise provided in paragraph (2) of this subsection, to initially qualify as a special education due process hearing officer or review officer, a person shall meet the following requirements:

(A) Be a licensed attorney in good standing with the licensing agency in the state in which the person is licensed to practice law;

(B) have passed a written examination prescribed by the state board concerning special education laws and regulations;

(C) have completed a program sponsored or approved by the state board concerning due process hearing procedures and the role and responsibilities of a due process hearing officer; and

(D) have passed a written examination prescribed by the state board concerning due process proceedings.

(2) Each person who is on the list of qualified due process hearing officers maintained by the state board shall remain eligible to serve as a due process hearing officer or review officer if the person completes the continuing education programs in special education law that are conducted or approved by the state board. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-963a; effective May 19, 2000; amended March 21, 2008.)

#### **91-40-30. Expedited due process hearings.**

(a) If an expedited due process hearing is requested under the provisions of K.S.A. 72-992 or 72-993 and amendments thereto, the agency responsible for providing the hearing shall immediately notify the state board of the request and the parent's name and address.

(b) Upon being notified of a request for an expedited due process hearing, the state board shall appoint, from its list of qualified hearing officers, a due process hearing officer and shall notify the parties of the appointment.

(c) Each of the parties to an expedited due process hearing shall have the rights afforded to them under K.S.A. 72-973 and amendments thereto, except that either party shall have the right to prohibit the presentation of any evidence at the expedited hearing that has not been disclosed by the opposite party at least two business days before the hearing.

(d) (1) Each hearing officer shall conduct the expedited due process hearing within 20 school days of the agency's receipt of the request for the expedited due process hearing and shall render a decision in the matter within 10 school days after the close of the hearing.

(2) A hearing officer in an expedited due process hearing shall not grant any extensions or otherwise fail to comply with the requirement of paragraph (1) of this subsection.

(e) Either party to an expedited due process hearing may appeal the decision in accordance with K.S.A. 72-974 and amendments thereto. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-992 and 72-993; effective May 19, 2000; amended March 21, 2008.)

**91-40-31. Educational placement during proceedings.** (a) Except as otherwise provided in K.S.A. 72-993 and amendments thereto and this regulation, during the pendency of any special education due process or judicial proceeding, the child's educational placement shall be determined in accordance with K.S.A. 72-973 and amendments thereto.

(b) If a state review officer in an administrative appeal agrees with the parent's position as to the appropriate educational placement for the child, the child shall be educated in that placement during any further proceedings, unless the parent and agency agree to another placement or the child's placement is changed in accordance with K.S.A. 72-993 and amendments thereto.

(c) If the due process hearing involves the evaluation of or initial services for a child who is transferring from the infant and toddler program under the federal law because the child has reached three years of age, the agency shall not be required to provide the services that the child had been receiving under the infant and toddler program. However, if the child is determined to be eligible for special education and related services, the agency shall provide appropriate services to which the parent consents. (Authorized by K.S.A. 2007 Supp. 72-963;

implementing K.S.A. 2007 Supp. 72-973 and 72-993; effective May 19, 2000; amended March 21, 2008.)

**91-40-32. Reserved.**

**91-40-33. Change in placement for disciplinary reasons; definitions.** As used in K.A.R. 91-40-33 through 91-40-38, the following terms shall have the meanings specified in this regulation:

(a) (1) The phrase "change in placement for disciplinary reasons" means that school personnel or a special education due process hearing officer has ordered any of the following changes in placement of a child with a disability.

(A) The child is suspended or expelled from school for more than 10 consecutive school days.

(B) The child is subjected to a series of short-term suspensions constituting a pattern that meets all of the following criteria:

(i) The suspensions cumulate to more than 10 school days in a school year.

(ii) Each incident of misconduct resulting in a suspension involved substantially the same behavior.

(iii) The length of each suspension, the total amount of time the child is suspended, and the proximity of the suspensions to one another indicate a pattern.

(C) The child is placed in an interim alternative educational setting.

(2) (A) If school personnel order two or more short-term suspensions of a child with a disability during a school year, these suspensions shall not constitute a change in placement for disciplinary reasons if the suspensions do not constitute a pattern as described in paragraph (a)(1)(B).

