

# CHAPTER 1

## PARENT RIGHTS IN SPECIAL EDUCATION (PROCEDURAL SAFEGUARDS)

### INTRODUCTION

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." This chapter will focus on the procedural safeguards related to evaluations and to the development and revision of the IEP. Later chapters will address procedures regarding dispute resolution processes, such as due process hearings, mediation and formal complaints to the state department of education.

The procedural safeguards specified in the IDEA were primarily designed to help schools and parents work together to develop effective educational programs for children with disabilities. In Henry Hendrick Hudson Central School District v. Rowley, 102 S.Ct. 3034 (1982), the United States Supreme Court said:

*"...we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Commissioner for approval, demonstrate the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP."*

This chapter provides information to assist schools in ensuring that parents and students receive their rights as established in IDEA-2004. The following topics will be discussed:

- A. Parent Participation
- B. Definition of Parent
- C. Parent Rights In Special Education Notice
- D. Prior Written Notice
- E. Parent Consent
- F. Parent Consent Requested but Not Provided
- G. Notice of IEP Meeting
- H. Rights for Parents of Gifted Students
- I. Education Advocates
- J. Student Rights at Age 18

### A. PARENT PARTICIPATION

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). Schools are to ensure that parents have the opportunity to be members of the IEP team that makes decisions on the educational placement of their child. Although logistically this increased involvement of parents may present challenges in arranging convenient

meeting times, it should result in decisions that are individualized to meet the unique needs of students and in the development of a closer, more collaborative relationship with parents. Additionally, parents have a responsibility to participate and provide their input into their child's education. School teams recognize the contributions that parents can make to the process and how they can help ensure their child's educational progress (K.A.R. 91-40-25(a); K.A.R. 91-40-17(a); 34 C.F.R. 300.501(b)(c)).

Every child with an exceptionality is entitled to receive a free appropriate public education (FAPE). Parent rights are intended to ensure that children receive FAPE. FAPE is defined as special education and related services that meet the following criteria:

1. are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the state board;
3. include an appropriate preschool, elementary, or secondary school education; and
4. are provided in conformity with an individualized education program. (K.A.R. 91-40-1(z))

Parents are to be provided notice of meetings related to eligibility, evaluation, reevaluation, IEP development, provision of a free appropriate public education (FAPE) for their child and educational placement decisions, to ensure that they have the opportunity to participate in the meetings (See Section G of this chapter.). The notice requirements are the same as for notice of an IEP meeting (K.A.R. 91-40-17(a)(b)(1); K.A.R. 91-40-21(c)(1)(d); K.A.R. 91-40-24(b)(c); 34 C.F.R. 300.501(b)(2); 34 C.F.R. 300.322(a)(b)(1)).

The school must make reasonable efforts to ensure that the parents understand, and have the opportunity to participate in these meetings, including arranging for an interpreter for parents with deafness, or for parents whose native language is other than English. The parent and the school may agree to use alternative means of meeting participation, such as video conferences or conference calls (K.A.R. 91-40-17(c); K.A.R. 91-40-25(d); 34 C.F.R. 300.322(e)). These meeting requirements do not apply to informal or unscheduled conversation of school personnel on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting (K.A.R. 91-40-25(e); 34 C.F.R. 300.501(b)(3)).

In addition to involving parents in making decisions about their children, schools should involve parents of children with exceptionalities in their school improvement planning process. Parents should be involved in designing, evaluating, and where appropriate, implementing school improvement plans. In Kansas, school improvement plans are implemented under Quality Performance Accreditation (QPA), which is built upon standards for student educational performance and includes Special Education Focused Assistance and Monitoring (FAM). Each school should include parents of students with exceptionalities on each School Site Council.

