Kansas
Special Education Services
Process Handbook

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KANSAS SPECIAL EDUCATION SERVICES PROCESS HANDBOOK

This document was developed by the Kansas State Department of Education, Special Education Services, Topeka, Kansas. The opinions expressed herein do not necessarily reflect the position of the United States Department of Education, and no endorsement of the United States Department of Education should be inferred.

This document is provided as a guide for the provision of special education and related services. If any portion of this document conflicts with law or regulation, the law or regulation takes precedence.

Please contact our department if you have questions about information contained within this handbook:

Phone: 800-203-9462, or 785-296-3869
Fax: 785-296-6715
Homepage: http://www.ksde.org/Default.aspx?tabid=101

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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); 34 C.F.R. 300.503). (See Parent Rights Notice at http://www.ksde.org/Default.aspx?tabid=2832#rights)

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).

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.

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

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

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

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

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

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

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

B PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describe any evaluation procedures the school proposes to conduct (K.S.A. 72-988(b)(2); 34 C.F.R. 300.304(a)). In addition, there are standard components of content the notice must also contain. The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct an initial evaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include:

1) A description of the action proposed by the agency,
2) An explanation of why the agency proposes the action,
3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action,
4) A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained,
5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards, and
6) A description of other options considered and the reasons why those options were rejected; and,
7) A description of other factors that is relevant to the agency's proposal. (K.S.A. 72-990; 34 C.F.R. 300.503(b))

Additionally, if the notice is to propose to conduct an initial evaluation, the notice must describe any evaluation procedures that the school proposes to conduct (K.S.A. 72-986(b); K.A.R. 91-40-27(b); 34 C.F.R. 300.304(a)(1)). (See Prior Written Notice for Evaluation or Reevaluation form at http://www.ksde.org/Default.aspx?tabid=2832)

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the LEA must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, that the parent understands the content of the notice. The school must have written evidence that this has been done (K.A.R. 91-40-26(b)(c); 34 C.F.R. 300.503(c)).

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

There are two methods of evaluation, (i)"the child's response to scientific, research-based intervention" and (ii)"a pattern of strengths and weaknesses", which are outlined in federal regulations with regard to the identification of students with specific learning disabilities. However, in Kansas, both are also appropriate to be used to determine eligibility for any of the areas of exceptionality. Below is a brief description of each method of evaluation. (K.S.A. 72-986(b)(4)

The process based on the child's response to scientific, research-based intervention ((i) above) is referred to as Response to Intervention (RtI), and is based on a school-wide multi-tier system of interventions for all students. The evaluation data collected during this process will include results of school-wide universal screening, benchmark assessments, diagnostic assessments and processes, and information collected during problem-solving, and most importantly, the results of the child's response to various types of interventions including slope (growth), rate (closing the gap) and fidelity of those interventions. Most often, the child's response to intervention data will take the form of charts and graphs which reflect individual child growth under various intervention conditions. Teams analyze and interpret this information to determine whether or not the child is a child with an exceptionality and to determine and describe the educational needs of the child.

The process based on a child's pattern of strengths and weaknesses ((ii) above) tends to rely more heavily on the results of norm-referenced tests and other assessments. Evaluation teams must decide which tests are appropriate to use given the referral question and what type of assessment is needed to answer questions about an individual student's need for intervention and support. As described before, evaluations must be individually planned based on the presenting concern and review of existing data. The automatic administration of any assessments, including intelligence or achievement tests, for an evaluation is not appropriate practice. If the evaluation team determines that they are needed, then ability or achievement measures are analyzed to identify patterns within academic skills or cognitive functions. The administration of intelligence and achievement tests solely to examine the discrepancy is not necessary since discrepancy is not an eligibility requirement. If achievement or intelligence tests are administered they should be interpreted in combination with other relevant data to identify the child's strengths and weaknesses, including the child's approach to tasks, characteristic patterns of learning, and difficulties in processing information. The richest source of this information comes from the data collection conducted during the General Education Intervention process, as well as data regarding interventions conducted during the initial evaluation process. Teams analyze and interpret this information to determine whether the pattern of strengths and weaknesses is characteristic of a child with an exceptionality and to determine and describe the child's educational needs.

K.S.A. 72-986

(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

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

OR

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

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

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

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

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

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.

K.A.R. 91-40-1(k)(w)(kkk)

(k) "Child with a disability" means the following:

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

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

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

(kkk) "Special education" means the following:

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

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

(B) instruction in physical education;

K.A.R. 91-40-12

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

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

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

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

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

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

(B) take either of the following actions:

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

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

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

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

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

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

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

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

QUESTIONS AND ANSWERS ABOUT INITIAL EVALUATION AND ELIGIBILITY

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

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

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

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

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

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

There are three ways that a child may be referred for a special education evaluation. (1) The parent requests an evaluation; (2) an adult student requests an evaluation; or (3) school personnel suspect that a child may be a child with an exceptionality and need special education services. Typically, school personnel determine this through the GEI process.

