Receiving Gifted Services Via Special Education

Kansas Statutes & Regulations

as included within the 2008 Kansas Special Education Process

Special Education Services
Kansas Department of Education
*120 SE 10th Avenue * Topeka, Kansas 66612*
September 2008

Kansas State Department of Education
*120 SE 10th Ave * Topeka, KS 66612*

SPECIAL EDUCATION FLOW CHART

"Receiving Gifted Services via Special Education"
as included within the
2008 Kansas Special Education Process Handbook

	CHAPTER TOPICS	TIMELINES AND CONSIDERATIONS
General Education Interventions		
Parent Participation & Involvement (Procedural Safeguards) Chapter 1		
Screening & General Education Interventions (Child Find) Chapter 2	♦Public Notice for Child Find ♦Screening/Gen Ed Interventions (GEI) ♦Data Collection & Documentation	- ***Policies and Procedures*** *used to identify, locate and evaluate all children with exceptionalities?* - ***Screening tools /general ed interventions*** *used to identify potential exceptionalities?* - *Process for* ***collecting documented data****?*
Referral for Initial Evaluation Chapter 2	♦Parent Rights (Chapter 1) ♦Prior Written Notice and Consent	- *An initial evaluation* ***referral process*** *exists?* - *Following an oral or written parent request, the school responded within* ***15 school days*** *with a copy of the* ***Parent Rights Notice*** *and* ***Prior Written Notice*** *and a* ***Request for Consent*** *OR* ***Prior Written Notice*** *that an evaluation will not be conducted?*
Initial Evaluation for Possible Exceptionality Chapter 3	♦Evaluation Team ♦Timeline ♦Procedures ♦Collecting Data	- ***Initial Evaluation*** *conducted* ***within 60 school days*** *following receipt of parent consent?* - *A written* ***Notice of IEP Meeting*** *to determine eligibility provided at least* ***10 days prior*** *to the meeting?* - *An* ***IEP developed*** ***within 30 days*** *of determination of eligibility?* - *Parents provided* ***Prior Written Notice*** *and* ***Request for Consent*** *for the initial provision of special education and related services to the child?* - ***IEP Services*** *implemented* ***not later than 10 school days*** *after written parent consent for provision of special education services was granted?*
Eligibility Determination Chapter 3	♦Meets Definition of Exceptionality & Demonstrates Need for Special Education ♦Eligibility Report ♦Prior Written Notice	
IEP Team Meeting Chapter 4	♦IEP Team Membership ♦Notice of Meeting ♦Development of IEP ♦Implementing IEP – Prior Written Notice and Consent	
Special Education & Related Services Chapter 5	♦Related Services ♦Program Modifications & Supports For School Personnel ♦Frequency, Location & Duration of Svcs	- *The* ***amount of services*** *and the* ***amount of time*** *to be committed to each of the various services is (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP?* - *Provisions of* ***K.A.R. 91-40-3(g)(h)*** *been considered for inclusion within the IEP?*
Reevaluation Determining Continued Eligibility Chapters 7-8	♦Prior Written Notice & Request for Consent ♦Continued Services – Annual IEP - Review, Revise ♦Discontinued Services (chapter 8)	- ***Reevaluation*** *occurs at least once every* ***3 years*** *unless the parent and school agree a reevaluation is unnecessary?* - ***Prior Written Notice*** *and* ***Request for Consent*** *OR* ***Prior Written Notice*** *that an evaluation will not be conducted and the parent's right to pursue the reevaluation through mediation or due process?* - *Reevaluation met all of the same requirements for an initial evaluation?* - *Following the reevaluation, parents provided a* ***Notice of the Continued Eligibility Meeting*** *at least* ***10 calendar days prior*** *to the meeting date that includes the requirements in K.A.R. 91-40-17(b)(1)?* - *A written copy of the* ***reevaluation report and documentation*** *of whether or not the child continues to be a child with an exceptionality given to the parents?*
Special Considerations Chapters 9-14	♦Confidentiality (Chapter 9) ♦Mediation (Chapter 10) ♦Due process (Chapter 11) ♦Formal Complaint (Chapter 12) ♦Suspension/Expulsion (Chapter 13) ♦Private Schools (Chapter 14)	

RECEIVING GIFTED SERVICES
VIA
SPECIAL EDUCATION

Kansas State Department of Education
Special Education Services

Kansas State statute and regulations require Special Education services be provided through the development and implementation of individualized education programs (IEP's) for eligible students identified as meeting the definition of gifted and because of their giftedness, need specialized instruction to ensure access and progress within the general education curriculum.

The following information is adapted from the full version of the 2008 Kansas Special Education Process Handbook.
NOTE: The gifted requirements do not apply if the determined exceptionality includes giftedness with one or more disabilities.

Full Version **2008 KS Special Education Process Handbook** ***(click on link below)***	**Basic Version** (within this document) ***(click on link below)***	**Basic Content & References to State Statutes and Regulations** ****Specific Mention of Gifted Issues*** ***Any statute or regulation mention of "exceptionality" does apply to gifted.*** ***Any statute or regulation mention of "disability" does not apply to gifted.***
Chapter 1 **Parent Rights**	**Chapter 1** Pgs 5-6	Parent Participation, ***Rights for Parents** (see Full Version for expanded list), ***Exceptions**
Chapter 2 **Screening and General Education Intervention**	**Chapter 2** Pgs 7-8	Public Notice for Child Find, General Education Intervention (GEI) for Children from Kindergarten –Age 21, Data Collection and Documentation for GEI, Referral for Initial Evaluation
Chapter 3 **Initial Evaluation and Eligibility**	**Chapter 3** Pgs 9-21	Referral for Initial Evaluation, Prior Written Notice & Request for Consent, Evaluation Team, Timeline for Conducting Initial Evaluation, Conducting the Evaluation, Eligibility Determination and Documentation, Prior Written Notice for Identification, Independent Educational Evaluation
Chapter 4 **The Individualized Education Program (IEP)**	**Chapter 4** Pgs 22-26	IEP Team, Notice of IEP Team Meeting, Development of the IEP, Meeting to Review and Revise the IEP, Transfer within State or ***Transfer from Out-Of-State**, Implementing the IEP
Chapter 5 **Special Education and Related Services**	**Chapter 5** Pgs 27-29	Special Education Services, ***Related Services**, Program Modifications and Supports for School Personnel, Frequency, Location and Duration of Services, ***Extended School Year/Day Services**, Home Schooling, ***Services In Local Detention Facilities**, Qualified Special Education Personnel, Educational Placement, Parent Participation
Chapter 6 **Educational Placement and Least Restrictive Environment**	**Chapter 6** Pg 30	Parent Participation, **Determining Educational Placement**, ***Least Restrictive Environment**

Full Version **KS Special Education Process Handbook** ***(click on link below)***	**Basic Version** ***(click on link below)***	**Basic Content & References to State Statutes and Regulations** ***Specific Mention of Gifted Issues*** ***Any statute or regulation mention of "exceptionality" does apply to gifted.*** ***Any statute or regulation mention of "disability" does not apply to gifted.***
Chapter 7 **Reevaluation**	**Chapter 7** Pgs 31-32	Purpose of the Reevaluation, Prior Written Notice, Request for Consent, Members of the Reevaluation Team, Conducting the Reevaluation, Determined Continued Eligibility
Chapter 8 **Discontinuing Special Education Services**	**Chapter 8** Pgs 33-35	No Longer Eligible for Services, Graduation From High School, ***Summary of Performance**, **Revocation of Consent for Special Education Services**, **Student Drops Out of School**, Discontinuing Services: Prior Written Notice and Request for Consent
Chapter 9 **Confidentiality**	**Chapter 9** Pgs 36-37	Federal and State Requirements, Access to Records, Transfer of Records, Release of Information, Amendment of Records, Destruction of Records, Age of Majority, Test Protocols, Discipline Records, Child in Need of Care
Chapter 10 **Mediation**	**Chapter 10** Pg 38	Mediation Process, Mediation Requests, Mediation Participants, Special Education Mediators, Mediation Results
Chapter 11 **Formal Complaint**	**Chapter 11** Pg 38	**Filing a Formal Complaint**, Investigating the Complaint, Following Up on the Complaint, Appealing the Decision, Sanctions by the State Board of Education
Chapter 12 **Due Process Hearings**	**Chapter 12** Pg 39	**Filing for Due Process**, Assigning A Special education due process hearing officer, Resolution Meeting, D. Pre-hearing Requirements, Conducting A Due Process Hearing, Reaching A Decision, Appealing the Due Process Decision, Stay-Put, Civil Actions, Attorney Fees
Chapter 13 **Suspension and Expulsion**	**Chapter 13** Pg 39	**Local School District Responsibilities**, **Code of Conduct Violations**, Short-Term Removals (Not A Change of Placement), Long-Term Removals (A Change of Placement), 45 School Day Interim Alternative Educational Setting (Weapons, Drugs, or Serious Bodily Injury), Appeals, Children Not Yet Eligible for Special Education, Reporting A Crime, Seclusion and Restraint
Chapter 14 **Children in Private Schools**	**Chapter 14** Pgs 40-42	**Children Placed in Private Schools** by the Public School, **Children Enrolled by Their Parents in Private Schools** Where FAPE is at Issue, **Child Find for Children Voluntary Enrolled in Private Schools** by Their Parents, **State Requirements** for Children Voluntary Enrolled in Private Schools by Their Parents, **Federal Requirements** for Children Voluntary Enrolled in Private Schools by Their Parents, Mediation and Due Process Rights of Private School Children

CHAPTER 1 - PARENT RIGHTS/INVOLVEMENT

- The reauthorization of the Individuals with **Disabilities** Education Improvement Act (IDEA), in 2004, retained important procedures which schools must use when evaluating eligibility for special education services, when developing or changing a child's Individualized Education Program (IEP) or when attempting to resolve serious disputes regarding special education issues. These procedures are sometimes referred to as "procedural safeguards" or "parent rights."