(B) School officials shall have the authority to make the determination of whether a series of short-term suspensions of a child with a disability constitutes a change in placement for disciplinary reasons. This determination shall be subject to review through due process proceedings.

(b) "School officials" means the following:

(1) A regular education administrator;

(2) the director of special education or the director's designee or designees; and

(3) a special education teacher of the child with a disability.

(c) "Short-term suspension" means a suspension as authorized by K.S.A. 72-8902(a)

and amendments thereto. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-991a; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-34. Short-term suspensions and interim placements; suspension of gifted children.** (a) As authorized by K.S.A. 72-8902(a) and amendments thereto, school personnel may impose one or more short-term suspensions upon a child with a disability during a school year for violations of any school rule if these short-term suspensions do not constitute a pattern amounting to a change in placement for disciplinary reasons as specified in paragraph (a)(1)(B) of K.A.R. 91-40-33.

(b) As authorized in K.S.A. 72-991a and amendments thereto, school personnel may order a change in placement of a child with a disability to an interim alternative educational setting.

(c) Gifted children shall be subject to suspension or expulsion from school as authorized by K.S.A. 72-8902 and amendments thereto. While a gifted child is suspended or expelled from school, an agency shall not be required to provide special education or related services to the child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-991a and 72-8902; effective May 19, 2000; amended March 21, 2008.)

**91-40-35. Services required during suspensions or interim alternative educational placements.** (a) An agency shall not be required to provide special education or related services to a child with a disability who has been suspended from school for 10 or fewer school days during any school year, if the agency does not provide educational services to nondisabled children who are suspended from school.

(b) (1) A child with a disability shall be entitled to continue to receive special education and related services if the child is suspended from school under either of the following circumstances:

(A) For more than 10 cumulative school days in any school year, but with these suspensions not resulting in a change of placement for disciplinary reasons; or

(B) for more than 10 consecutive school days in any school year for behavior that has been determined not to be a manifestation of the child's disability.

(2) If a child with a disability is suspended from school under either of the circumstances stated in paragraph

(b)(1), the agency that suspended the child shall provide, commencing on the 11th day of suspension and during any subsequent day or days of suspension, special education and related services that are needed to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP.

(c) If a child with a disability is placed in an interim alternative educational setting in accordance with K.S.A. 72-991a and amendments thereto, the agency shall provide special education and related services to the child that meet the following requirements:

(1) The services provided shall enable the child to continue both of the following:

(A) To progress in the general curriculum, although in another setting; and

(B) to receive those services and modifications, including those described in the child's IEP, that will enable the child to meet the goals set out in the IEP.

(2) The services shall include services and modifications that address the child's misbehavior and that are designed to prevent the misbehavior from recurring. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-991a; effective May 19, 2000; amended March 21, 2008.)

**91-40-36. Determination of services for children with disabilities suspended from school or placed in interim alternative educational settings.** (a) If a child with a disability is properly suspended from school for more than 10 cumulative school days in any school year, the special education and related services to be provided to the child during any period of suspension shall be determined by school officials of the agency responsible for the education of the child.

(b) If a child with a disability is suspended from school for more than 10 consecutive school days or is expelled from school for behavior that has been determined not to be a manifestation of the child's disability, the child's IEP team shall determine the special education and related services that will be provided to the child.

(c) If a child with a disability is placed in an interim alternative educational setting as a result of the child's possession of a weapon or illegal

drug, the child's IEP team shall determine the following:

(1) The special education and related services to be provided to the child in the interim alternative educational setting; and

(2) those services and modifications that will be provided to address the misbehavior of the child and that are designed to prevent the misbehavior from recurring.

(d) (1) If a child with a disability is to be placed in an interim alternative educational setting by a due process hearing officer because the child is substantially likely to cause injury to self or others, school officials shall propose to the hearing officer the special education and related services to be provided to the child, and those services and modifications to be provided to address the behavior and prevent its recurrence.

(2) The hearing officer shall determine whether the services proposed by the school officials are appropriate. If so determined, those services shall be provided to the child. If determined to be inappropriate, the hearing officer shall order any modification in the services to be provided that the hearing officer determines necessary to provide the child with an appropriate education.