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

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

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

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

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

Each assessment must be given and interpreted by a licensed or certified professional in the area being assessed (e.g., speech and language, motor, behavior, or other area). Public school psychological evaluations must be given and interpreted by school psychologists. Certain test developers and suppliers also have specific requirements with regard to training and qualifications that must be considered. Assessments during initial evaluations encompass much more than test administration, however. When planning to collect the data for an evaluation, teams should determine which individuals have the most appropriate skills to obtain whatever data is needed.

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

Yes. Existing data should be reviewed as a part of any initial evaluation. This would include evaluations and information provided by the parents, current classroom-based, local, or state assessments; classroom-based observations; and observations from teachers and related service providers. For an initial evaluation, such data would help the team decide if more information is needed to determine eligibility–both the presence of an exceptionality and the determination of the child's educational need. The existing data also will help identify the present levels of academic achievement and related developmental needs of the child; whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child; and to participate, as appropriate, in the general education curriculum, or for preschool-age children, appropriate activities. If the team has enough information from all five required sources of data (GEI or Screening, Record Review, Interviews, Observations, Tests), the team may conclude that no additional data are needed and eligibility may be determined based upon existing data. The Prior Written Notice would include: (1) a statement of this fact and the reasons for it; and (2) a statement of the right of the parents to request additional assessments to determine whether the child is a child with an exceptionality. Parent consent to conduct the initial evaluation is required, whether or not additional data is needed.

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

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

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

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

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

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

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

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

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

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

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

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

In essence, this court said that the IEP team could not create a valid IEP that addressed the child's unique needs if required members of the team (the parents) were not fully informed of the evaluation results, which indicated their child had autism. Although this court did not address it, when a parent is not fully informed of the results of an evaluation, it is also likely that any consent given by the parent will be deficient. For these reasons, it is recommended that the evaluation report include the specific category of exceptionality in which a child is identified as an exceptional child. If the category of exceptionality is not identified in the evaluation report, it is important that school personnel document in some other way that the parents have been informed of this important information.

13. There are several categories of disability that reference particular disorders within them (e.g., Learning Disability includes perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia; Other Health Impairment may include asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome; Emotional Disturbance includes schizophrenia; etc.) Does this mean that school teams are diagnosing these disorders? Does this mean school teams must obtain (e.g., from a physician or clinical psychologist) a diagnosis of one of these disorders?

The work of school psychologists and evaluation/eligibility teams needs to focus on the question of eligibility within the categories defined by state and federal special education regulations. This does not require school teams to diagnose particular disorders associated with any category of disability within the IDEA. What it requires is that data exists to meet both prongs of eligibility (e.g., presence of an exceptionality as defined in regulation and need for specially designed instruction).

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

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

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

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

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

Teams should try to reach consensus about the eligibility decision. If a member of the school team does not agree with the others, they are able to must record their disagreement on the eligibility report and submit a separate statement presenting their conclusions. Parents who disagree with the report may, but are not required to, submit a separate statement. However, if the team cannot reach agreement, the final decision rests with the person who serves as the LEA representative at the eligibility determination meeting.

16. Because KSDE discourages use of aptitude/achievement discrepancy as the determining factor for eligibility under the category of Learning Disability, is it still considered good practice to use cognitive assessment?

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

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

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

If using the RtI method of evaluation, most of the data will come from universal screening, the diagnostic process and progress monitoring. Any additional assessment and intervention to be conducted should be based on the referral question. Based upon the GEI data, the team will need to decide whether or not an assessment of cognitive skills needs to be completed.

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

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

Yes. Once a child who has been identified as a child with an exceptionality has been exited, either through revocation of consent or a reevaluation resulting in a determination that the child is no longer eligible, a subsequent evaluation would be an initial evaluation. A reevaluation is used to determine continued eligibility and continued need for special education and related services. As such, a reevaluation only applies to a child currently identified as a child with an exceptionality. However, this does not necessarily mean the initial evaluation must include new assessments. If appropriate as a part of the initial evaluation, the team must conduct a review of existing data. If there is enough current data available, the team may determine there does not need to be any further assessments conducted.

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

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

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

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

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

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

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

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

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

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

age-appropriate transition assessment was used to provide information on the student's needs, strengths, preferences and interests regarding postsecondary goals. Evidence would most likely be found in the student's file.

Those responsible gather the information needed to understand student needs, taking into account strengths, preferences and interests through career awareness and exploration activities and a variety of formal and informal transition assessments. These assessments should seek to answer questions such as:

a. What does the student want to do beyond school (e.g., further education or training, employment, military, continuing or adult education, etc.)?
b. Where and how does the student want to live (e.g., dorm, apartment, family home, group home, supported or independent)?
c. How does the student want to take part in the community (e.g., transportation, recreation, community activities, etc.)?

It is important to consider and understand transition assessment as having the potential of being a reevaluation. As information is collected to identify and determine need for services, in this case transition services, the assessments could easily enter into the area of reevaluation requiring notice, consent and an evaluation report. For more information about determining whether the activities of the planned transition assessment would be considered a reevaluation see Chapter 7 on Reevaluation.