PARENT PARTICIPATION	KANSAS LEGAL CITATION
♦ To address the requirement to strengthen the role of parents in the special education process, Congress mandated that schools afford parents the opportunity to be members of any decision making team for their child, including eligibility, initial evaluation and reevaluation, and development of an Individualized Education Program (IEP) for the provision of a free appropriate public education (FAPE).	***K.A.R. 91-40-21(c)(2)*** *In determining the educational placement of a **gifted** child, each agency shall ensure that the placement decision is made by a group of persons, including the child's parent and other persons who are knowledgeable about the child, the meaning of the evaluation data and appropriate placement options for **gifted** children.*

RIGHTS FOR PARENTS OF GIFTED STUDENTS	KANSAS LEGAL CITATION
♦ In the State statute and regulations, the term "**exceptional** children" includes children who are **gifted** and children with **disabilities**. **Special education services are not compulsory for children who are gifted**. Therefore, parents of **gifted** children may choose to accept whatever special education services are proposed by the IEP team. However, schools are required to provide the services specified in an IEP once the parent gives consent. Accordingly, parents of, and children with **giftedness** (who do not also have a **disability**) have the same rights as parents of, and children with **disabilities**, with the following exceptions:	***K.S.A. 72-977*** *(a) Except as otherwise provided in this section, it shall be the duty of the parent of each **exceptional** child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately.* ***(b) The provisions of subsection (a) do not apply to gifted children or to parents of gifted children.***

EXCEPTIONS FOR GIFTED STUDENTS	KANSAS LEGAL CITATION
♦ **Suspension/Expulsion: There are no special education protections for students who are gifted under the discipline provisions.**	***K.A.R. 91-40-34(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.*
♦ **Age of Eligibility: Preschool children under the age of 5 are not eligible for gifted services.**	***K.A.R. 91-40-1(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.* ***K.S.A. 72-1107*** *Age of eligibility for school attendance: (c) subject to the provisions of subsection (d), any child is eligible to attend kindergarten in the school district in which the child resides or in a school district which has entered into an agreement in accordance with and under authority of K.S.A. 72-8233, and amendments thereto, with the school district in which the child resides if* *(1) for the 1994-95 school year, the child will attain the age of five years on or before September 1 of the school year and* *(2) for any school year commencing after the 1994-95 school year, the child will attain the age of five years on or before August 31 of the school year; any child who was a resident in another state and who, while residing in such other state, had entered and was in attendance in kindergarten in such state shall be eligible to attend kindergarten in this state, regardless of age.*

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EXCEPTIONS FOR GIFTED STUDENTS (continued)	**KANSAS LEGAL CITATION**
♦ **LRE: Students who are gifted do not have the same considerations for least restrictive environment (LRE) as students with disabilities, but the IEP Team must make placement decisions based on their individual needs.**	***K.A.R. 91-4-1(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,……..* ***K.A.R. 91-40-21(c)(2)*** *….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.*
♦ **ESY: Extended school year services are not provided to students who are gifted.**	***K.A.R. 91-40-1(y)*** *"Extended school year services" means special education and related services that are provided to a child with a **disability** under the following conditions…..*
♦ **Incarcerated: Students in JJA or DOC facilities do not receive gifted services.**	***K.A.R. 91-40-5 (c)(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**.*
♦ **Transition/Summary of Performance: Requirements for secondary transition and summary of performance (SOP) are not applicable to gifted students.**	***K.A.R. 91-40-1(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 post school activities, including postsecondary education, vocational education, integrated employment including supported employment, continuing and adult education, adult services, independent living, and community participation.*
♦ **Related Services: Students who are gifted are not eligible for all of the related services.**	*(See Management Information System Data Dictionary, www.kansped.org/ksde/mis/DataDictionary09.pdf)*
♦ **Benchmarks/Short-term Objectives**	***K.S.A. 72-987(c)(1)(c)*** *"Benchmarks or short-term objectives" ….. for those children with **disabilities** who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objections;*
♦ **Assistive Technology**	***K.A.R. 91-40-1*** *Assistive Technology – "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.*
♦ **Supplementary Aids/Services**	***K.S.A. 72-962 and K.A.R. 91-40-1*** *"Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with **disabilities** to be educated with nondisabled children to the maximum extent appropriate.*

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Chapter 2 - Screening and General Education Intervention

- Districts must have local policies and procedures in effect to ensure that all children with **exceptionalities** (those who have **disabilities** and those who are **gifted**) and who are in need of special education and related services are identified, located, and evaluated.

- As an agency, the Kansas State Department of Education (KSDE) encourages the use of a Multi-Tiered System of Support (MTSS) for all children, encompassing school-wide support for both academic and behavioral competency. This is further emphasized in Kansas special education regulations which require the use of general education interventions (GEI), prior to referring any child in kindergarten through grade 12 for an initial evaluation. GEI requires schools to have data-based documentation of the general education interventions and strategies implemented for each child. Other schools accomplish conducting GEI through an individual child problem solving approach, often referred to as student improvement teams (SIT, SAT, TAT, Care Team, etc.). The individual problem solving approach to GEI is consistent with past guidance provided by the state.

CHILD FIND	KANSAS LEGAL CITATION
♦ The first step in the child find process is to provide information to the public concerning the availability of special education services for **exceptional** children, including procedures for accessing these services. This public notice is usually provided at the beginning of the school year and must be repeated annually. Copies of the information from child find activities are kept on file as documentation for implementing policies and procedures.	***K.A.R. 91-40-7*** *(d) Each board, at least annually, shall provide information to the public concerning the availability of special education services for **exceptional** children, including child find activities conducted by the board.* *(e) Each agency shall ensure that the collection and use of data under this regulation are subject to the confidentiality requirements of K.A.R. 91-40-50 and amendments thereto.*
♦ Schools must have policies and procedures in effect to ensure that all children with **exceptionalities** (those who have **disabilities** and those who are gifted) and who are in need of special education and related services are identified, located, and evaluated. This included children who attend public or private schools, which are home schooled; are highly mobile including migrant and homeless, or are wards of the State.	***K.A.R. 91-40-7*** *(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.*

SCREENING PROCEDURE/GENERAL ED INTERVENTION (GEI) K - 21	KANSAS LEGAL CITATION
♦ For children in kindergarten through age 21, Kansas screening laws require that schools utilize observations, instruments, measures, and techniques that disclose any potential **exceptionality** and indicate a need for evaluation, including hearing and vision screening, and age-appropriate assessments for school-aged children designed to identify possible physical, intellectual, social or emotional, language, or perceptual differences. ♦ In Kansas, this screening is conducted, in part, through the required implementation of General Education Intervention (GEI). The purpose of GEI is to intervene early for any child who is presenting academic or behavioral concerns. This early intervention leads to a better understanding of the supports children need in order to be successful in the general education curriculum and school setting. Additionally, the data collected during GEI assists school personnel in determining which children may be children with potential **exceptionalities** who need to move into initial evaluation for special education. Collaboration between special education and general education staff is an important part of the general education intervention process. *(continued on next page)*	***K.A.R. 91-40-7*** *(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.*

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Chapter 2 - Screening and General Education Intervention (continued)	
DATA COLLECTION/DOCUMENTATION FOR GEI	**KANSAS LEGAL CITATION**
♦ There must be data-based documentation that provides a basis for determining that a special education evaluation is warranted. Additional documentation is required for schools that utilize a school-wide multi-tiered system of support approach to providing GEI.	***K.A.R. 91-40-10*** *(f) If the child has participated in a process that assesses the child's response to scientific, research-based intervention, the evaluation report shall also address the following matters:* *(1) The instructional strategies used and the student-centered data collected; and* *(2) the documentation that the child's parents were notified about the following:* *(A) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;* *(B) strategies for increasing the child's rate of learning; and* *(C) the parents' right to request an evaluation.*
REFERRAL FOR INITIAL EVALUATION – GEI and/or Parent Referral	**KANSAS LEGAL CITATION**
♦ Screening and GEI are child find activities, and either process may result in the determination that an initial evaluation for special education is needed. Most decisions to move forward into initial evaluation will come as a result of these processes. However, there are instances when requests for evaluation may be made by parents or by adult students. ♦ Regardless of how the decision to move forward with an initial evaluation is made, it is crucial that the school have a process which will insure that all data collected prior to the evaluation (i.e., data collected as part of screening, or GEI) is provided to the evaluation team. This insures the evaluation team has a basis for understanding what additional data may be need to be collected as the initial evaluation process goes forward.	***K.A.R. 91-40-7(c)*** *(c) Any board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:* *(1) School personnel have data-based documentation which indicates that general education interventions and strategies would be inadequate to address the areas of concern for the child.* *(2) School personnel have data-based documentation that indicates that prior to, or as a part of the referral, the following were met:* *A. The child was provided appropriate instruction in regular education settings that was delivered by qualified personnel;* *B. The child's academic achievement was repeatedly assessed at reasonable intervals which reflected formal assessment of the child's progress during instruction;* *C. The assessment results were provided to the child's parents; and* *D. The assessment results indicate an evaluation is appropriate.*

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Chapter 3 – Initial Evaluation and Eligibility

- When teams conducting general education interventions begin to question whether the child might be a child with an **exceptionality**, or when the team begins to question whether the child might need special education and related services, then a referral for an initial evaluation needs to be considered.

- An initial evaluation involves the use of a variety of assessment tools and strategies to gather relevant functional, developmental and academic information to assist in determining if the child is eligible for special education. A two-pronged test for eligibility: (1) whether the child is a child with an **exceptionality** (**disability** or **giftedness**); and (2) by reason thereof, has a need for special education and related services, has driven eligibility decisions for many years. However, it is clear more than ever in the law that evaluations must also determine the present levels of academic achievement and functional performance (related developmental needs) of the child (K.S.A. 72-986(b)(1); K.A.R. 91-40-8(a)(c)(2); 34 C.F.R. 300.305(a)(2)(i)(ii)(iii)). This shifts the focus of the initial evaluation from access to services to what the child needs

- Every evaluation should be approached and designed individually based on the specific concerns of the child to be evaluated. Thoughtful planning is required to insure that the team will use appropriate tools to collect the data needed, while eliminating time spent collecting information that is either unnecessary or overly time-consuming for no clear purpose. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct an evaluation.

REFERRAL FOR INITIAL EVALUATION	KANSAS LEGAL CITATION
♦ A school age child would participate in general education interventions (GEI) prior to the referral. As a result of GEI, the school would have data-based documentation of repeated assessments of achievement at reasonable intervals, that indicate the instruction and educational interventions and strategies presented to the child in the general education setting were not adequate and indicated an evaluation for special education is appropriate. ♦ A parent or adult student may request an evaluation at any time. A parent request may be oral or written. The school may set a policy as to how a referral is to be made. The school must respond to the request within a reasonable period of time, which has been interpreted by the KSDE as being no more than 15 school days. The building principal or person designated to respond to parent requests for evaluations, should explain to the parents the following: (a) They have the right to go directly to an evaluation; and (b) A GEI process that precedes an initial evaluation is available to assist in determining the specific concerns and needs of their child. This includes the right of the parents to participate in the GEI process. Parents may elect to have their child participate in GEI prior to the evaluation, or, if the parents request the initial evaluation be conducted without waiting for general education interventions to conclude, the general education intervention process may be conducted as part of the initial evaluation. (c) The school may refuse to conduct the evaluation. The Prior Written Notice would explain why the school refuses to conduct the evaluation. *(continued on next page)*	***K.A.R. 91-40-7*** *(b) Each board's policies and procedures under this regulation shall include age-appropriate screening procedures that meet the following requirements:* *(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* *(c) Any board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:* *(A)(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 and* *(D) The assessment results indicate an evaluation is appropriate* ***K.S.A. 72-990*** *The notice required by subsection (b)(2) of K.S.A. 72-988, and amendments thereto, shall include:* *(a) A description of the action proposed or refused by the agency;* *(b) an explanation of why the agency proposes or refuses to take the action;* *(c) a description of other options that the agency or IEP team considered and the reasons those options were rejected;* *(d) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;* *(e) a description of any other factors that are relevant to the agency's proposal or refusal;* *(f) a statement that the parents have protection under the procedural safeguards of this act and, if the notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and* *(g) sources for parents to contact to obtain assistance in understanding the provisions of the federal law and this act.*

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Chapter 3 – Initial Evaluation and Eligibility (continued)