(e) An agency shall convene IEP meetings under this regulation as expeditiously as possible and shall be required to give only 24 hours' prior notice of an IEP meeting to the child's parents. (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000 Supp. 72-966 and 72-991; effective May 19, 2000; amended May 4, 2001.)

**91-40-37.** (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000 Supp. 72-991; effective May 19, 2000; amended May 4, 2001; revoked March 21, 2008.)

**91-40-38. Manifestation determination; appeal.** (a) If an agency proposes to make a change in educational placement for disciplinary reasons, the agency shall implement the provisions of K.S.A. 72-991a and amendments thereto.

(b) An agency may conduct the manifestation determination at the same IEP team meeting that is held in regard to developing or reviewing a behavioral intervention plan under K.S.A. 72-991a and amendments thereto.

(c) If, in making a manifestation determination, deficiencies are identified in the child's IEP or placement or in the provision of services to the child, the IEP team shall make any changes it deems appropriate, and the agency shall implement those changes.

(d) An agency shall convene meetings under this regulation as expeditiously as possible and shall be required to give only 24 hours' prior notice of a meeting to the child's parent or parents.

(e)(1) If a parent files a due process complaint concerning the manifestation determination, a resolution meeting between the parties shall be held within seven days of the filing of the complaint, unless the parties agree, in writing, to waive the resolution meeting or to engage in mediation.

(2) If the matter has not been resolved to the satisfaction of both parties within 15 days of the filing of the due process complaint, the due process hearing may proceed. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-991a; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008.)

**91-40-39.** (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-994; effective May 19, 2000; revoked March 21, 2008.)

**91-40-40. Reserved.**

**91-40-41. Private school placement by parents to obtain FAPE.** (a) (1) If the parent of an exceptional child who previously was receiving special education and related services from an agency enrolls the child, without the consent of or referral by the agency, in a private preschool or a private elementary or secondary school because the parent believes the child was not receiving FAPE from the agency, a court or special education due process hearing officer may require the agency to reimburse the parent for the cost of that enrollment only if the court or due process hearing officer makes both of the following findings:

(A) The agency did not make FAPE available to the child in a timely manner before the private school enrollment.

(B) The private school placement made by the parent is appropriate to meet the needs of the child.

(2) A court or due process hearing officer may find that a private school placement by a parent is appropriate for a child although that placement does not meet state standards that apply to special education and related services that are required to be provided by public agencies.

(b) Subject to subsection (c), a court or due process hearing officer may deny or reduce any reimbursement for private school placement by a parent, if the court or due process hearing officer makes any of the following findings:

(1) (A) At the most recent IEP meeting that the parent attended before making the private school placement, the parent did not inform the IEP team that the parent was rejecting the services or placements proposed by the agency to provide FAPE to the child, including a statement of concerns and the intent to enroll the child in a private school at public expense; or

(B) at least 10 business days, including any holidays that occur on a business day, before removal of the child from public school, the parent did not give written notice to the public agency of the information specified in paragraph (1) (A) of this subsection.

(2) Before the parent's removal of the child from public school, the agency notified the parent, in accordance with the requirements of K.S.A. 72-988 and amendments thereto, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parent did not make the child available for the evaluation.

(3) The actions of the parent in removing the child from public school were unreasonable.

(c) Notwithstanding the notice requirements in subsection (b), a court or due process hearing officer shall not deny or reduce reimbursement of the cost of a private school placement for failure to provide the notice, if the court or due process hearing officer makes any of the following findings:

(1) Compliance with the prior notice requirement would likely have resulted in physical harm to the child.

(2) The agency prevented the parent from providing the required prior notice.

(3) The parent had not been given notice by the agency of the prior notice requirement prescribed in subsection (b).

(d) At the discretion of a court or due process hearing officer, the court or hearing

officer may allow a parent full or partial reimbursement of the cost of a private school placement even though the parent failed to provide the notice required in subsection (b), if the court or hearing officer finds either of the following:

(1) The parent is not literate and cannot write in English.

(2) Compliance with the prior notice requirement would likely have resulted in serious emotional harm to the child. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-42. Child find and count of children with disabilities enrolled in private schools; determination of children to receive services.**

(a) Child find activities.