2. Measurable Postsecondary Goals

Each IEP for a student with a disability, who will be 14 or older during the time period of the IEP, must have measurable postsecondary goal(s) that address the areas of: training/education, employment, and independent living when appropriate. The only goal area that is not required based on individual student needs is independent living.

Descriptions of these categories are:

- **Training/Education** – specific vocational or career field, independent living skill training, vocational training program, apprenticeship, OJT, military, Job Corps, etc., or 4 year college or university, technical college, 2 year college, military, etc.
- **Employment** - paid (competitive, supported, sheltered), unpaid, non-employment, etc.
- **Independent living skills** – adult living, daily living, independent living, financial, transportation, etc.

Measurable postsecondary goals are different from measurable annual goals in that they measure an outcome that occurs after a student leaves high school where a measurable annual goal measures annual progress of the student while in school. It is important to note that each postsecondary goal, must be supported by one or more annual goal and each annual goal may support more than one postsecondary goal. When developing postsecondary goals, the team should understand what annual goals support the postsecondary goal.

The requirements for measurable postsecondary goals are specific to the areas of training/education, employment and independent living. A student's IEP Team must consider the unique needs of each individual student with a disability, in light of his or her plans after leaving high school, in developing postsecondary goals for a student. Postsecondary goals in the areas of training and education may overlap. An IEP Team may determine that separate postsecondary goals in the areas of training and education would not result in the need for distinct skills for the student after leaving high school. The IEP Team then may combine the training and education goals of the student into one or more postsecondary goals addressing both areas.

Employment is a distinct area of activity and may not be combined with another goal. Each student's IEP must include, at minimum, separate postsecondary goals for (1) employment and (2)

education/training. Postsecondary goals related to independent living are to be developed when the IEP determines it would be appropriate for the student.

Examples of Measurable Postsecondary Goals:

Example Education/Training Goals:

After graduation from high school, Sara will attend college to study drafting.

After graduation from high school, Jamie will attend Central County Community College in the welding industry certificate program.

Example Employment Goals:

After graduation from high school, Sam will obtain employment as a CAD operator.

After graduation from high school, Jerry will work in an auto repair shop to gain experience in the automotive repair industry.

3. Courses of Study

The IEP that will be in effect when the student turns age 14 must address the courses of study needed to assist the student in reaching his or her postsecondary goals. Courses of study are defined as a multi-year description of coursework to achieve the student's desired post-school goals, from the student's current to anticipated exit year. The courses of study may be identified on the student's IEP as a list of courses of study or a statement of instructional program, as appropriate for the student.

The IEP team reviews the required courses leading to graduation or completion of a school program, and helps the student select courses and other educational experiences that are most likely to move the student toward his or her desired postsecondary goals (e.g., employment, education/training, independent living). The IEP team should work closely with the guidance counselor who keeps a transcript of required courses toward graduation. The IEP team should review the transcript and ensure that the courses identified support the student's postsecondary goals. The guidance counselor may be involved in the IEP meeting should there be changes to the coursework.

Each year the IEP team, including the student, reconsiders the student's postsecondary goals and aligns the courses of study with those desired goals. The decisions regarding the courses of study should relate directly to where the student is currently performing and what he or she wants to do after graduation. The IEP team may take the following steps:

- Review elective courses available and identify courses of study based on student's needs, taking into account preferences and interests.
- Consider other educational experiences: work study, community-based instruction, independent living, and self-determination.
- Consider whether any prioritization is necessary.

The connection between the student's postsecondary goals and the courses of study should be obvious. To help develop the connection, the IEP team may wish to respond to the following questions:

- Do the transition services include courses of study that focus on improving the academic and functional achievement of the child to facilitate the child's movement from school to post-school objectives?
- Do the transition services include courses of study that align with the student's postsecondary goal(s)?

4. Age 16 Transition Services

Beginning at age 16, or younger, if determined appropriate by the IEP team, each IEP of a student with a disability must also contain an additional statement of needed transition services for the child,

including, when appropriate, a statement of the interagency responsibilities or any needed linkages (K.S.A. 72-987(c)(8)). This requirement is in ADDITION to the age 14 requirements.

The age 16 transition services should be a coordinated set of activities or strategies that support the student in achieving their desired postsecondary goals. The IEP team builds this set of activities from information contained in the PLAAFP that describe where the student is currently performing in relationship to his/her postsecondary goals. The IEP team should consider the individual child's needs, taking into account the child's strengths, preferences, and interests. With that as the starting point, the team needs to determine what skills, services, or supports the student will need in order to successfully transition from where (s)he is now to his/her desired postsecondary goals. For each postsecondary goal, there should be consideration of transition services in the areas of (a) instruction, (b) related service(s), (c) community experience, (d) development of employment and other post-school adult living objective, (e) if appropriate, acquisition of daily living skill(s), or (f) if appropriate, provision of a functional vocational evaluation listed in association with meeting the postsecondary goal. The LEA may also include the multi-year plan for activities and transition services in the IEP as part of the Age 16 Transition Services. If the LEA decides to include a multi-year plan there must be a clear distinction between those activities/services that are being provided for the current IEP year and the activities or services that are being planned for the future.