The Kansas special education law (K.S.A. 72-961-997), known as the Special Education for Exceptional Children Act, revised in 2006, (referred to here as the "State statute") also sets forth parental responsibilities. This law requires parents to see that their child with a disability (not giftedness) attends school so that their child can receive the special education and related services on the child's IEP, or to provide such services privately. This means that for a child with a disability who has an IEP (or IFSP ages 3-5) compulsory attendance may begin as early as age 3 (K.S.A. 72-977).

**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.

**K.A.R. 91-40-17. IEP team meetings and participants.**

(a) Each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP 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;

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

- (b) The notice required in subsection (a) of this regulation shall meet the following requirements:
- (1) The notice shall indicate the purpose, time, and location of the IEP team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services.
  - (2) If the meeting is for a child who has been receiving special education services under the infant and toddler provisions of the federal law but is now transitioning to the provisions for older children, the notice shall inform the parents that they may require that a representative of the infant and toddler program be invited to attend the initial IEP team meeting to assist with the smooth transition of services.
  - (3) The notice shall indicate the following information, if a purpose is to consider postsecondary goals and transition services for the child:
    - (A) The agency will invite the parents' child to attend.
    - (B) One of the purposes of the meeting will be to consider the postsecondary goals and needed transition services for the student.
  - (4) The parents have the right to invite to the IEP team meeting individuals whom the parents believe to have knowledge or special expertise about their child.
- (c) If neither parent of an exceptional child can be physically present for an IEP team meeting for the child, the agency shall attempt other measures to ensure parental participation, including individual or conference telephone calls.
- 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.
- K.A.R. 91-40-25. Opportunity to examine records and participate in meetings.**
- (a) Each agency shall allow the parents of an exceptional child an opportunity to inspect and review all education records and participate in any meeting concerning their child with respect to the following:
- (1) The identification, evaluation, or education placement of the child; and

## B. DEFINITION OF PARENT

School personnel must determine the appropriate person(s) to make educational decisions on behalf of the child. Those individuals have a right to receive notice, give or revoke consent, file formal complaints, request mediation, file for a due process hearing, give or deny permission for release of records, etc. (See KSDE Memo: "Definition of a Parent" at <http://www.ksde.org/Default.aspx?tabid=614>.)

- In Kansas "parent" is defined as:
- A natural (biological) parent;
- An adoptive parent;
- A person acting as a parent;
- A legal guardian;
- An education advocate; or
- A foster parent, if the foster parent has been appointed the education advocate of an exceptional child. (K.S.A. 72-962(m); 34 C.F.R. 300.30)

"Person acting as a parent" means a person such as a grandparent, stepparent or other relative with whom a child lives, or a person other than a parent or relative who is legally responsible for the welfare of a child.

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

If parents are divorced, regardless of which parent has primary custody, the school must provide Prior Written Notice of any special education action to both parents, even if only one parent has the right to consent, unless a court order precludes this from happening. This applies to all special education notice requirements including notice of an IEP meeting. If the school is only aware of one parent's address, the school must make reasonable efforts to locate the other parent in order to provide notice. However, consent from one parent is sufficient. In the event that the school receives consent forms from both parents, with one parent providing consent for the action and the other denying consent, the school is deemed to have received consent and must fulfill its obligation to provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

The following checklist is provided as a guide to school personnel to help determine the legal educational decision maker:

Figure 1-3

### WHO CAN GIVE CONSENT FOR EDUCATIONAL DECISIONS?

1. **Parents are available**
  - A. **Natural (biological) parent(s):** If parents are divorced, notify both parents unless a court order precludes this from happening. Consent from one parent is sufficient even if the other parent refuses to consent.
  - B. **Adoptive parent(s):** If adoption is not final, an education advocate is needed; documentation is the 'Decree of Adoption'.
  - C. **Guardian:** Guardianship has been completed and is documented with "Letters of Guardianship" issued by a court.
2. **Parent is unknown or unavailable (Person acting as a parent)**
  - A. **Person Acting as a Parent:** A person, such as a grandparent, stepparent or other relative with whom a child lives, or a person other than a parent who is legally responsible for the welfare of a child.
  - B. **Education Advocate:** Appointment as an education advocate has been completed and is documented with a Letter of Appointment from Families Together.
  - C. **Foster parent:** Only if appointment as an education advocate has been completed and is documented with a Letter of Appointment from Families Together.
3. **The student at age 18:** At age 18 the student becomes his/her own educational decision-maker unless determined by a court to be incompetent.