(1) Each board, in accordance with K.A.R. 91-40-7, shall locate, identify, and evaluate all children with disabilities who are enrolled in private elementary or secondary schools located in the school district, including children with disabilities who reside in another state.

(2) The activities undertaken to carry out this responsibility shall meet the following criteria:

(A) Be similar to the activities undertaken for exceptional children enrolled in the public schools;

(B) provide for the equitable participation of private school children;

(C) provide for an accurate count of children with disabilities enrolled in the private schools; and

(D) be completed in a time period comparable to the time for these activities in the public schools.

(3) Each board, in accordance with K.A.R. 91-40-42a, shall consult with representatives of private schools and parents of private school children concerning the activities described in paragraph (1) of this subsection.

(4) The cost of carrying out the child find activities required under this regulation, including individual evaluations of private school children, shall not be considered in determining if an agency has met its obligation to provide a proportionate share of its federal funds for private school children.

(b) Child count activities.

(1) Each board shall annually conduct a count of the number of children with disabilities who are enrolled in private schools located in the

school district. This count, at the discretion of each board, shall be conducted on either December 1 or the last Friday of October of each school year.

(2) Each board, in accordance with K.A.R. 91-40-42a, shall consult with representatives of private schools and parents of private school children concerning the annual count required in paragraph (1) of this subsection.

(3) Each board shall use the child count required by this subsection to calculate the amount of funds provided to the school district under the federal law that the school district must allocate for the purpose of providing special education and related services to private school children with disabilities in the next succeeding school year.

(c) Each board, based upon the results of its child find activities under subsection (a), shall consult with representatives of private schools and parents of children with disabilities enrolled in private schools and then determine which private school children will be provided special education and related services by the board. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-42a. Consultation.** (a) Each board shall engage in timely and meaningful consultation with representatives of private schools located in the school district and representatives of parents of children with disabilities enrolled in those private schools before making determinations regarding the following matters:

(1) How the consultation process among the board, private school officials, and representatives of parents of private school children shall be organized and carried out, including how the process will operate throughout the school year to ensure that children with disabilities who are identified throughout the school year can receive the special education and related services that are provided to private school children;

(2) how the child find process will be conducted, including the following:

(A) How children enrolled in private schools who are suspected of having a disability can participate equitably in the child find process; and

(B) how parents, teachers, and private school officials will be informed of the process;

(3)(A) How the determination of the proportionate share of federal funds that will be available to serve private school children will be made, including a review of how the proportionate share of those funds must be calculated under the federal law; and

(B) how special education and related services will be apportioned if the proportionate share of federal funds are insufficient to serve all of the private school children who are designated to receive services; and

(4)(A) How, where, and by whom special education and related services will be provided to private school children, including a discussion of the means by which services will be delivered, including direct services and services through contracts; and

(B) how and when final decisions on these issues will be made by the board.

(b)(1) When a board believes that it has completed timely and meaningful consultation as required by this regulation, the board shall seek to obtain a written affirmation, signed by representatives of participating private schools, affirming that the consultation did occur.

(2) If representatives of the private schools do not provide the affirmation within 30 days of the date the affirmation is requested, the board shall forward documentation of the consultation to the state department.

(c)(1) A representative of a private school may submit a complaint to the state department alleging that the board of the school district in which the private school is located failed to engage in consultation that was meaningful and timely or did not give due consideration to the views of private school representatives. A copy of the complaint shall also be submitted to the board.

(2) Each complaint submitted by a private school representative shall include a statement of the specific requirement that the board allegedly failed to meet and the facts that support the allegation.

(3) Within 30 days of receiving a complaint, the board shall prepare a reply to the complaint and submit the reply and documentation supporting its position to the state department.

(4)(A) Within 60 days of receiving a complaint, the state department shall issue a determination on whether the complaint is justified and any corrective action that is to be taken.

(B) If the private school representative is dissatisfied with the decision of the state department, the representative may appeal the

decision by submitting an appeal to the secretary of the United States department of education as specified in the federal regulations. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective March 21, 2008.)