CONDUCTING THE EVALUATION – GENERAL PROCESS	KANSAS LEGAL CITATION
♦ Upon referral for an initial evaluation, regardless of the source, the first action the school must take is to provide the parents, or the adult student, a copy of the Parent Rights Notice (procedural safeguards) available to them.	***K.S.A. 72-988(e)*** *(e) A list of the rights available to the parents of **exceptional** children shall be given to the parents only one time each school year, except a copy also shall be given to the parents: (A) Upon initial referral or parental request for evaluation; (B) upon request of a parent; and (C) upon the initial filing of a complaint under subsection (b)(4).*
♦ When selecting assessment tools to assist in gathering the evaluation data across the five sources of data, those conducting the evaluation must also ensure that specific criteria are met.	***K.A.R. 91-40-9**. Evaluation procedures. (a) If assessment instruments are used as a part of the evaluation or reevaluation of an **exceptional** child, the agency shall ensure that the following requirements are met:* *(1) The assessment instruments or materials shall meet the following criteria:* *(A) Be selected and administered so as not to be racially or culturally discriminatory; and* *(B) be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless this is clearly not feasible.* *(2) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has an **exceptionality** and needs special education, rather than measuring the child's English language skills.* *(3) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved and progress in the general curriculum or, for a preschool child, to participate in appropriate activities that could assist in determining whether the child is an **exceptional** child and what the content of the child's IEP should be.* *(4) Any standardized tests that are given to a child shall meet the following criteria:* *(A) Have been validated for the specific purpose for which they are used; and* *(B) be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment.* *(5) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.* *(6) Assessments and other evaluation materials shall include those that are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.* *(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.*
(continued on next page)	

Chapter 3 – Initial Evaluation and Eligibility (continued)	
CONDUCTING THE EVALUATION – GENERAL PROCESS	**KANSAS LEGAL CITATION**
(continued from previous page) ♦ When conducting an evaluation, no single measure or assessment shall be used as the sole criterion for determining whether the child is a child with an **exceptionality** and for determining an appropriate educational program for the child.	***K.A.R. 91-40-9***. *(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.*
♦ All assessment tools and strategies must provide relevant information that directly assists in determining the educational needs of the child and not merely those that are designed to provide a single general intelligence quotient.	***K.A.R. 91-40-9***. *(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.*
♦ During the evaluation process, the child is assessed in all areas related to the suspected **exceptionality,** including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities	*(a)(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.* *(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.*
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Chapter 3 – Initial Evaluation and Eligibility (continued)	
REQUEST FOR CONSENT	**KANSAS LEGAL CITATION**
♦ The school must obtain informed consent from the parent of the child before conducting the evaluation.	***K.A.R. 91-40-27*** *(a) Except as otherwise provided in this regulation, an agency shall obtain written parental consent before taking any of the following actions:* *(1) Conducting an initial evaluation or any reevaluation of an **exceptional** child;* *(2) initially providing special education and related services to an **exceptional** child; or* *(3) making a material change in services to, or a substantial change in the placement of, an **exceptional** child, unless the change is made under the provisions of K.A.R. 91-40-33 through 91-40-38, or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.* *(d) An agency shall not construe parental consent for initial evaluation as parental 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 the parent of an **exceptional** child who is enrolled or is seeking to enroll in a public school does not provide consent for an initial evaluation or any reevaluation, or for a proposed material change in services or a substantial change in the placement of the parent's child, an agency may, but is not required to, pursue the evaluation or proposed change by initiating due process or mediation procedures.* *(2) If the parent of an **exceptional** child who is being home schooled or has been placed in a private school by the parent does not provide consent for an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, an agency may not pursue the evaluation or reevaluation by initiating mediation or due process procedures.* *(3) An agency shall not be in violation of its obligations for identification, evaluation or reevaluation if the agency declines to pursue an evaluation or reevaluation, because a parent has failed to provide consent for the proposed action.* *(4) Each agency shall document its attempts to obtain parental consent for action proposed under this regulation.* *(g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parents have failed to respond.* *(h) An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities or services offered by the agency.*

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Chapter 3 – Initial Evaluation and Eligibility (continued)	
PRIOR WRITTEN NOTICE	**KANSAS LEGAL CITATION**
♦ After the team has reviewed the existing data, there must be a determination of what data, if any, will be collected during the evaluation. The Prior Written Notice will be completed to reflect the data that will be collected and describe any evaluation procedures the school proposes to conduct as part of the evaluation.	***K.S.A. 72-988*** *(b) The parents of **exceptional** children shall have the right to:* *(2) written prior notice in accordance with K.S.A. 72-990, and amendments thereto, whenever an agency:* *(A) Proposes to initiate or change; or* *(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;* *(e) A list of the rights available to the parents of **exceptional** children shall be given to the parents only one time each school year, except a copy also shall be given to the parents:* *(A) Upon initial referral or parental request for evaluation;* *(B) upon request of a parent; and* *(C) upon the initial filing of a complaint under subsection (b)(4).* ***K.S.A. 72-986*** *(b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:* *(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an **exceptional** child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;* *(2) not use any single measure or assessment as the sole criterion for determining whether a child is an **exceptional** child or determining an appropriate educational program for the child;* *(3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and* *(4) in determining whether a child has a specific learning **disability**, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.* ***K.A.R. 91-40-27(e)*** *(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.*

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Chapter 3 – Initial Evaluation and Eligibility (continued)	
THE EVALUATION TEAM	**KANSAS LEGAL CITATION**
♦ Once the consent has been obtained from the parent, a team is formed who will have the responsibility of carrying out the evaluation process. The membership of the evaluation team are the same as those who would serve on the child's IEP Team (should the child be found eligible), including the parents.	***K.S.A. 72-962*** *(u) "Individualized education program team" or "IEP team" means a group of individuals composed of:* *(1) The parents of a child;* *(2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment;* *(3) at least one special education teacher or, where appropriate, at least one special education provider of the child;* *(4) a representative of the agency directly involved in providing educational services for the child who:* *(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of **exceptional** children;* *(B) is knowledgeable about the general curriculum; and* *(3) is knowledgeable about the availability of resources of the agency;* *(5) an individual who can interpret the instructional implications of evaluation results;* *(6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;*
TIMELINE FOR CONDUCTING THE INITIAL EVALUATION	**KANSAS LEGAL CITATION**
♦ Kansas has established a 60 school-day timeline consistent with federal regulations. The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services or completion of the evaluation report if the child is not found eligible for special education services.	***K.A.R. 91-40-8(f)(g)*** *(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:* *(1) Conduct the evaluation of the child;* *(2) conduct a meeting to determine whether the child is an **exceptional** child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the parent as required by K.A.R. 91-40-17(a); and* *(3) implement the child's IEP in accordance with K.A.R. 91-40-16.* *(g) An agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met:* *(1) The parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation.* *(2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.* *(h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each **exceptional** child within 30 days from the date on which the child is determined to need special education and related services.*

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Chapter 3 – Initial Evaluation and Eligibility (continued)	
CONDUCTING THE EVALUATION – PROCEDURES	**KANSAS LEGAL CITATION**
♦ The data collected is critical not only for the purpose of determining whether a child is eligible for special education, but also to assist in the development of present levels of academic achievement and functional performance. Regulations clearly state that the evaluation must result in determining the content of the child's IEP (if found eligible) including information related to enabling the child to be involved in and progress in the general curriculum However, the evaluation should assist in the development of an instructional plan for the child if the child is not found to be eligible.	***K.S.A. 72-986 (b)*** *An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:* *(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an **exceptional** child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;* *(2) not use any single measure or assessment as the sole criterion for determining whether a child is an **exceptional** child or determining an appropriate educational program for the child;* *(3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and* *(4) in determining whether a child has a specific learning **disability**, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.* *(3) An agency shall ensure that:* *(1) Assessments and other evaluation materials used to assess a child under this section: (A) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (B) are provided and administered in the language and form most likely to yield accurate information on what the child knows and is able to do academically, developmentally and functionally, unless it is not feasible to so provide or administer; (C) are valid and reliable for the specific purpose for which they are used; (D) are administered by trained and knowledgeable personnel; and (E) are administered in accordance with instructions provided by the producer of such tests;* *(2) the child is assessed in all areas of suspected **exceptionality**;* *(3) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and* *(4) the assessments of any child who transfers from another agency during the school year are coordinated with the child's prior school, as necessary and as expeditiously as possible, to ensure prompt completion of an evaluation begun by the prior school.* ***K.A.R. 91-40-10(3)*** *(3) 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**.* (continued on next page)

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Chapter 3 – Initial Evaluation and Eligibility (continued)	
CONDUCTING THE EVALUATION – PROCEDURES (continued)	**KANSAS LEGAL CITATION**
(continued from previous page)	***K.A.R. 91-40-8(a)(c)(d)(e)*** *(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.* *(3) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements:* *(1) The evaluation team shall review existing evaluation data on the child, including the following information:* *(A) Evaluations and information provided by the parent of the child;* *(B) current classroom-based, local, and state assessments and classroom-based observations; and* *(3) observations by teachers and related services providers.* *(2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed to determine the following matters:* *(A) Whether the child has a particular category of* ***exceptionality*** *or, in the case of a reevaluation of a child, whether the child continues to have such an* ***exceptionality****;* *(B) what the present levels of academic achievement and educational and related developmental needs of the child are;* *(3) 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 (3) may conduct its review without a meeting.* *(e) (1) If the team described in subsection (3) determines that additional data is required to make any of the determinations specified in paragraph (2) of subsection (3), 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.*

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Chapter 3 – Initial Evaluation and Eligibility (continued)	
CONDUCTING THE EVALUATION – COLLECTING AND REVIEWING DATA	**KANSAS LEGAL CITATION**
♦ Collecting relevant functional, developmental and academic information related to enabling the child to be involved in, and progress in, the general curriculum requires that data be collected not only about the child, but about the child's interactions in the curriculum, instruction, and environment as well. Data must be collected from the five sources referred to in Kansas as G R I O T. GRIOT represents five sources of data that teams need to be aware of and use as appropriate. **(**Go to full version to see description of each category) *G – General Education Interventions/Curriculum Progress* *R – Record Review* *I – Interview* *O – Observation* *T – Test*	***K.A.R. 91-40-10(d)(1)(2)*** *(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;* *(3) 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.* ***K.A.R. 91-40-8(3)*** *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* *(3) observations by teachers and related services providers.* ***K.S.A. 72-986 (i)*** *As part of an initial evaluation, if appropriate, and as part of any reevaluation under this section, the IEP team and other qualified professionals, as appropriate, shall:* *(1) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and* *(2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine: (A) Whether the child is an* ***exceptional*** *child and the educational needs of the child, or in the case of a reevaluation of a child, whether the child continues to be an* ***exceptional*** *child and the current educational needs of the child; (B) the present levels of academic and related needs of the child; (C) whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and* *(D) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.*

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Chapter 3 – Initial Evaluation and Eligibility (continued)

ELIGIBILITY DETERMINATION AND DOCUMENTATION	KANSAS LEGAL CITATION
♦ At the time the evaluation is completed and the information is compiled, the team should schedule a time to convene in order to make the determination of eligibility. The team must ensure that information obtained from all sources used in the evaluation is documented and carefully considered. ♦ The parents and other qualified professionals review the results of the initial evaluation to determine if the child meets the definition of one of the categories of **exceptionality** and, as a result of that **exceptionality**, needs special education and related services (i.e., 2 pronged test).	***91-40-10(d)(2)*** *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;* *(3) 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.* ***K.A.R. 91-40-7*** *(3)(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.* *(3) The assessment results were provided to the child's parent.* ***K.S.A. 72-986*** *(a)(3) An initial evaluation shall consist of procedures to determine whether a child is an **exceptional** child and the educational needs of such child.* ***K.A.R. 91-40-8*** *(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.*

Note:

♦ There is not a uniform standard across Kansas' districts for determining the criteria that are used to determine if a child meets the definition of **gifted**.