The age 16 (and over) transition services statement must:

1. Document activities & transition services for the current IEP year and identify the responsible party/agency.
2. Document who will provide or pay for which services if an agency outside of the school has responsibility.

The IEP team, including the student and parent, may find it helpful to answer the following questions as the age 16 transition services are developed:

- What services, supports, or programs does this student currently need? (For example, specially designed instruction, accommodations and modifications, related services, job coaching, special transportation, etc.)

Then, based on what the student currently needs:

- What additional services, supports, activities, or programs will this student need in order to achieve his or her desired postsecondary goals and lead to success as the student leaves high school?
- Are linkages being made to the needed post-school services, supports or programs before the student leaves the school setting?
- Do the age 16 transition services include strategies to ensure students and parents are aware of, and connected to, needed post-school services, programs and supports before the student exits the school system?

The age 16 transition services should be developed as a coordinated set of activities by considering each of the following areas:

- Instruction the student needs to receive in specific areas to complete needed courses, succeed in the general curriculum and gain needed skills post high school.
- Related services the student may need to benefit from special education while in school. Generally, the IEP team should also begin to consider related service needs the student may have as he or she enters the adult world. If related services will be needed beyond school, the IEP should identify, as appropriate, linkages to adult agencies or providers before the student leaves the school system.
- Community experiences that are provided outside the school building or in community settings. Examples may include community-based work experiences and/or exploration, job site training, banking, shopping, transportation, counseling and recreation activities.

- Employment or other post-school adult living objectives the student needs to achieve desired post-school goals. These could be services leading to a job or career or those that support activities done occasionally such as registering to vote, filing taxes, renting a home, accessing medical services, applying for insurance or accessing adult services such as Social Security Income (SSI).
- Acquisition of daily living skills (if appropriate). Daily living skills are those activities that adults do every day (e.g., preparing meals, budgeting, maintaining a home, paying bills, caring for clothing, grooming, etc.).
- Functional vocational evaluation (if appropriate). This is an assessment process that provides information about job or career interests, aptitudes and skills. Information may be gathered through situational assessment, observation, or formal measures and should be practical. The IEP team could use this information to refine services outlined in the IEP.

The IEP team must determine, to the extent appropriate, any other public agency that must be invited to the IEP meeting because they are likely to be responsible for providing or paying for transition services. The parents, or a student who is 18 years of age, must provide consent for the school to invite any outside agency to the IEP meeting (K.A.R. 91-40-17(g); 34 C.F.R. 300.321(b)(3)). Consent from the parent (or adult student) is required when inviting outside agencies to ensure the protection of confidentiality of information under FERPA (Federal Register, August 14, 2006, p. 46672). (See Consent to Invite Noneducation Agency to IEP Meeting form at http://www.ksde.org/Default.aspx?tabid=2832).

It is expected that transition services to be provided by agencies other than the school will be included in the IEP. If an agency other than the school, fails to provide the transition service in the IEP that it had agreed to provide, the school must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child that are set out in the IEP (34 C.F.R. 300.324(c)(1)). Alternative strategies might include the identification of another funding source, referral to another agency, the public agency's identification of other district-wide or community resources that it can use to meet the student's identified needs appropriately or a combination of these strategies.

The school, or any participating agency, including the State vocational rehabilitation agency, is responsible to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency. This is to be done without delay. The school may claim reimbursement from an outside agency that failed to provide or pay for the service pursuant to an interagency agreement or other financial arrangement (34 C.F.R. 300.324(c)(2); 34 C.F.R. 300.103; 34 C.F.R. 300.154). If a participating agency, other than the school district, fails to provide the transition services described in the IEP, the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child.

For students incarcerated in an adult correctional facility whose eligibility under IDEA will end because they will turn 21 years old before they will be eligible to be released from prison, the requirements relating to transition planning and transition services do not apply (K.A.R. 91-40-5(c)(2)(B); 34 C.F.R. 300.324(d)).

g. Age of Majority

Beginning at age 17, the IEP team must inform the student and the parents that at the age of majority under State law (age 18 in Kansas), the rights under IDEA will transfer to the student. The school must provide documentation in the IEP, at least one year before the student is 18, that the student has been informed of rights provided in the federal and state law that will transfer to the student. If parents believe that their child may not be able to make educational decisions, they may wish to find out about obtaining a limited guardianship or some other legal means to support the student upon reaching the age of majority. It is important for the school to provide information and resources to the student and parents

early in the IEP process to assist them in understanding the implications of the transfer of these rights under IDEA (K.S.A. 72-989; K.A.R. 91-40-18(e)).

h. Statement of Special Education and Related Services

Each IEP for a child with an exceptionality must include a statement of:

- the special education services
- related services
- supplementary aids and services (including accommodations), based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child
- a statement of the program modifications, and
- supports for school personnel that will be provided for the child to:
    - advance appropriately toward attaining the annual goals;
    - be involved in and make progress in the general education curriculum, and participate in extracurricular and other nonacademic activities; and
    - be educated and participate with other children with exceptionalities and nonexceptional children in these activities. (K.S.A. 72-987(c)(4))

Each of these areas must be addressed on the IEP even if the way it is addressed is indicating the child does not need the service. All services; special education and related services, supplementary aids and services, program modifications, and supports for school personnel, as outlined in the IEP (including transition services) must indicate the projected date for the beginning of the services and the anticipated frequency, location, and duration of those services(K.S.A. 72-987(c)(7)). It is possible that service dates may vary throughout the year and should be indicated as such on the IEP.