**91-40-43. Services to private school children.**

(a) Consistent with the number and location of private school children in the school district, each board shall provide special education and related services to this group of children in accordance with K.A.R. 91-40-43 through 91-40-48. Each board also shall provide services to gifted children who reside in the district and are enrolled in a private school.

(b) The parent of an exceptional child may request that the child be provided special education and related services in accordance with K.S.A. 72-5393 and amendments thereto.

(c) A board shall not be required to provide any special education or related services to a private school child unless one of the following conditions is met:

(1) The child is a member of a group of private school children that has been designated to receive special education and related services in accordance with the provisions of K.A.R. 91-40-43 through 91-40-48.

(2) The parent of the child requests that services be provided to the child in accordance with K.S.A. 72-5393 and amendments thereto.

(d) Except as otherwise provided in K.S.A. 72-5393 and amendments thereto, a private school child shall not be entitled to receive any special education or related service that the child would be entitled to receive if enrolled in a public school, and a private school child may receive a different amount of special education or related services than a child with a disability who is enrolled in a public school.

(e) Each board shall ensure that the special education and related services provided to private school children are provided by personnel who meet the same standards as the standards for public school personnel, except that private school teachers who provide services to private school children shall not be required to be highly qualified under the federal law. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-5393; effective May 19, 2000; amended March 21, 2008.)

**91-40-44. Allocation and expenditure of federal funds; reports.** (a) To meet the requirement of K.A.R. 91-40-43 (a), each board shall allocate, for expenditure in providing special education and related services to private school children, the amounts specified below.

(1) For private school children aged three through 21, an amount calculated as follows:

(A) Divide the number of private school children aged three through 21 who are enrolled in private schools located in the school district by the total number of children with disabilities aged three through 21 in the school district; and

(B) multiply the quotient determined under paragraph (1) (A) times the total amount of federal funds received by the school district under section 1411 (f) of the federal law; and

(2) for private school children aged three through five, an amount calculated as follows:

(A) Divide the number of private school children aged three through five who are enrolled in private elementary schools located in the school district by the total number of children with disabilities aged three through five in the school district; and

(B) multiply the quotient determined under paragraph (2) (A) times the total amount of federal funds received by the school district under section 1419 (g) of the federal law.

(b) In making the calculations under subsection (a), each board shall include all private school children whether or not those children are actually receiving special education or related services from the school district.

(c) (1) Each board, to the extent necessary, shall expend the amounts calculated under subsection (a) of this regulation to provide private school children with those special education and related services that have been determined will be provided to those children under the provisions of K.A.R. 91-40-43.

(2) If a board does not expend all of the funds allocated for the provision of special education and related services to private school children during a school year, the board shall allocate the unexpended funds for the purpose of providing services to private school children during the next succeeding school year.

(d) (1) A board, in meeting the requirement of subsection (c) of this regulation, shall not be authorized to include expenditures made by the board for child find activities under K.A.R. 91-40-42.

(2) A board, in meeting the requirement of subsection (c) of this regulation, shall be authorized to include expenditures made by the

board to provide transportation to private school children to receive special education and related services.

(e) Each board shall maintain records regarding the following information related to children enrolled in private schools located in the school district:

- (1) The number of children evaluated;
- (2) the number of children determined to be children with disabilities; and
- (3) the number of children provided with special education and related services. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-45. Services plan or IEP.** (a) Each board shall develop and implement a services plan for each private school child who meets both of the following criteria:

(1) The child is a member of the group of private school children that has been designated to receive special education and related services under the provisions of K.A.R. 91-40-43.

(2) The child is not receiving special education and related services by request of the child's parent under the provisions of K.S.A. 72-5393 and amendments thereto.

(b) Each board shall ensure that the services plan for each private school child meets each of the following requirements:

(1) The services plan shall describe the specific special education and related services that the board will provide to the child, based upon the services the board has determined that it will make available to private school children under the provisions of K.A.R. 91-40-43.

(2) The services plan shall be developed, reviewed, and revised, as necessary, in the same manner in which IEP's are developed, reviewed, and revised under this article, except that the board shall ensure that a representative of the child's private school is invited to attend, or to otherwise participate in, each meeting held to develop or review the child's services plan.