♦ However, each district is required to have local Policies, Practices and Procedures in place that describes how the district **gifted** services are determined and delivered. The process and criteria used to determine eligibility to receive individualized **gifted** services through Special Education needs to support a two-pronged test to determine if:
(1) the child meet the definition of **gifted**; and
(2) if the child needs Special Education services to address the unique needs that result from the child's **giftedness** to ensure access to and progress of the child in the general education curriculum.

(continued on next page)

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Chapter 3 – Initial Evaluation and Eligibility (continued)

ELIGIBILITY DETERMINATION	KANSAS LEGAL CITATION
(h) **Determining Whether the Child is a Child with an Exceptionality (Gifted)** ♦ The first prong of the test of eligibility is to determine whether or not the child meets the definition of one of the **exceptionality** categories – Gifted. Team members compare the multi-sourced data about the child to see if there is a match to the Gifted **exceptionality** category as defined in the regulations. *(h)* **Determining Whether the Child Needs Special Education Services** ♦ The second prong of the test of eligibility is to determine whether or not the child needs special education. By definition, special education means *specially designed instruction*, and specially designed instruction means adapting the content, methodology or delivery of instruction to address the unique needs of a child that result from the child's **exceptionality**. ♦ The team must review the evaluation data in such a way as to understand the extent of the child's needs with regard to specially designed instruction. Teams should be able to use the data to describe the intensity of the support needed to assist the child in accessing and progressing in the general education curriculum. It is only through this discussion that the team can determine whether or not the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided without the support of special education. ♦ If the team determines that the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided in regular education without the support of special education, the team may determine that the child needs special education and related services (Prong 2 of the eligibility test). ♦ If a child meets the definition of an **exceptionality** category but does not need special education and related services, s/he will not be determined to be eligible. ♦ If the child has a need for special education and related services but does not meet the definition of an **exceptionality** category, s/he will not be determined to be eligible. Back to Table of Contents	***K.S.A. 72-962(h)*** *"Gifted children" means **exceptional** children who are determined to be within the gifted category of **exceptionality** as such category is defined by the state board.* ***K.A.R. 91-40-1(cc)*** *"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.* ***K.S.A. 91-40-10*** *(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;* *(3) 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* ***K.A.R. 91-40-1(kkk)*** *"Special Education: means specially designed instruction provided at no cost to parents to meet the unique needs of an **exceptional** child……..*

ELIGIBILITY REPORT	KANSAS LEGAL CITATION
♦ The evaluation team shall ensure that the information obtained from all sources is documented and considered. After carefully considering all data and making the eligibility determination, the team then must document the decision made regarding the child's eligibility for special education and related services. Once the evaluation report and documentation of eligibility has been completed, each team member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions.	***91-40-10*** *(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;* *(3) 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.* ***K.S.A. 72-986(e)(f)*** *(e) Upon completion of the administration of assessments and other evaluation materials:* *(1) The determination of whether the child is an **exceptional** child shall be made by a team of qualified professionals and the parent of the child in accordance with this section; and* *(2) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.* *(f) In making a determination of eligibility under this section, a child shall not be determined to be an **exceptional** child if the determinant factor for such determination is lack of instruction in reading, including instruction using the essential components of reading instruction, math or limited English proficiency.* *(g) (1) If it is determined that a child is an **exceptional** child, the agency shall seek consent from the parent of the child to provide special education and related services to the child. No such services shall be provided until consent is given by the parent.* *(2) If the parent of a child refuses to consent to the provision of services, or fails to respond to a request for consent to services, the agency:* *(A) Shall not initiate any procedure or proceeding under this act to gain authority to provide services to the child;* *(B) shall not be considered to be in violation of the requirement to provide a free appropriate public education to the child; and* *(C) shall not be required to convene an IEP meeting or develop an IEP for the child.*
PRIOR WRITTEN NOTICE FOR IDENTIFICATION	**KANSAS LEGAL CITATION**
♦ After the eligibility determination is made, the school is required to provide Prior Written Notice to the parents that the school proposes to initially identify the child as a child with an **exceptionality** and that the child requires special education and related services. Likewise, school personnel must give Prior Written Notice to the parents if they determine that a child is not eligible for special education or related services. The required content of the Prior Written Notice is identical to the content described earlier in this chapter. However, parent consent is not required for identification of a child with an **exceptionality**. ***Back to Table of Contents***	***K.S.A. 72-988*** *(b) The parents of **exceptional** children shall have the right to:* *(2) written prior notice in accordance with K.S.A. 72-990, and amendments thereto, whenever an agency:* *(A) Proposes to initiate or change; or* *(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;* *(e) A list of the rights available to the parents of **exceptional** children shall be given to the parents only one time each school year, except a copy also shall be given to the parents:* *(A) Upon initial referral or parental request for evaluation;* *(B) upon request of a parent; and* *(C) upon the initial filing of a complaint under subsection (b)(4).*

INDEPENDENT EDUCATIONAL EVALUATION	KANSAS LEGAL CITATION
♦ After an initial evaluation is completed, if the parents disagree with the school's evaluation, they have the right to ask for an independent educational evaluation at public expense. If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the school, if it meets the school's criteria, in any decision made with respect to the provision of FAPE to the child. ♦ Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the child in question. Public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.	***K.A.R. 91-40-12*** *(a) (1) Subject to the conditions specified in this regulation, the parent of an* ***exceptional*** *child shall have the right to request an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the agency.* *(2) The parent shall be eligible for only one independent educational evaluation at public expense in response to an evaluation conducted by the agency.* *(b) If a parent requests an independent educational evaluation of the child, the agency, without unnecessary delay, shall take one of the following actions:* *(1) Initiate a due process hearing to show that its evaluation is appropriate; or* *(2) (A) Provide information to the parent about where an independent educational evaluation may be obtained and the agency criteria prescribed under subsection (g)that apply to independent educational evaluations; and* *(B) take either of the following actions:* *(i) Pay the full cost of the independent educational evaluation or otherwise ensure that the evaluation is provided at no cost to the parent; or* *(ii) initiate a due process hearing to show that the evaluation obtained by the parent does not meet agency criteria.* *(c) If the agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent shall still have the right to an independent educational evaluation, but the agency shall not be required to pay the cost of that evaluation.* *(d) If a parent requests an independent educational evaluation, the agency may ask the reason for the objection to the public evaluation. However, the explanation by the parent shall not be required, and the agency shall not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.* *(e) If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. The results of this evaluation may be presented as evidence at a due process hearing regarding that child.* *(f) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be paid by the agency.* *(g) (1) Subject to the provisions of paragraph (2) of this subsection, each agency shall adopt criteria for obtaining an independent educational evaluation at public expense. The criteria may include the qualifications of the examiner and the location of the evaluation, but shall not impose other conditions or timelines for obtaining the evaluation.* *(2) The criteria adopted by an agency under paragraph (1) of this subsection shall be the same as the criteria that the agency uses when it conducts an evaluation, to the extent that those criteria are consistent with the parents' right to obtain an independent educational evaluation.*

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Chapter 4 – The Individualized Education Program (IEP)

- The Individualized Education Program (IEP) is defined as a written statement for each student with an **exceptionality** which describes that child's educational program and is developed, reviewed, and revised in accordance with special education laws and regulations. The IEP describes and guides services for each child on an individual basis. Such a guide also assists teachers and other staff to have very specific, well-defined measurable annual goals for each eligible child. Kansas has State statutes and regulations regarding IEPs, which also include children identified as gifted.

IEP TEAM	KANSAS LEGAL CITATION
♦ The IEP team is a group of people, knowledgeable about the child, who come together at an IEP meeting in order to develop or review and revise a child's IEP. Collaboration among IEP team members is essential to ensure that each child's educational experience is appropriate and meaningful. All members of the IEP team are equal partners in IEP discussions. Because of their long-term perspective and unique relationship, parents bring a valuable understanding of their child to the table. Children also can express their own needs, strengths, and interests.	***K.S.A. 72-962*** *(u) "Individualized education program team" or "IEP team" means a group of individuals composed of:* *(1) The parents of a child;* *(2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment;* *(3) at least one special education teacher or, where appropriate, at least one special education provider of the child;* *(4) a representative of the agency directly involved in providing educational services for the child who:* *(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of **exceptional** children;* *(B) is knowledgeable about the general curriculum; and* *(3) is knowledgeable about the availability of resources of the agency;* *(5) an individual who can interpret the instructional implications of evaluation results; (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate*

NOTICE OF IEP MEETING	KANSAS LEGAL CITATION
♦ The school must take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The meeting is to be scheduled at a mutually agreed upon time and place. The school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings. The notice must be provided in writing at least 10 calendar days prior to the meeting.	***K.A.R. 91-40-17*** *(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.*

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Chapter 4 – The Individualized Education Program (IEP) (continued)	
DEVELOPMENT OF THE IEP	**KANSAS LEGAL CITATION**
♦ In order to ensure that the IEP team addresses all of the special education and related service needs of the child there are several special factors that the IEP team must consider in the development of the IEP (K.S.A. 72-987(d)). These considerations must be documented but there is no requirement on where they are documented. Some districts may choose to include documentation of these considerations within the IEP while others may choose to keep documentation separately and maintain it in the student's file.	***K.S.A. 72-987*** *(d) In developing each child's IEP, the IEP team shall consider:* *(1) The strengths of the child and the concerns of the parents for enhancing the education of their child;* *(2) the results of the initial evaluation or most recent evaluation of the child;* *(3) the academic, developmental and functional needs of the child;* *(4) in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports and other strategies to address that behavior;* *(5) in the case of a child with limited English proficiency, the language needs of the child as such needs relate to the child's IEP;* *(6) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;* *(7) the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and* *(8) whether the child requires assistive technology devices and services.* ***K.A.R. 91-40-18. IEP development and content*** *(a) In developing or reviewing the IEP of any* ***exceptional*** *child, each agency shall comply with the requirements of K.S.A. 72-987 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.*