The amount of services to be provided must be stated in the IEP so that the level of the school's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP (Federal Register, August 14, 2006, p. 46667).

(For more information, see Chapter 5, Special Education and Related Services.)

i. Least Restrictive Environment

Least restrictive environment (LRE) means the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled (K.A.R. 91-40-1(ll)). The IEP must contain an explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education class, and in extracurricular and nonacademic activities (K.S.A. 72-987(c)(5)). Children with disabilities are to be removed from the general education environment only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services or modifications cannot be achieved satisfactorily (K.S.A. 72-976(a)).

In determining the location for special education and related services the IEP team must consider the continuum of educational placements necessary to implement the IEP. The school must ensure that the parents of each child are members of any group that makes decisions on the educational placement of their child. The placement decision must be made in conformity with the requirement of providing services in the least restrictive environment (LRE). The educational placement is to be:

- determined at least annually; and
- based upon the child's IEP. (K.A.R. 91-40-21)

Although placement in the LRE is not legally required for children identified as gifted, the provision of FAPE still requires that the IEP team make an individualized placement determination for the child. Additionally, parents of gifted children must be part of the team making placement decisions. (For additional information on Educational Placement and Least Restrictive Environment see Chapter 6.)

(i) As part of an initial evaluation, if appropriate, and as part of any reevaluation under this section, the IEP team and other qualified professionals, as appropriate, shall:
(1) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and
(2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
(A) Whether the child is an exceptional child and the educational needs of the child, or in the case of a reevaluation of a child, whether the child continues to be an exceptional child and the current educational needs of the child;
(B) the present levels of academic and related needs of the child;
(C) whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
(D) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
(j) Each agency shall obtain informed parental consent prior to conducting any reevaluation of an exceptional child, except that such informed consent need not be obtained if the agency can demonstrate that it took reasonable measures to obtain such consent and the child's parent failed to respond.
(k) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be an exceptional child and the child's educational needs, the agency:
(1) Shall notify the child's parents of:
(A) That determination and the reasons for it; and
(B) the rights of such parents to request an assessment to determine whether the child continues to be an exceptional child and the child's educational needs; and
(2) shall not be required to conduct such an assessment unless requested by the child's parents.
(l) (1) Except as provided in paragraph (2), an agency shall reevaluate a child in accordance with this section before determining that the child is no longer an exceptional child.
(2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.

B. NEED FOR THE REEVALUATION

A reevaluation must be conducted if the school determines that the education or related services needs, including improved academic achievement and functional performance of the child, warrant a reevaluation, or, if the child's parent or teacher requests a reevaluation. A reevaluation must be conducted before a school determines a child is no longer a child with an exceptionality. However, a reevaluation shall not occur more than once a year, unless the parent and the school agree otherwise (K.S.A. 72-986(h)(1)(2)(A); 34 C.F.R. 300.303(b)(1)).

If a parent requests a reevaluation, or more than one reevaluation per year, and the school disagrees that a reevaluation is needed, the school must provide Prior Written Notice to the parent that explains, among other things, why the school refuses to do the reevaluation and the parent's right to pursue the reevaluation through mediation or due process.

A reevaluation is to occur at least once every 3 years, unless the parent and the school agree that a reevaluation is unnecessary (K.S.A. 72-986(h)(2)(B); 34 C.F.R. 300.303(b)(2)). Prior to conducting a reevaluation the parent and the school shall determine whether a reevaluation is needed. They must consider the child's educational needs, which may include whether the child is participating in the general education curriculum and being assessed appropriately. The parent and the school will discuss the advantages and disadvantages of conducting a reevaluation, as well as what effect a reevaluation might have on the child's educational program (Federal Register, August 14, 2006, p. 46640, 46641). Documentation of this agreement must be maintained (See sample Re-evaluation Not Needed Agreement Form at http://www.ksde.org/Default.aspx?tabid=2832.).

There are circumstances when a reevaluation is not required:

1. before the termination of a child's eligibility due to graduation with a regular diploma, however, Prior Written Notice is required for the change of placement; or
2. due to exceeding the age of eligibility for FAPE, which would be the end of the school year in which the student becomes 21 years of age. Prior Written Notice is required. (K.S.A. 72-986(l)(2); 34 C.F.R. 300-305(e)(2))
3. when the school and parent agree that a reevaluation is not needed.

If a student drops out of school, the school is obligated to consider the student's FAPE entitlement very carefully. The school has an obligation to report the student's truancy to the District Attorney or County Attorney if the student is younger than age 18. The school may want to consult with the school's attorney on this issue as well.

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.