(3) The services plan shall meet the requirements of K.A.R. 91-40-18 with respect to the services that the child is designated to receive.

(c) Each board shall develop, review, and revise, as necessary, in accordance with this article, an IEP for the following children:

(1) Each private school child whose parent requests special education and related services

under the provisions of K.S.A. 72-5393 and amendments thereto; and

(2) each identified gifted child residing in the school district and enrolled in a private school whose parent elects to have the child receive special education and related services from the board. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-5393; effective May 19, 2000; amended March 21, 2008.)

**91-40-46. Mediation and due process rights of private school children.** (a)(1) The parent of a private school child may request mediation or initiate a due process hearing as authorized under this article, if the parent believes that a board has failed to properly identify and evaluate the parent's child, in accordance with K.A.R. 91-40-42 (a).

(2) Each due process complaint by the parent of a private school child shall be filed with the board of education of the school district in which the private school is located. The parent of the child shall provide a copy of the complaint to the state board of education.

(b) The parent of a private school exceptional child who is receiving special education and related services in accordance with an IEP may request mediation or initiate a due process hearing as authorized under this article on any matter concerning the child's education.

(c) The parent of a private school child with a disability who is receiving special education and related services under a services plan shall not be entitled to request mediation or to initiate a due process hearing on any matter concerning the child's education, but shall be entitled to take either, or both, of the following actions:

(1) Request that a meeting be conducted, in accordance with K.A.R. 91-40-45 (b), to review and revise the child's services plan; or

(2) file a complaint with the state board, in accordance with K.A.R. 91-40-51. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966 and 72-5393; effective May 19, 2000; amended March 21, 2008.)

**91-40-47. Transportation for exceptional children enrolled in private schools.**

(a) Except as otherwise provided in this regulation, each board, to the extent necessary for an exceptional child to benefit from, or to participate in, special education and related services provided to the child by the board, shall furnish or provide for the following transportation services for the child:

(1) Transportation from the child's private school or home to the site at which the child is provided special education and related services; and

(2) transportation from the site at which special education and related services are provided to the child to the child's private school or the child's home, as appropriate.

(b) Except as provided in K.S.A. 72-8306 and amendments thereto, a board shall not be required to furnish or provide transportation from an exceptional child's home to the child's private school.

(c) A board shall not be required to furnish or provide transportation services outside of its school district. (Authorized by K.S.A. 1999 Supp. 72-963; implementing K.S.A. 1999 Supp. 72-966 and 72-5393; effective May 19, 2000.)

**91-40-48. Use of funds and equipment.**

(a) Subject to subsection (d), an agency may use state and federal funds to make personnel available at locations other than at its facilities to the extent necessary to provide special education and related services to exceptional children enrolled in private schools, if those services are not normally provided by the private schools.

(b) Subject to subsection (d), an agency may use state and federal funds to pay for the services of an employee of a private school to provide special education and related services if both of the following conditions are met:

(1) The employee performs the services outside of the employee's regular hours of duty.

(2) The employee performs the services under public supervision and control.

(c) (1) Subject to subsection (d), an agency may use state and federal funds to provide for the special education and related services needs of exceptional children enrolled in private schools, but shall not use those funds for either of the following purposes:

(A) To enhance the existing level of instruction in the private school or to otherwise generally benefit the private school; or

(B) to generally benefit the needs of all students enrolled in the private school.

(2) Each agency shall ensure that special education and related services provided to exceptional children enrolled in private schools are provided in a secular and nonideological manner.

(d) An agency's authority to use federal funds under this regulation shall be limited to providing special education and related services to children with disabilities.

(e) An agency shall not offer or maintain classes that are organized separately on the basis of public or private school enrollment or the religion of the students, if the classes offered to students are provided at the same site and the classes include students enrolled in a public school and students enrolled in a private school.

(f) (1) An agency shall keep title to, and exercise continuing administrative control over, all property, equipment, and supplies that are acquired by the agency to be used for the benefit of exceptional children enrolled in private schools.

(2) An agency may place equipment and supplies in a private school, to the extent allowed by law, for the period of time needed to provide special education and related services to exceptional children enrolled in the school.