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CONTENT OF THE IEP – Minimal Requirements for Gifted IEPs	KANSAS LEGAL CITATION
♦ Evaluation information for a child with an **exceptionality** must identify each of the child's specific needs that result from the **exceptionality**, provide baseline information and describe how the **exceptionality** affects the child's participation and progress in the general education curriculum. ♦ Utilizing baseline data established in the present levels of academic achievement and functional performance (PLAAFPs), the IEP team must develop measurable annual goals, including academic and functional goals that meet the child's needs and enable the child to be involved in and make progress in the general education curriculum. The special education, related services, program modifications, and supports for school personnel described in the IEP must reflect the child's needs in order to ensure he or she receives educational benefit.	***K.S.A. 72-987*** *(c) The IEP for each **exceptional** child shall include:* *(1) A statement of the child's present levels of academic achievement and functional performance, including: (A) How the child's **disability** or **giftedness** affects the child's involvement and progress in the general education curriculum; (B) for preschool children, as appropriate, how the **disability** affects the child's participation in appropriate activities; and (C) for those children with **disabilities** who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objections;* *(2) a statement of measurable annual goals, including academic and functional goals designed to: (A) Meet the child's needs that result from the child's **disability** or **giftedness,** to enable the child to be involved in and make progress in the general education or advanced curriculum; and (B) meet each of the child's other educational needs that result from the child's **disability** or **giftedness**;* *(3) a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided, such as through the use of quarterly or other periodic reports issued concurrently with general education report cards;* *(4) a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child: (A) To advance appropriately toward attaining the annual goals; (B) to be involved in and make progress in the general education curriculum in accordance with provision (1) and to participate in extracurricular and other nonacademic activities; and (C) to be educated and participate with other **exceptional** and non exceptional children in the activities described in this paragraph;* *(7) the projected date for the beginning of the services and modifications described in provision (4), and the anticipated frequency, location, and duration of those services and modifications;* *(9) beginning at least one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights, if any, that will transfer to the child on reaching the age of majority as provided in K.S.A. 72-989, and amendments thereto.* *Nothing in this section shall be construed to require: (1) That additional information be included in a child's IEP beyond that which is specifically required by this section; and (2) that an IEP team include information under one component of a child's IEP that is already contained under another component of the IEP.*
CONTENT OF THE IEP – Items NOT Applicable to Gifted	**KANSAS LEGAL CITATION**
♦ **Items Not Required for Inclusion in Gifted IEPs because they are specifically designated for children with disabilities:** ♦ **Transition Services** ♦ **Benchmarks/Objectives** **(more items listed on next page)** ***Back to Table of Contents***	***K.A.R. 91-40-1*** *"Transition services" means a coordinated set of activities for a student with **disabilities**, designed within an outcome-oriented process that promotes movement from school to post school activities including postsecondary education, vocational training, and integrated employment including supported employment, continuing and adult education, adult services, independent living, and community participation.* ***K.S.A. 72-987(c)(1)(c)*** *"Benchmarks or short-term objectives" ….. for those children with **disabilities** who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objections;*

CONTENT OF THE IEP – ITEMS NOT APPLICABLE TO GIFTED	KANSAS LEGAL CITATION
♦ **ESY**	***K.A.R. 91-40-1*** *ESY – "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;*
♦ **Assistive Technology**	***K.A.R. 91-40-1*** *Assistive Technology – "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.*
♦ **Supplementary Aids and Services**	***K.S.A. 72-962 and K.A.R. 91-40-1*** *"Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with **disabilities** to be educated with nondisabled children to the maximum extent appropriate.*

MEETING TO REVIEW, REVISE OR AMEND THE IEP	KANSAS LEGAL CITATION
♦ The IEP is to be reviewed at least once every 12 months, to determine whether the annual goals for the child are being achieved and to revise the IEP as appropriate. The review and revision of the IEP is to address: (a) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (b) the results of any reevaluation conducted; (c) information about the child provided by the parents; (d) the child's anticipated needs; or (e) other matters. ♦ At an annual IEP team meeting, changes to the IEP are to be made by the entire IEP team. However, between annual IEP reviews, if the parent and school representative agree, changes can be made without an IEP team meeting, by amending the IEP rather than by rewriting the entire IEP. ♦ Even when using the IEP amendment process, the school must provide Prior Written Notice of any changes in the IEP. If the changes in the IEP constitute a substantial change in placement or a material change in services, the school must request parent consent to implement the change. Although the school is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with an **exceptionality** have the right to request an IEP meeting at any time. The child's teacher or other school staff may also propose an IEP meeting at any time they feel the IEP has become inappropriate for the child and revision should be considered. ***Back to Table of Contents***	***K.S.A. 72-987*** *(b)(4) (A) After the annual IEP meeting for a school year, the parent of an **exceptional** child and an appropriate representative of the agency providing services to the child may agree to develop a written document amending or modifying the child's current IEP, without convening an IEP meeting.* *(B) If the parent and agency representative develop a written document amending or modifying a child's current IEP, the document shall be dated and signed by the parent and the agency representative. The parent and the agency shall be provided a copy of the document.* *(f) Each agency shall ensure that the IEP team:* *(1) Reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and* *(2) revises the IEP, as appropriate, to address: (A) Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (B) the results of any reevaluation conducted under this section; (C) information about the child provided by the parents; (D) the child's anticipated needs; or (E) other matters.* ***K.A.R. 91-40-16. IEP requirements.*** *(a) Each agency shall be responsible for initiating and conducting meetings to develop, review, and revise the IEP of each **exceptional** child served by the agency.* *(b) Except as otherwise provided in subsection (c), each agency shall ensure that the following conditions are met:* *(1) An IEP is in effect before special education and related services are provided to an **exceptional** child.* *(2) Those services to which the parent has granted written consent as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.* *(3) An IEP is in effect for each **exceptional** child at the beginning of each school year.* *(4) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.* *(5) Each teacher and provider described in paragraph (4) of this subsection is informed of the following:* *(A) That individual's specific responsibilities related to implementing the child's IEP; and* *(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

TRANSFER WITHIN THE STATE AND FROM OUT-OF- STATE	KANSAS LEGAL CITATION
♦ **Within State Transfer** When a child with an **exceptionality** transfers to a new school district in Kansas, with a current IEP in a previous school district in Kansas, the new school district, in consultation with the parents, must provide FAPE to the child, including services comparable to those described in the child's IEP from the previous school district. Once the new district receives the current IEP the new school district may adopt the child's IEP from the previous school district or develop and implement a new IEP. When a student moves within the State, eligibility has already been established and a reevaluation is not required. ♦ **Out-of-State Transfer – Does not apply to gifted students transferring in from states that do not require Special Education IEPs for gifted students.** The new school district may conduct an initial evaluation to determine eligibility, and develop and implement a new IEP. The evaluation conducted by the new school district would be to determine if the child is a child with an **exceptionality** and to determine the educational needs of the child. Therefore, the evaluation would be an initial evaluation, which would require parental consent.	***K.S.A. 72-987*** *(g) (1) If an **exceptional** child with a current IEP transfers from one Kansas school district to another during the academic year, the new school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the new school district either adopts the transferred IEP, or develops and implements a new IEP for the child.* *(2) If during the academic year, an **exceptional** child who has a current IEP transfers from a school district in another state to a Kansas school district, the Kansas school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the Kansas school district either adopts the transferred IEP, or conducts an evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child.*

IMPLEMENTING THE IEP	KANSAS LEGAL CITATION
♦ Once the IEP team has completed developing the initial IEP, Prior Written Notice, describing the proposed action must be provided to the parents and a request made for consent to initiate special education and related services. Services are to be initiated within 10 school days after written parent consent is granted, unless reasonable justification for a delay can be shown. The implementation of initial services must be completed within the 60 school day timeline of initial evaluation. ***Back to Table of Contents***	***K.A.R. 91-40-16*** *(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.* ***K.A.R. 91-40-8*** *(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g) of this regulation, the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:* *(1) Conduct the evaluation of the child;* *(2) conduct a meeting to determine whether the child is an **exceptional** child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the parents as required by K.A.R. 91-40-17(a); and* *(3) implement the child's IEP in accordance with K.A.R. 91-40-16.* *(g) The agency shall not be subject to the timeframe prescribed in subsection (f) of this regulation if:* *(1) the parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation; or* *(2) the child enrolls in a different school before the evaluation is completed and the parent and new school agree to a specific time when the evaluation will be completed.* *(h) In complying with subsection (f) of this regulation, each agency shall ensure that an IEP is developed for each **exceptional** child within 30 days from the date on which the child is determined to need special education and related services.*

Chapter 5 – Special Education and Related Services

- The decision about what services, the amount of services, and the setting of services necessary to meet the unique needs of an **exceptional** child is based on a variety of factors. The IEP team must identify the child's present levels of academic achievement and functional performance (PLAAFPs) and determine the annual goals.

- Once the PLAAFPs and goals are established, the IEP team decides what services are to be provided. The IEP team decides the specific services and the amount of services that will be needed for the child to make the necessary progress to achieve the measurable annual goals. After the IEP team determines which services and the amount of services are necessary the team next needs to decide where those services will be provided, and the amount of time the child will spend in general education settings, special educational settings, or in a combination of settings.

- All special education and related services must be individually determined in light of each child's unique abilities and needs to meet the annual goals in the IEP and make progress in the general education curriculum.

SPECIAL EDUCATION OPPORTUNITES AVAILABLE FOR GIFTED STUDENTS	KANSAS LEGAL CITATION
♦ The following regulations, when applicable, need to be specified in the child's **gifted** individualized education program (IEP).	***K.A.R. 91-40-3*** *(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.*

RELATED SERVICES	KANSAS LEGAL CITATION
♦ Related services are developmental, corrective, and supportive services required to assist a child, who has been identified as a child with an **exceptionality**, to benefit from special education services. Generally, when needed, related services are provided in addition to special education instruction. Once the child has been identified as a child with an **exceptionality**, the child need not meet the eligibility criteria for another area of **exceptionality** in order to receive related services. ♦ Related services are available for **exceptional** children; **however, not all related services are available to children identified as gifted.** To distinguish which related services are or are not available to children identified as gifted refer to the definitions of a particular related services in K.A.R. 91-40-1. **As examples, if the definition specifically addresses a child with disability, then the related service is not applicable to students with gifted IEPs.** ***Back to Table of Contents***	***K.A.R. 91-40-1*** *Assistive Technology - "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.* ***K.S.A. 72-962 and K.A.R. 91-40-1*** *"Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with **disabilities** to be educated with nondisabled children to the maximum extent appropriate.* ***K.A.R. 91-40-1(ccc)*** *(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:* *(B) assistive technology devices and services;* *(D) counseling services;* *(L) parent counseling and training;* *(S) school social work services;* *(W) transportation;* *(Also, see Management Information System Data Dictionary, http://www.kansped.org/ksde/mis/DataDictionary09.pdf)*

Chapter 5 – Special Education and Related Services (continued)

PROGRAM MODIFICATIONS AND SUPPORTS FOR SCHOOL PERSONNEL/FREQUENCY, LOCATION, & DURATION	KANSAS LEGAL CITATION
♦ Each IEP for a child with an **exceptionality** must include a statement of the program modifications, or supports for school personnel that will be provided to the child, or on behalf of the child, to enable the child to advance appropriately toward attaining their measurable annual goals and to be involved and progress in the general education curriculum. The modifications may address various areas including environmental and structural changes, how the child will participate in direct instruction, learning activities, collaborative work groups, large-group discussions, and other events occurring in their general education classroom. ♦ The program modification and/or supports for school personnel in the IEP must indicate the projected date for the beginning of the services or supports, including the frequency, location, and duration.	***K.S.A. 72-987*** *(3) The IEP for each **exceptional** child shall include:* *(4) a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child: (A) To advance appropriately toward attaining the annual goals; (B) to be involved in and make progress in the general education curriculum in accordance with provision (1) and to participate in extracurricular and other nonacademic activities; and (C) to be educated and participate with other **exceptional** and non exceptional children in the activities described in this paragraph;* *(5) an explanation of the extent, if any, to which the child will not participate with non exceptional children in the regular class and in the activities described in provision (4);* *(7) the projected date for the beginning of the services and modifications described in provision (4), and the anticipated frequency, location, and duration of those services and modifications;*

EXTENDED SCHOOL YEAR/DAY SERVICES – NOT APPLICABLE TO GIFTED	KANSAS LEGAL CITATION
♦ **Children identified as gifted are not eligible for extended school year services.** ♦ ESY services are different than general education summer school. ESY may or may not be provided in conjunction with the general education summer school. ESY may be needed by a child even though summer school is not offered for general education children. In fact, for certain children, services over winter or spring breaks may be needed. The reason for these services is to ensure the provision of FAPE so that the child can make progress toward the goals specified on the child's IEP and to prevent regression, which would impede such progress.	***K.A.R. 91-40-1*** *ESY - "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;*

HOME SCHOOLING

♦ Public schools are not required to provide special education and related services for home-schooled children. School districts are required through Child Find to locate, identify, and evaluate all children residing in the school district, including those who are home schooled. Further, the school must make a free appropriate public education (FAPE) available to all home-schooled children if their parents choose to enroll them in the public schools.