F. SUMMARY OF PERFORMANCE (SOP)

A Summary of Performance (SOP) is required under the reauthorization of the Individuals with Disabilities Education Act of 2004 for a child with a disability whose eligibility under special education terminates due to graduation with a regular diploma, or due to exceeding the age of eligibility. The local education agency must provide the child with a summary of the child's academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals (K.S.A. 72-986(m); 34 C.F.R. 300.305(e)(3). This requirement applies only to children with disabilities, therefore, an SOP does not need to be completed for students identified as gifted.

The purpose of the SOP is to transfer critical information that leads to the student's successful participation in postsecondary settings. It includes a summary of the achievements of the student with current academic, personal and career/vocational levels of performance. Information may be included as part of the summary based on assessment findings and team input. Assessment data and accommodations included in the summary should be written in functional terms easily understood by the student. Any supporting documents should be appropriately referenced and included with the summary. Signatures by the student and IEP team members are encouraged as verification that the contents of the summary have been explained, but are not required.

The SOP must, at a minimum, address the following:

- **Academic achievement**: Information on reading, math, and language grade levels, standardized scores, or strengths.
- **Functional performance**: Information on learning styles, social skills, independent living skills, self-determination, and career/vocational skills.
- **Recommendations**: Team suggestions for accommodations, assistive services, compensatory strategies for post-secondary education, employment, independent living, and community participation.

The Summary of Performance is intended to assist the student in transition from high school to higher education, training and/or employment. This information is helpful under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) in establishing a student's eligibility for reasonable accommodations and supports in postsecondary settings. It is also useful for the Vocational Rehabilitation Comprehensive Assessment process. However, recommendations in a student's SOP do not assure that an individual who qualified for special education in high school will automatically qualify for accommodations in a postsecondary education or employment setting. Post-secondary settings will continue to make ADA and Section 504 eligibility decisions on a case-by-case basis based on their criteria.

Since the SOP must be provided to the student with a disability whose eligibility terminates due to graduation or age, it is reasonable to conclude that the SOP must be completed and provided to the student by the end of the final year of a student's high school education. That does not mean that it cannot be completed and provided to the student prior to graduation. The timing of completion of the SOP may vary depending on the student's postsecondary goals. If a student is transitioning to higher education, the SOP may be necessary as the student applies to a college or university. Likewise, this information may be necessary as a student applies for services from state agencies such as vocational rehabilitation. In some instances, it may be most appropriate to wait until the spring of a student's final year to provide an agency or employer the most updated information on the performance of the student. (See sample form at http://www.ksde.org/Default.aspx?tabid=2832#misc.)

K.S.A. 72-986
(m) For a child whose eligibility for services under this act terminates under either of the circumstances described in subsection (l), the agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

G. PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

For some situations discussed within this chapter, parents must receive Prior Written Notice, and for some situations the school must obtain informed parent consent. (See sample Prior Written Notice and Consent forms at http://www.ksde.org/Default.aspx?tabid=2832.)

The following chart may be useful to districts in determining when a reevaluation, Prior Written Notice and parent consent, as well as a Summary of Performance (SOP) are needed:

Reason for Discontinuing Services	Reevaluation Required	Prior Written Notice Required	Parent or Adult Student Consent Required	SOP Required
No longer eligible for special education and related services	Yes	Yes	Yes	No
Graduation	No	Yes	No	Yes
End of school year in which student reached age 21	No	Yes	No	Yes
Revokes consent for special education services	No	Yes*	No	No
Drops out of school	No	No	No	No

QUESTIONS AND ANSWERS ABOUT DISCONTINUING SPECIAL EDUCATION SERVICES

1. What if the student no longer requires special education services?

The IEP Team must determine whether the student no longer requires special education services based on data from a reevaluation. If, after a reevaluation, the team determines that the student is no longer eligible for special education it must give parents Prior Written Notice of that determination and that the team is proposing to end services. The school must also request that the parent give written consent for the end of services. The IEP Team may also determine that the student qualifies as a student with a disability under Section 504 and refer the student to the Section 504 team, which would write a Section 504 plan for him/her.

2. What is required when the student graduates from high school?

The school must provide the student, if age 18, and the parents with Prior Written Notice of exiting special education. The Prior Written Notice will clearly state that the student will no longer be entitled to receive special education services from the district after graduation. Informed parent consent is not required. Additionally, the school must provide the student with a Summary of Performance.

*chart corrected 11/8/2011

findings of facts and conclusions. Both the record of the hearing and the decision of the special education due process hearing officer must be provided at no cost to the parents (K.S.A. 72-973(b)(7)(8); K.S.A. 72-975(e)).

F. REACHING A DECISION

The 45 day timeline for completion of a due process hearing starts on the day after one of the following events occurs:

- both parties to the due process proceedings agree, in writing, to waive the resolution meeting;
- the parties begin a resolution meeting or a mediation but agree, in writing, that resolution of their dispute is not possible before the end of the 30 day resolution period; or
- both parties agreed, in writing, to continue to engage in mediation beyond the end of the 30 day resolution period, but later, one, or both, of the parties withdraws from the mediation. (K.A.R. 91-40-28(g))

The special education due process hearing must be completed within 35 days of the receipt of the notice of due process. A Special education due process hearing officer may grant extensions of time upon request of either party, unless the due process hearing is an expedited hearing (K.S.A. 72-975(c)).