(g) (1) An agency shall ensure that any equipment or supplies placed in a private school are used to provide special education and related services and can be removed from the private school without the necessity of remodeling the private school.

(2) An agency shall remove its equipment or supplies from a private school if either of the following conditions exists:

(A) The equipment or supplies are no longer needed to provide special education or related services to students enrolled in the private school.

(B) Removal is necessary to avoid unauthorized use of the equipment or supplies.

(h) An agency shall not use public funds to construct, remodel, or repair any private school facility. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-966; effective May 19, 2000; amended March 21, 2008.)

**91-40-49. Reserved.**

**91-40-50. Parental access to student records; confidentiality.** (a) As used in this regulation, the following terms shall have the meanings specified in this subsection:

(1) “Destruction” means physically destroying the medium on which information is recorded or removing all personal identifiers from the information so that no one can be identified.

(2) “Education records” means any document or medium on which information directly related to one or more students is maintained by a participating agency in accordance with K.S.A. 72-6214 and amendments thereto.

(3) “Participating agency” means any educational agency or institution that collects, maintains, or uses personally identifiable student information to provide special education and related services to children with disabilities.

(b) The provisions in 34 C.F.R. §§ 300.612 through 300.624, as in effect on August 14, 2006, and published in 71 Fed. Reg. 46802-46804 (2006), which concern parental access to education records and confidentiality of those records, are hereby adopted by reference. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-963 and 72-988; effective May 19, 2000; amended March 21, 2008.)

**91-40-51. Filing complaints with the state department of education.** (a) Any person or organization may file a written, signed complaint alleging that an agency has violated a state or federal special education law or regulation. Also, a prevailing party in a due process hearing may file a complaint alleging that the other party has failed to implement the hearing decision. The complaint shall include the following information:

(1) A statement that the agency has violated a requirement of state or federal special education laws or regulations;

(2) the facts on which the statement is based;

(3) the signature of and contact information for the complainant; and

(4) if the complaint involves a specific child, the following information:

(A) The child’s name and address of residence, or other contact information if the child is a homeless child or youth;

(B) the name of the school the child is attending;

(C) a description of the problem involving the child; and

(D) a proposed resolution to the problem, if a possible resolution is known and available to the complainant.

(b)(1) The complaint shall allege a violation that occurred not more than one year before the date the complaint is received and shall be filed with the commissioner of education.

(2) The party filing the complaint shall forward a copy of the complaint to the agency against which the allegations are made at the same time the complaint is filed with the commissioner of education.

(c) Upon receipt of a complaint, an investigation shall be initiated. At a minimum, each investigation shall include the following:

(1) A discussion with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded;

(2) contact with the agency against which the complaint is filed to allow the agency to respond to the complaint with facts and information supporting its position, offer a proposal to resolve the complaint, or offer to engage in mediation to resolve the complaint; and

(3) a written report of findings of fact and conclusions, including reasons for the decision, and any corrective action or actions that are required, including the time period within which each action is to be taken. Unless the parent and the agency agree to engage in mediation, this report shall be sent to the parties within 30 days of the receipt of the complaint. If the parties mediate but fail to resolve the issues, the report shall be sent 30 days after the department received notice that mediation has failed.

(d) An on-site investigation may be conducted before issuing a report.

(e)(1) If a report requires corrective action by an agency, that agency, within 10 days of the date of the report, shall submit to the state director of special education one of the following:

(A) Documentation to verify acceptance of the corrective action or actions specified in the report;

(B) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report, together with justification for the request; or

(C) a written notice of appeal. Each appeal shall be made in accordance with subsection (f).

(2) If an agency files a request for an extension of time within which to complete one or more corrective actions required in a report, a review committee of at least three department of education members shall be appointed by the commissioner to review the request and the offered justification for the extension of time. A decision on the request shall be made by the committee within five business days of the date the request was received. The decision of the review committee shall be final.

(3) If a local education agency fails to respond to a report within the time allowed, the sanctions listed in paragraph (f) (2) may be invoked.

(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect. Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;

(B) the withholding of state or federal funds otherwise available to the agency;

(C) the award of monetary reimbursement to the complainant; or

(D) any combination of the actions specified in paragraph (f)(2).