♦ Under the definition in State law, home schools are not elementary or secondary schools or "educational institutions." Home schools also do not fit the definition of a private school, means "an organization which regularly offers education at the elementary or secondary level, which is exempt from federal income taxation under section 501 of the federal internal revenue code of 1954, as amended, which conforms to the civil rights act of 1964, and attendance at which satisfies any compulsory school attendance laws of this state" (K.S.A. 72-5392(c)). However, if a home-schooled child is found to be a child with an **exceptionality**, parents should be informed, in writing, that special education and related services are available if the child is enrolled in the public schools and that the school district "stands ready, willing, and able to provide a free appropriate public education" to the child.

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Chapter 5 – Special Education and Related Services (continued)

SERVICES IN LOCAL DETENTION FACILITIES, JUVENILE JUSTICE AUTHORITY AND DEPARTMENT OF CORRECTIONS FACILITIES	KANSAS LEGAL CITATION
♦ **A student previously identified as gifted only is not entitled to receive special education services while incarcerated.**	***K.A.R. 91-40-5*** *FAPE for detained or incarcerated children with* ***disabilities****.*

QUALIFIED SPECIAL EDUCATION PERSONNEL

♦ Each school district must ensure that all personnel necessary to carry out the requirements of IDEA are appropriately and adequately prepared and trained. Each teacher employed by a public school as a special education teacher must meet the requirements as highly qualified (34 C.F.R. 300.156(c)). This requirement does not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by the school to provide equitable services to parentally-placed private school children with **exceptionalities** (34 C.F.R. 300.18(h)).

Special education teachers who provide "direct instruction" in one or more core content areas will need to meet the highly qualified teacher (HQT) requirements for the content area(s). The content requirements pertain only to individuals who are coded as "special education" teachers in the Licensed Personnel Report and who provide direct instruction in a core content area(s) (English Language Arts, Science, Social Studies or Math) for one or more children. Direct instruction is defined as being either the teacher of record or the teacher responsible for introducing new content material and providing initial instruction.

EDUCATIONAL PLACEMENT	KANSAS LEGAL CITATION
♦ Educational placement refers to the educational environment for the provision of special education and related services rather than a specific place, such as a specific classroom or school (K.A.R. 91-40-1(t)). The IEP team makes the decision about the child's educational placement. The teams' decision must be based on the child's needs, goals to be achieved.	***K.A.R. 91-40-1. Definitions.*** *(t) "Educational placement" and "placement" mean the instructional environment in which special education services are provided.*

PARENT PARTICIPATION	KANSAS LEGAL CITATION
♦ Parents have the right to be part of the decision-making team for determining their child's educational placement and have input into that decision. In Kansas, placement decisions are made by the IEP team. The parent must be provided notice of the IEP team meeting at least 10 calendar days prior to the meeting to ensure that parents have the opportunity to participate.	***K.A.R. 91-40-21(d)*** *(d)(1) Each agency shall give notice to the parent of any meeting to discuss the educational placement of the child. The notice shall meet the requirements of K.A.R. 91-40-17.* *(2) If a parent cannot participate in person at a meeting relating to the educational placement of the child, the agency shall offer to use other methods to allow the parent to participate, including conference calls and video conferencing.* *(3) An agency may conduct a meeting to determine the appropriate educational placement of a child with a* ***disability*** *without participation of the child's parent if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.* *(4) If an agency conducts a meeting to determine the appropriate educational placement of a child without the participation of the child's parent, the agency shall have a record, as prescribed in K.A.R. 91-40-17(e)(2), of the attempts that the agency made to contact the parent.* *(5) An agency shall take action to ensure that parents understand and are able to participate in, any discussions concerning the educational placement of their children, including arranging for an interpreter for parents who are deaf or whose native language is other than English.*

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PARENT PARTICIPATION (continued)	KANSAS LEGAL CITATION
♦ Once the IEP team has made the decision on the initial placement of a child with an **exceptionality**, the parents must be provided Prior Written Notice about the placement decision and requested to provide consent before initial provision of special education and related services in the proposed placement. Within the notice requirements, parents must be informed about the placement options that were considered and the reasons why those options were rejected.	***K.A.R. 91-40-17(e)*** *(1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parents or to convince the parents that they should participate.* *(2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parents to provide them notice of the meeting and to secure the parents' participation. The record shall include at least two of the following:* *(A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;* *(B) detailed records of visits made to the parents' home or homes, including the date, time, and person making the visit and the results of the visit;* *(C) copies of correspondence sent to the parents and any responses received; and* *(D) detailed records of any other method attempted to contact the parents and the results of that attempt.*

DETERMINING EDUCATIONAL PLACEMENT	KANSAS LEGAL CITATION
♦ In determining the educational placement of a child with an **exceptionality** (including **gifted** and preschool children with **disabilities**), each school district must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. IEP Teams, including the parents, must make each child's educational placement decisions on an individual basis for each child with **exceptionalities** (K.A.R. 91-40-21(c)). Placement decisions must be based on the child's IEP and must be determined at least annually.	***K.A.R. 91-40-21 (c)(2). Educational placement.*** *(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.*

LEAST RESTRICTIVE ENVIRONMENT – NOT APPLICABLE TO GIFTED	KANSAS LEGAL CITATION
♦ **LRE requirements do NOT apply to children who are identified as gifted (K.A.R. 91-40-21(3)(2))**. ♦ Children who are **gifted** must have an educational placement determined by the IEP Team, based on their individual needs and to ensure that the child receives FAPE.	***K.A.R.91-40-21. Educational placement.*** *(a) Each agency shall ensure that the children with **disabilities** served by the agency are educated in the LRE.* *(3)(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.*

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Chapter 7 – Reevaluation

PURPOSE OF THE REEVALUATION

- An evaluation that is conducted at any time after an initial evaluation and initial determination of eligibility as a child with an **exceptionality**, is considered a reevaluation. Schools must ensure that a reevaluation of each child with an **exceptionality** is conducted if conditions warrant a reevaluation, or if the child's parents or teacher requests a reevaluation, but at least once every three years. Reevaluations may not occur more than once a year, unless the parent and the school agree otherwise. New requirements also allow the parent and the school to agree that a three year reevaluation is not necessary (K.S.A. 72-986(h)(2)(B); 34 C.F.R. 300.303(b)(2)).

- Most components of the reevaluation process are identical to those required for initial evaluation. See Chapter 3, Initial Evaluation and Eligibility, for a complete explanation of the evaluation process. A report of the reevaluation must be written and provided to the parents.

- The information gathered as a result of the reevaluation provides valuable information about child progress and needs. In addition to using the information to determine whether the child continues to be eligible for special education and related services, this information should be used to review the IEP, revising it if necessary, in accordance with K.S.A. 72-986(h)-(l), as well as 34 C.F.R. 300.301 through 300.311.

- During reevaluation, like initial evaluation, the school is required to inform parents of their right to an independent educational evaluation, according to 34 C.F.R. 300.502. Chapter 3 includes a full discussion of independent educational evaluations.

PRIOR WRITTEN NOTICE

- Whenever a school proposes to conduct a reevaluation, the school must provide Prior Written Notice to the parents of the child that describes any evaluation procedures the school proposes to conduct (K.S.A. 72-986(b); K.S.A. 72-988; 34 C.F.R. 300.304(a)). The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

REQUEST FOR CONSENT

- The school must obtain informed consent from the parent of the child before conducting any reevaluation (K.A.R. 91-40-27(a)(1); 34 C.F.R. 300.300(c)).

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

MEMBERS OF THE REEVALUATION TEAM

- The membership of the team that conducts the reevaluation and determines continued eligibility is the same as the IEP Team. The actual team members on each reevaluation team may differ; however, there are specific members and skills that must be represented on the team.

CONDUCTING THE REEVALUATION

- The school shall ensure that a reevaluation meets all of the same requirements for an initial evaluation as described in Section E, of Chapter 3, in this Handbook.

- The reevaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child continues to be an exceptional child, the educational needs of the child, and the content of the child's IEP, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities (K.S.A. 72-986(b)(1)).

- The first activity the reevaluation team is to conduct is a review of existing data. The reevaluation team needs to consider all data that is currently available including evaluations and information provided by the parents, current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented. The review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents (K.A.R. 91-40-8(3)(d); K.A.R. 91-40-27(e); 34 C.F.R. 300.305(b); 34 C.F.R. 300.300(d)(1)).

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Chapter 7 – Reevaluation (continued)

DETERMINING CONTINUED ELIGIBILITY

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

- Upon completion of the reevaluation, the team should compile all data (that which previously existed and/or was collected as part of the reevaluation) into a format that will be useful when the team convenes to make the continued eligibility determination. It is important that all the information be in an understandable format that allows the team, including the parent, to understand the child's strengths and weaknesses and how the child is progressing in the general curriculum in addition to information about the child's **exceptionality** and needs for special education.

- After completion of appropriate reevaluation procedures, the team of qualified professionals and the parent of the child shall prepare a written reevaluation report. A copy of the reevaluation report and documentation of whether or not the child continues to be a child with an **exceptionality** must be given to the parents. See Section F, of Chapter 3, in this Handbook for a complete discussion of the requirements for determination of continuing eligibility and a description of the reevaluation and continued eligibility report.