After the close of the special education due process hearing the special education due process hearing officer must render a decision on the matter, including findings of fact and conclusions, within 10 calendar days. The decision must be written or, at the option of the parent, must be an electronic decision. Any action of the special education due process hearing officer resulting from a due process hearing shall be final, subject to appeal and review (K.S.A. 71-973(h)).

A written notice of the result of any hearing must be given to the school providing for the hearing and must be sent by certified mail to the parent, or attorney of the child within 24 hours after the result is determined. In addition, the special education due process hearing officer must delete personally identifiable information from the report and send a copy to the State Board of Education, which must make the decision available to the Special Education Advisory Council. (K.S.A. 72-974(a); 34 C.F.R. 300.509(d))

G. APPEALING THE DUE PROCESS DECISION

If school personnel or the parents are dissatisfied by the findings of the special education due process hearing officer, either party may file a notice of appeal to the Commissioner of the State Department of Education not later than 30 calendar days after the date of the postmark on the written decision. A review officer appointed by the State Board of Education must conduct an impartial review of the hearing and make an independent decision based on the review. The review officer must conduct the review according to the requirements of K.S.A. 72-974 and 72-975. The review must be completed and the decision sent to both parties and the State Board within 20 calendar days after the notice of appeal is filed. Personally identifiable information is also deleted from the report, and is made available to the Special Education Advisory Council.

The decision of the review officer is final unless either party chooses to bring a civil action in either State or Federal district court.

Whenever an order of a due process hearing officer or state review officer requires a local education agency (LEA) to take some action, and no further appeal is available, Special Education Services will provide written notification to the LEA that it must provide Special Education Services with documentation of compliance with the order. The notification will identify the specific documentation to be provided and the date by which the documentation must be delivered to Special Education Services. Whenever an order of a due process hearing officer or state review officer requires the State Educational Agency (SEA) to take some action, and no further appeal is available, Special Education Services will identify the specific written documentation needed to verify that the order has been implemented, and produce the identified documentation. The documentation will be placed in the SEA due process file, and a copy of the documentation will be sent to the hearing officer and to the prevailing party.

The chart on the previous page illustrates the most important requirements for the legal course of action for school personnel to follow when removing a student and the disciplinary reasons. The chart may be used for disciplinary removals involving code of conduct violations and for violations relating to weapons, drugs, serious bodily injury or behavior substantially likely to result in injury to the child or others.

C. SHORT TERM REMOVALS (NOT A CHANGE OF PLACEMENT)

(ROW 1 ON DISCIPLINE CHART)

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

When proposing a short-term suspension for a child with a disability, school officials must also consider the provisions of the Kansas Pupil Suspension and Expulsion Act, K.S.A. 72-8901 et seq. This State law sets forth due process requirements that apply to all children in implementing a suspension. This law requires (1) providing notice, and (2) the opportunity for an informal hearing before a child is removed from school.

K.S.A. 72-991
(a) School personnel may order a change in the placement of a child with a disability:
(1) To an appropriate interim alternative educational setting or other setting, or the short-term suspension of the child…
K.S.A. 72-8902.
(a) A suspension may be for a short term not exceeding 10 school days, or for an extended term not exceeding 90 school days. An expulsion may be for a term not exceeding 186 school days. If a suspension or expulsion is for a term exceeding the number of school days remaining in the school year, any remaining part of the term of the suspension or expulsion may be applied to the succeeding school year.
(f) A formal hearing on a suspension or expulsion may be conducted by any person or committee of persons authorized by the board of education to conduct the hearing.

D. SUBSEQUENT SHORT-TERM REMOVALS (NOT A CHANGE IN PLACEMENT)

(ROW 2 ON DISCIPLINE CHART)

When a child with a disability has more than a single suspension in a school year, school officials should carefully monitor the cumulative number of school days of suspension and make decisions about the effect of imposing additional short-term suspensions. If school officials order two or more short-term suspensions of a child with a disability during a school year, these suspensions are not a change in placement for disciplinary reasons if the suspensions do not constitute a pattern of removals.

School officials as defined in K.A.R. 91-40-33(b), means a regular education administrator; the Director of special education or director designee; and a special education teacher of the child with a disability.

To determine if a change of placement has occurred, school officials must consider whether the series of suspensions constitutes a pattern of removals. School officials may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements, is appropriate for a child with a disability who violates a code of student conduct. (34 C.F.R. 300.530(a))

When a series of suspensions/removals total more than 10 school days in a school year, school officials should determine whether a pattern of removals has developed by considering:

- Whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals
- Other factors such as:
  - The length of each removal;
  - The total amount of time the child has been removed; and
  - The proximity of the removals to one another.