(g) (1) If a complaint is received that is also the subject of a due process hearing or that contains multiple issues of which one or more are part of the due process hearing, the complaint or the issues that are part of the due process hearing shall be set aside until conclusion of the hearing.

(2) If an issue that has previously been decided in a due process hearing involving the same parties is raised in a complaint, the due process hearing decision shall be binding on that issue and the complainant informed of this fact. (Authorized by K.S.A. 2007 Supp. 72-963; implementing K.S.A. 2007 Supp. 72-988; effective May 19, 2000; amended March 21, 2008.)

**91-40-52. School district eligibility for funding; facilities.** (a) (1) To be eligible to receive state and federal funding, each board shall submit to the state board documentation that the board has policies, procedures, and programs in effect to achieve compliance with the special education for exceptional children act and this article.

(2) In school districts having an enrollment of more than 5,000 students, the board's policies shall provide for the employment of a full-time administrator of special education.

(b) (1) Each board shall be eligible to receive state funding for the following related services, if provided under an exceptional child's IEP or services plan:

(A) Art therapy;

(B) assistive technology devices and services;

(C) audiology;

(D) counseling services;

(E) dance movement therapy;

(F) medical services for diagnostic or evaluation purposes;

(G) music therapy;

(H) occupational therapy;

(I) parent counseling and training;

(J) physical therapy;

(K) recreation;

(L) rehabilitation counseling services;

(M) school health services;

(N) school psychological services;

(O) school social work services;

(P) special education administration and supervision;

(Q) special music education;

(R) speech or language services; and

(S) transportation.

(2) A board shall submit requests for reimbursement for any other related service to the state board for its consideration.

(c) An agency shall not use federal funds to pay the attorneys' fees or costs of any parent who is the prevailing party in any proceeding or action brought under the federal law and its implementing regulations.

(d) Each agency shall ensure that all of the following requirements concerning facilities are met:

(1) All facilities for exceptional children shall be comparable to those for non-exceptional children within the same school building.

(2) If an agency operates a facility solely for exceptional children, the facility and the services and activities provided in the facility shall be comparable to those provided to nonexceptional children.

(3) All facilities for exceptional children shall be age appropriate environments, and each environment shall be appropriate for the instructional program being provided. (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000 Supp. 72-978; effective May 19, 2000; amended May 4, 2001.)

attorney in private practice shall be appointed by the commissioner of education to conduct the hearing. The hearing officer shall be selected from the list of special education due process hearing officers that is required to be maintained under K.S.A. 72-973 and amendments thereto.

(3) Upon being appointed, the hearing officer shall notify the parties of the appointment and shall commence the hearing procedures. The hearing officer shall conduct the hearing in accordance with the Kansas administrative procedure act and shall issue a final order in regard to the matter.

(4) The hearing officer, as part of the order, shall assess the costs of the hearing as determined appropriate based upon the outcome of the hearing.

(d) If a party to an interagency agreement fails to provide the transition services described in a child's IEP, the agency responsible for the child's education shall reconvene the child's IEP team to identify alternative strategies to meet the transition objectives for the student as set out in the IEP. (Authorized by K.S.A. 2000 Supp. 72-963; implementing K.S.A. 2000 Supp. 72-966; effective May 19, 2000; amended May 4, 2001.)

**91-40-53. Resolution of interagency agreement disputes.** (a) If a dispute arises under an interagency agreement entered into under K.S.A. 72-966 and amendments thereto, the parties to the dispute shall resolve the matter under either of the procedures specified in this regulation.

(b) (1) Parties to an interagency agreement dispute may select a mutually agreed-upon mediator, or they may make a joint request to the commissioner of education to appoint a person to serve as mediator. Upon receiving a request for the appointment of a mediator, a mediator shall be promptly appointed by the commissioner of education.

(2) The parties to any interagency agreement dispute shall divide equally the costs of the mediation process.

(c) (1) If the parties to an interagency agreement dispute do not agree to mediate the disagreement or are unable to resolve the dispute through mediation, either party may initiate an administrative hearing by filing a request for a hearing with the commissioner of education.

(2) Upon receiving a request for an administrative hearing under this regulation, an