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Chapter 8– Discontinuing Special Education Services

NO LONGER ELIGIBLE FOR SERVICES	KANSAS LEGAL CITATION
There are times when a child's eligibility for special education and related services ends or when the parent or student chooses to end the provision of special education services.	
♦ When a parent or school personnel suspect that a child is no longer eligible for special education and related services, a reevaluation must be conducted to determine if the child is no longer a child with an **exceptionality** (K.S.A. 72-986(l)(1)). As part of the reevaluation, the IEP team will review existing data and determine whether they need to conduct any additional assessments (See Chapter 7, Reevaluation.).	♦ ***K.S.A. 72-986(l)****(1) Except as provided in paragraph (2), an agency shall reevaluate a child in accordance with this section before determining that the child is no longer an exceptional child.*
♦ If it is determined by the IEP team through a reevaluation that the child is no longer a child with an **exceptionality** (no longer has a **disability** or is **gifted** and no longer needs special education and related services), the district will provide the parents with Prior Written Notice of this decision and obtain parent consent before discontinuing services. Typically, if the IEP Team determines that a child is no longer eligible, the reason is that the child no longer has a need for special education and related services.	♦ **91-40-27. Parental consent.** (a) Except as otherwise provided in this regulation, each agency shall obtain written parental consent before taking any of the following actions: (1) Conducting an initial evaluation or any reevaluation of an exceptional child; (2) initially providing special education and related services to an exceptional child; or (3) making a material change in services to, or a substantial change in the placement of, an exceptional child
♦ If the team decides that the child is no longer eligible for special education services, but the parents refuses to consent to the child exiting from services, services must continue. However, the team could continue to try to reach consensus with the parent. If parents continue to refuse to provide consent, then the school could request mediation and/or due process.	♦ **91-40-27. Parental consent.** (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.

GRADUATION FROM HIGH SCHOOL	KANSAS LEGAL CITATION
♦ No reevaluation is required prior to exiting a student due to graduation (K.S.A. 72-986(l)(2); 34 C.F.R. 300.305(e)(2)). However, before the student completes the last semester of high school in which she/he is expected to graduate, the district must provide the student (if over age 18) and the parents with Prior Written Notice of the discontinuation of services at the end of the school year**.** The Prior Written Notice will clearly state that the student will no longer be entitled to receive special education services from the district after graduation. Parental consent is not required when a child graduates with a regular diploma (K.A.R. 91-40-27(a)(3); 34 C.F.R. 300.102(a)(3)(iii)).	***K.S.A. 72-986(l)(2)*** *(2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.* ***K.A.R. 91-40-10(g)*** *(g)(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.*

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Chapter 8– Discontinuing Special Education Services

SUMMARY OF PERFORMANCE (SOP) – NOT APPLICABLE FOR GIFTED	KANSAS LEGAL CITATION
♦ The local education agency must provide the child with a summary of the child's academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals (K.S.A. 72-986(m); 34 C.F.R. 300.305(e)(3). ♦ **This requirement applies only to children with <u>disabilities</u>, therefore, a Summary of Performance (SOP) does not need to be completed for students identified as gifted.**	

REVOCATION OF CONSENT FOR SPECIAL EDUCATION SERVICES – NOT APPLICABLE FOR GIFTED	KANSAS LEGAL CITATION
♦ Parent consent is voluntary, and may be revoked by the parents at any time. If the parents or an adult student revokes consent for special education services, no reevaluation is needed. ♦ Therefore, the parent can provide the services privately. **The requirement for parent responsibility for mandatory special education services applies only to parents of children with <u>disabilities</u>, not to parents of children who are gifted.**	Additionally, *K.S.A. 72-977 states that:* *"…it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately. (b)* ***The provisions of subsection (1) do not apply to gifted children or to parents of gifted children."***

REVOCATION OF CONSENT FOR SPECIAL EDUCATION SERVICES	KANSAS LEGAL CITATION
♦ When parents revoke their consent for a specific special education action, the revocation is not retroactive but becomes effective on the date that it was revoked (K.A.R. 91-40-1(l)(3); 34 C.F.R. 300.9). Therefore, the revoking of consent does not negate any action that has occurred after the previous consent was given and before the consent was revoked. ♦ If the parent refuses or revokes consent for one service or activity the school cannot deny the parent or child any other activity or service on the child's IEP (K.A.R. 91-40-27(h)). In addition, because consent for services must be in writing, revocation of consent must be in writing.	***K.A.R. 91-40-1(l)(3)*** *(3) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time, but if the parent revokes consent, that 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.*

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Chapter 8– Discontinuing Special Education Services

STUDENT DROPS OUT OF SCHOOL – NOT APPLICABLE FOR GIFTED	KANSAS LEGAL CITATION
♦ If a student drops out of school, no Prior Written Notice, consent, or reevaluation is required. However, reevaluation may be needed if the student was to reenroll and a new IEP may need to be developed.	***K.S.A. 72-977*** *states that:* *"…it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately. (b)* ***The provisions of subsection (1) do not apply to gifted children or to parents of gifted children."***

DISCONTINUING SERVICES: PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

♦ The following chart may be useful to districts in determining when a Reevaluation, Prior Written Notice and Parent Consent are needed:

Reason for Discontinuing Services	Reevaluation Required	Prior Written Notice Required	Parent or Adult Student Consent Required	Summary of Performance Required
No longer eligible for special education and related services	Yes	Yes	Yes	No
Graduation	No	Yes	No	Yes
Revokes consent for special education services	No	No	No	No
Drops out of school	No	No	No	No

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Chapter 9 – Confidentiality

FEDERAL AND STATE REQUIREMENTS – CONFIDENTIALITY AND ACCESS	KANSAS LEGAL CITATION
♦ In addition to Federal requirements, the Kansas State Department of Education (KSDE) is obligated to establish policies and procedures to ensure that confidentiality requirements are in place at every participating agency. KSDE does this by having each public agency accessing funds sign assurances and establish local policies and procedures consistent with confidentiality requirements.	***Federal Regulations:*** ***Sec. 300.32*** *Personally identifiable information* *Sec. 300.612. Notice to parents* *Sec. 300.613. Access rights* *State Regulations:* *K.A.R. 91-40-50. Parental access to student records; confidentiality*

TRANSFER OF RECORDS	KANSAS LEGAL CITATION
♦ Education records include personally identifiable information, and may not be released to another agency or organization without parent consent. However, when a student transfers to another Kansas school district or nonpublic school, education records may be forwarded without student or parent consent if the annual FERPA notice to parents includes a statement that these records will be forwarded to the receiving school. ♦ Kansas schools may NOT withhold records because of fines or other such reasons. The sending district is to transfer the original school record to the requesting district. The sending district should maintain a copy of the educational record that is sent.	***K.S.A. 72-5386*** *(a) This section shall apply to all school districts and to every pupil of any school district. As used in this section, the term "school records" means transcripts, grade cards, the results of tests, assessments or evaluations, and all other personally identifiable records, files and data directly related to a pupil.* *(b) All school district property in the possession of any pupil shall be returned to the proper school district authority or paid for by the pupil upon transfer of the pupil from the school district. The school records of any such pupil shall not be withheld for any reason. A school district authority, upon request, shall provide a fully itemized list of the school district property in the possession of the pupil. In the event that such school district authority receives an affidavit stating that the pupil's parents are unable to return the school district property which is lost or missing, such school district authority shall note in the school records of the pupil that the pupil has complied with the provisions of this section. In the event that a school district authority receives an affidavit from the board of education of another school district or from the governing authority of a nonpublic school stating that a pupil's records are being requested as proof of identity of the pupil pursuant to the provisions of K.S.A. 72-53,106, and amendments thereto, such school district authority shall forward a certified copy of that part of the pupil's records which provides information regarding the identity of the pupil.* *(c) The school records of each pupil are the property of the pupil and shall not be withheld by any school district. Upon request of a pupil or the parent of a pupil, the school records of the pupil shall be given to such pupil or parent, or, upon transfer of the pupil to another school district or to a nonpublic school, shall be forwarded to such school district or nonpublic school. A pupil's records forwarded to another school district due to transfer will include original copies of all the student's records, including transcripts, grade cards, results of tests, assessments or evaluations, and all other personally identifiable records, files and data directly related to the pupil.*
♦ In addition, Kansas special education regulations require the sending district to immediately transfer the IEP, and any additional educationally relevant information regarding a child with exceptionality, to the receiving district.	***K.A.R. 91-40-4*** *(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.*

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Chapter 9 - Confidentiality (continued)	
DESTRUCTION OF RECORDS	**KANSAS LEGAL CITATION**
♦ Federal auditing requires the availability of education records for identified students for 5 years after they exit from special education services. After that period of time, schools may destroy records. However, before destroying special education records, the school must notify the parent (or the adult student) that the information is no longer needed to provide services to the student and that the school is proposing to destroy them.	***Sec. 300.624. Destruction of information*** *(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.* *(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.*
AGE OF MAJORITY	**KANSAS LEGAL CITATION**
♦ In Kansas, the age of majority is 18. Students who are 18 years or older, unless they have a guardian appointed under State law, have the right to grant or withhold consent, have access to records, to amend records, and to file a complaint, etc. (See Chapter 1, Parent Rights In Special Education, for additional information on age of majority.)	***Sec. 300.625. Children's rights*** *(a) The SEA shall provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of **disability**.* *(b) Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 C.F.R. 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18.* *(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with Sec. 300.520, the rights regarding educational records in Secs. 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.*
TEST PROTOCOLS	**KANSAS LEGAL CITATION**
♦ When a test protocol contains personally identifiable information directly related to a particular student, that protocol is an education record and a parent has a right to inspect and review it. In most cases, however, a parent would not have a right to a copy of a test protocol. ♦ When a student with an **exceptionality** is the subject of a court or administrative hearing, parents may have additional legal tools for accessing test protocols. These tools include pretrial discovery, subpoenas, and the right to question witnesses about their records. Also, the US Department of Education has advised that a parent's FERPA right to inspect test protocols may include a right to copy them if ordered by a special education due process hearing officer or a judge in a legal proceeding.	***Sec. 300.613(b)*** *(b) The right to inspect and review education records under this section includes--* *(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records…*

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Chapter 10 - Mediation

MEDIATION PROCESS

Mediation is a method of resolving disputes in special education at the local level. The Kansas State Department of Education (KSDE) has established mediation procedures to allow school districts and parents to resolve any matter regarding special education, including matters arising prior to the filing of a due process complaint. State statute, at K.S.A. 72-996, and State regulations at **K.A.R. 91-40-28 (exceptionality)**, and 91-40-29 set up provisions for special education mediation in Kansas.

Mediation is a process that includes discussion of the issues and proposed resolutions. Generally, discussions include the mediator, the parents, and a school representative. Generally, the likelihood of reaching an agreement is enhanced by keeping the number of participants to a minimum. However, either the parents or the school representative may ask an outside advocate to attend. If the parents are not able to participate fully and need assistance (because of reasons such as not speaking English, having a **disability** themselves, or not fully understanding the issues or procedures), the parents may wish to have an advocate to assist them.

Forms to request mediation should available in each school district. The building administrator, special education director, or the Mediation consultant at Special Education Services may be contacted for the forms. Copies of these forms are included in Appendix A. Figure 10-2 is the Request for Mediation, Figure 10-3 is the Agreement to Mediate, and Figure 10-4 is the Confidentiality Pledge, Timeline for Mediation Figure 10-5, and sample Rules of Mediation, Figure 10-6. All forms can be found on www.kansped.org .

Chapter 11 – Formal Complaint

FORMAL COMPLAINT PROCESS

Formal complaint is one of three methods of resolving disputes in special education at the local level. Formal complaint is one of the parent rights (procedural safeguards, see Chapter 1) afforded under Federal and State regulations (K.A.R. 91-40-51; 34 C.F.R. 300.151). The Kansas State Department of Education (KSDE) is mandated to make available an opportunity for individuals or organizations to file formal complaints against the school. Figure 11-1 in Appendix A is a flow chart that illustrates the steps in the process, and Figure 11-2 lists the timelines and responsible parties for the required steps.