- On the 11th school day of removal, the school must begin providing appropriate special education and related services. Note that the determination of services needed as a result of a disciplinary change of placement is not made by the school officials as in the previous situations. Instead, the IEP team decides on these services and where they will be provided.
- The school, the parent and relevant members of the child's IEP team (as determined by the parent and the school) must determine if the child's violation of the school's code of student conduct was a manifestation of his or her disability.
- The school must provide parents with prior written notice of meeting before convening meetings regarding the manifestation determination and the services to be provided during disciplinary removals (K.A.R. 91-40-25). However, the school is required to give only 24 hours prior (written) notice of a meeting to the child's parents (K.A.R. 91-40-38(d)).

When a disciplinary change of placement occurs, the IEP team, including the parent, determines the special education and related services to be provided during the removal. However, parental consent for the disciplinary change in placement is not required.

1. Manifestation Determination

As soon as practical, but not later than 10 school days after the date on which the decision is made to change the placement of a child with a disability because of a violation of a student code of conduct, the representative of the school, the parent and other relevant members of the child's IEP team, as determined by the parent and the school, must meet to review:

- all of the relevant information in the child's file,
- the child's IEP,
- any teacher observations, and
- any relevant information provided by the parent.

Based on its review of all the relevant information, the group must determine if the conduct in question was:

a. caused by, or had a direct and substantial relationship to the child's disability; or
b. the direct result of the school's failure to implement the child's IEP. (K.S.A. 72-991a(d)(2),(e)(1); 34 C.F.R.300.530(e)(1)).

If it is determined by the group that the conduct of a child was a result of either "a" or" "b" above, then the conduct must be determined to be a manifestation of the child's disability. (See Manifestation Determination Form at: http://www.ksde.org/Default.aspx?tabid=2832.)

2. Determination Behavior WAS a Manifestation of the Disability

If the school, the parent and other relevant members of the child's IEP team determine that the student's behavior was the direct result of the school's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

If the school, the parent and other relevant members of the IEP team determine that the child's behavior was a manifestation of the disability, the IEP team must:

a. Return the child to the placement from which the child was removed, unless the parent and the school agree to a change of placement as part of the modification of the behavioral intervention plan; and
b. Either:
    i. Conduct a functional behavioral assessment, unless the school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    ii. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior. (See Functional Behavior Assessment information at the Project STAY website, http://projectstay.com/resources_and_tools.shtml.)

6. Are parents entitled to be notified when their child is suspended or expelled for behavior that is subject to these discipline provisions?

Yes. If contemplating a suspension or an expulsion of a child with a disability, school districts must follow the requirements of K.S.A. 72-8902. For long-term suspensions or expulsions, the school district must also provide parents the required notice, under K.S.A. 72-991(d), of the school's decision to make a disciplinary change of placement as well as a copy of the Parent Rights document (34 C.F.R. 300.523(a)(1)).

7. What steps must be completed by the end of the 10th school day for a student to be suspended for a long term, or expelled from school, for behavior not involving weapons, drugs, or serious bodily injury?

In addition to the two notice requirements discussed in Question #6, the school must conduct a manifestation determination. K.S.A. 72-991a(d)(2) requires a manifestation determination within 10 school days from the decision to impose a long-term suspension or an expulsion. School personnel may not order a long-term suspension or expulsion of a child with a disability until a manifestation determination has been completed (K.S.A. 72-8902).

8. Many high schools have a point system for behavioral infractions, with a certain number of points leading to a suspension or other disciplinary actions. The principal has knowledge about a student's total points. Does this constitute the school's having knowledge of a potential disability?

Not necessarily. A student who is frequently violating the school's code of conduct is not necessarily a child with a disability. Such a child should be referred to the building's general education intervention (GEI) or problem-solving team, which would provide a method of addressing the needs of a student who is experiencing behavior problems in school. The problem-solving team may use general education interventions and then make a determination if other evaluations or a referral should be made, as appropriate.

9. Who determines the interim alternative educational setting?

It depends on the behavior and the situation in which the determination is being made. The school can determine the interim alternative educational setting for a short-term removal for 10 consecutive school days or less, or for a short-term removal of more than 10 days that does not constitute a change in placement. When the child is being removed for more than 10 school days and the behavior is not a manifestation of the child's disability, the IEP team will determine the interim alternative educational setting.

For behavior relating to drugs, weapons, or serious bodily injury the decision regarding IF a student is ordered to an interim alternative educational setting is made by designated school officials. However, the decision of WHERE that setting will be is made by the child's IEP Team (K.S.A. 72-991a(c); 34 C.F.R. 300.531). For behavior substantially likely to result in injury to the child or others, the decision regarding an appropriate interim alternative educational setting is made by a special education due process hearing officer (34 C.F.R. 300.532(b)(2)(ii)).

10. The law is specific in defining a pocket knife with a blade of more than 2-1/2 inches in length as being a weapon. What about a scalpel, X-ACTO knife, or box cutter?

These items could very well be considered a weapon under the law, which defines a weapon, in part, as any instrument or material that is used for, or is readily capable of, causing death or serious bodily injury. The exception for a knife having a blade of less than 2-1/2 inches in length applies only to "pocket" knives (K.S.A. 78-8902(a)(3)(C)).