For information about the formal complaint process, contact Families Together (800-264-6343), Kansas **Disability** Rights Center (877-776-1541), or Special Education Services at the KSDE (800-203-9462). See Figure 11-3 for the Formal Complaint form as well as the Special Education Services home page www.kansped.org **.**

The parent of any child with an **exceptionality** (**disabilities** and **giftedness**) including eligible students receiving services in public schools, private schools and other educational settings are entitled to file a formal complaint if they believe appropriate legal procedures have not been followed or implemented.

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Chapter 12 – Due Process Hearing

DUE PROCESS HEARINGS

Due process hearing is one of the methods parents or others have to resolve special education disagreements with the school district. Due process is a set of procedures that seeks to ensure fairness of educational decisions and accountability, both for parents and for educational professionals. Due process rights begin when educational professionals or the parents request an initial evaluation to determine whether or not a student is eligible and needs special education and related services. Every special education due process hearing and review must be provided for at no cost to the child or the parent of the child. The costs of the initial hearing must be provided for and paid by the school district except for attorney fees.

The due process hearing provides a forum where disagreements about the identification, evaluation, educational placement, and provision of a free appropriate public education for students with **exceptionalities** may be adjudicated. Although Federal regulations refer to due process rights for educators and parents of students with **disabilities**, in Kansas those same rights are also afforded to students with **giftedness**.

In Appendix A, Figure 12-1 is a chart that shows the steps in special education due process, Figure 12-2 is the Request for Due Process Hearing for District form, Figure 12-3 is the Request for Due Process Hearing for Parents, and Figure 12-4 illustrates how special education due process hearing officers are assigned. Additionally, forms can be found at www.kansped.org . See also Chapter 1, Parent Rights (Procedural Safeguards), for additional information about other rights of parents.

Chapter 13 – Suspension and Expulsion

LOCAL SCHOOL DISTRICT RESPONSIBILITIES AND CODE OF CONDUCT VIOLATIONS – NOT APPLICABLE TO GIFTED

The Kansas special education laws and regulations contain provisions that parallel Federal suspension and expulsion requirements. Other State laws regarding suspension and expulsion which apply to all children are also cited within the chapter. Figure 13-1 at the beginning of this chapter provides a chart that will be helpful in understanding some of the most important federal and state requirements for disciplinary removal procedures. Under Kansas special education law and regulations students with **giftedness** are not covered by the discipline requirements.

Requirements for imposing disciplinary removals of children with **disabilities** **(not gifted)** are found in numerous Federal and State laws and regulations.

Kansas regulations clarify that children identified as **gifted** are subject to suspension or expulsion from school the same as a child without a **disability**. While a child identified as **gifted** is suspended or expelled from school, the school is not required to provide special education or any other educational services to the child (K.A.R. 91-40-34(c)). If the child is identified as **gifted** (and does not have a **disability**), the school's usual disciplinary policies should be followed, because IDEA disciplinary provisions do not apply to children who do not have a **disability**.

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Chapter 14 – Children in Private Schools

RECEIVING SPECIAL EDUCATION SERVICES – DIFFERENT REASONS/DIFFERENT SITUATIONS

Federal and State laws and regulations recognize that children with **exceptionalities** may be receiving their education in private elementary and secondary school settings for different reasons. In different situations, school districts have different obligations. A school's obligation to provide special education services or pay for services provided to children in private schools depends on whether:

- The child with an **disability** is placed in the private school by the public school as a means of providing special education and related services;
- The child with an **exceptionality (including gifted)** is enrolled in a private school by his or her parents because the provision of a free appropriate public education (FAPE) is at issue; or
- The child with an **exceptionality (including gifted)** is voluntarily enrolled in a private school by his or her parents to receive general education.

Additionally, Kansas defines elementary and secondary schools as follows: (1) "elementary school" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades kindergarten through nine. (2) "Secondary School" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades nine through 12. These definitions do not include preschool programs or home schooling. Therefore, children ages 3 and 4, or 5 year old children not in kindergarten are not included in the private school requirements. Charter schools in Kansas are considered part of local school districts and are not private schools. In addition, there are specific requirements for children identified as **gifted** who are enrolled by their parents in private schools.

CHILDREN PLACED IN PRIVATE SCHOOLS BY THE PUBLIC SCHOOL

Both Federal and State laws and regulations allow a school district to place a child with a **disability** in a private school in order to meet its obligation to provide FAPE to the child. Kansas law clarifies that the use of private schools to meet the requirement for FAPE does not apply to children who are identified as **gifted,** unless they also have a **disability** that requires placement in a private school in order to receive FAPE.

CHILDREN ENROLLED BY THEIR PARENTS IN A PRIVATE SCHOOL WHEN FAPE IS AT ISSUE	KANSAS LEGAL CITATION
♦ If the parents of a child with an **exceptionality (including gifted)**, who previously was receiving special education and related services from the public school, enroll their child, without the consent of or referral by the public school, in a private preschool or a private elementary or secondary school because the parents believe the child was not receiving FAPE from the public school, a court or special education due process hearing officer may require the agency to reimburse the parents for the cost of that enrollment only if the hearing officer makes both of the following findings: (1.) The public school did not make FAPE available to the child in a timely manner before the private school enrollment; and (2.) The private school placement made by the parents is appropriate to meet the needs of the child. *NOTE: Read K.A.R. 91-40-41 in its entirety to understand any restrictions that may apply to this situation.	***K.S.A. 72-966*** *Duties of boards of education in meeting requirements of law; responsibilities of state board of education and other state agencies; interagency agreements; dispute resolution.* *(a) (3) Each board shall provide* ***exceptional*** *children who are enrolled by their parents in private schools with special education and related services in accordance with state law and federal law.* *K.A.R. 91-40-41. Private school placement by parents to obtain FAPE.*

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Chapter 14 – Children in Private Schools (continued)

CHILD FIND FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS	KANSAS LEGAL CITATION
♦ When children are enrolled by their parents in private schools, the public school has continuing responsibility for child find and must locate, evaluate, and identify children with **exceptionalities (including gifted**) in private schools just as they do in the public schools. ♦ The district of residence is still required to conduct child find activities for children who may be identified as **gifted** and for children ages 3 and 4, or 5 year old children not in kindergarten. However, Kansas schools do not have a responsibility to locate, identify, evaluate or serve **gifted** children who reside in another state. ♦ Under State law**,** children identified as **gifted** who are enrolled in a private school outside of their district of residence are also to be provided special education services by the district in which the child resides. The resident district would conduct the child find, do the evaluation, determine eligibility, develop an IEP and offer services in the district of residence. However, the resident district is not required to cross district boundaries to provide special education and related services. Therefore, an offer of services provided in the district would fulfill its requirement to make FAPE available even if the parent refuses the services at that site.	***K.S.A. 72-966*** *Duties of boards of education in meeting requirements of law; responsibilities of state board of education and other state agencies; interagency agreements; dispute resolution.* *(a) (3) Each board shall provide* ***exceptional*** *children who are enrolled by their parents in private schools with special education and related services in accordance with state law and federal law.* ***K.S.A. 72-5392*** *(c) "Private, nonprofit elementary or secondary school" means an organization which regularly offers education at the elementary or secondary level, which is exempt from federal income taxation under section 501 of the federal internal revenue code of 1954, as amended, which conforms to the civil rights act of 1964, and attendance at which satisfies any compulsory school attendance laws of this state.* ***K.S.A. 72-5393*** *Every school district shall provide special education services for* ***exceptional*** *children who reside in the school district and attend a private, nonprofit elementary or secondary school, whether such school is located within or outside the school district upon request of a parent or guardian of any such child for the provision of such services. No school district shall be required to provide such services outside the school district. Any school district may provide special education services for* ***exceptional*** *children who attend a private, nonprofit elementary or secondary school located within the school district whether or not all such children reside in the school district. Special education services, which are provided under this section for* ***exceptional*** *children who attend a private, nonprofit elementary or secondary school which is located in the school district may be provided in the private, nonprofit elementary or secondary school or in the public schools of the school district. The site for the provision of special education services under this section for an* ***exceptional*** *child shall be determined by the school district in consultation with the parent or guardian of the child and with officials of the private, nonprofit elementary or secondary school. Special education services provided under this section for* ***exceptional*** *children who attend a private, nonprofit elementary or secondary school are subject to the following requirements:* *(a) If the services are provided for in the private, nonprofit elementary or secondary school, amounts expended for the provisions of such services shall not be required to exceed the average cost to the school district for the provision of the same services in the public schools of the school district for children within the same category of* ***exceptionality;*** *(b) If the services are provided for in the public schools of the school district, the services shall be provided on an equal basis with the provision of such services for* ***exceptional*** *children attending the public schools; and* *(c) If the services are provided in the public schools of the school district, transportation to and from such public school shall be provided by the school district.* ***K.S.A. 72-5394*** *No special education services shall be provided in connection with religious courses, devotional exercises, religious training, or any other religious activity.*

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Chapter 14 – Children in Private Schools (continued)

FEDERAL REQUIREMENTS FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS – NOT APPLICABLE TO GIFTED

Federal law requires that children with **disabilities** in private schools (K-12) be provided an opportunity for participation in special education services. Federal law makes it clear that a child with a **disability** in a private school has no individual right to special education or related services. Rather, the public school district where the private school is located must ensure that a proportionate share of Federal funding is used to provide services to this population of children. Therefore, under Federal Law, in almost all cases, the public school district where the private school is located would not be obligated to provide any or all special education and related services to every child with a **disability** enrolled in a private school located within its boundaries.

This section of the Federal and State laws and regulations requiring the expenditures of a proportionate share of Federal funding to provide special education services does not include children identified as **gifted**.

STATE REQUIREMENTS FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

- The State law relating to children voluntary enrolled in private schools by their parents significantly adds to Federal requirements. State law requires that when a parent requests services, the school district of residence will make available all services and will provide any or all of the special education and related services that are identified by an IEP team for any child with an **exceptionality**, to which the parent provides consent. Therefore, the parent of a child attending a private school would go to the district of residence to request services

- Under State law**,** children identified as **gifted** who are enrolled in a private school outside of their district of residence are also to be provided special education services by the district in which the child resides. The resident district would conduct the child find, do the evaluation, determine eligibility, develop an IEP and offer services in the district of residence. However, the resident district is not required to cross district boundaries to provide special education and related services. Therefore, an offer of services provided in the district would fulfill its requirement to make FAPE available even if the parent refuses the services at that site.

K.A.R. 91-40-43. Services to private school children. *(a) Consistent with the number and location of private school children in the school district, each board shall provide special education and related services to this group of children in accordance with K.A.R. 91-40-43 through 91-40-48. Each board also shall provide services to* ***gifted*** *children who reside in the district and are enrolled in a private school.*
(b) The parent of an ***exceptional*** *child may request that the child be provided special education and related services in accordance with K.S.A. 72-5393 and amendments thereto.*

K.A.R. 91-40-45. Services plan or IEP
(c) Each board shall develop, review, and revise, as necessary, in accordance with this article of regulations, an IEP for the following children:
(1) Each private school child whose parent requests special education and related services under the provisions of K.S.A. 72-5393 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.*

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