#### K.S.A. 72-961

- (m) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as parent; (4) a legal guardian; (5) an education advocate; or (6) a foster parent, if the foster parent has been appointed the education advocate of an exceptional child.
- (n) "Person acting as parent" means a person such as a grandparent, stepparent or other relative with whom a child lives or a person other than a parent who is legally responsible for the welfare of a child.
- (o) "Education advocate" means a person appointed by the state board in accordance with the provisions of section 13, and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child.

#### K.A.R. 91-40-27 Parent Consent

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

### C. PARENT RIGHTS IN SPECIAL EDUCATION NOTICE

To ensure that parents have knowledge about their rights under the special education law, schools are required to provide a copy of the Parent Rights in Special Education Notice to the parents:

- At least one time in a school year; and
- Upon a referral or parent request for initial evaluation;
- First formal complaint or due process complaint filed in a school year;
- Upon a disciplinary removal from school that constitutes a change in placement; and
- Upon parent request.

These are the only times when the Parent Rights Notice is required to be provided. IDEA-04 eliminated the requirement to provide the Parent Rights Notice with the notification of each IEP meeting.

The notice is to 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 language or mode of communication is not a written language, the school must translate the notice orally or use

another mode of communication so that the parent understands the content of the notice. Parents may elect to receive the Parent Rights Notice by electronic mail communication, if the school makes that option available (34 C.F.R. 300.504(a)(b); 34 C.F.R. 300.505). If the Parent Rights Notice is provided electronically the school should have a copy of the email sent to the parent and documentation that the notice was received. The school may place a current copy of the Parent Rights Notice on its Internet Web site if one exists (34 C.F.R. 300.504(b)). However, simply putting the notice on the school's website does not fulfill a school's obligation to provide notice to the parents.

The Parent Rights in Special Education Notice is referred to in this document as Parent Rights Notice, and is referred to as Notice of Procedural Safeguards in federal law (34 C.F.R. 300.504). Special Education Services has developed a model Parent Rights Notice that schools may use or substitute another version if it includes the required content. The model Parent Rights Notice (Procedural Safeguards) is available in English and Spanish at <http://www.ksde.org/Default.aspx?tabid=544> or by calling 1-800-203-9462.

The Parent Rights Notice must include a full explanation of all of the procedural safeguards available as identified in K.S.A. 72-988 and 34 C.F.R. 300.504(c):

**K.S.A. 72-988. Parental rights.**

- (a) The rights of parents of exceptional children shall include, but not be limited to, the rights specified in this section.
- (b) The parents of exceptional children shall have the right to:
- (1) Examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;
  - (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;
  - (3) receive the notice required by provision (2) in their native language, unless it clearly is not feasible to do so;
  - (4) present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child, subject to the requirements in section 8, and amendments thereto;
  - (5) request mediation in accordance with this act;
  - (6) consent, or refuse to consent, to the evaluation, reevaluation or the initial placement of their child and to any substantial change in placement of, or a material change in services for, their child, unless a change in placement of their child is ordered pursuant to the provisions of section 17, and amendments thereto, or the agency can demonstrate that it has taken reasonable measures to obtain parental consent to a change in placement or services, and the child's parent has failed to respond. If the parent fails to respond to the request for parental consent to a substantial change in placement or a material change in services, the agency must maintain detailed records of written and verbal contacts with the parent and the response, if any, received from the parent;
  - (7) be members of any group that makes decisions on the educational placement of their child;
  - (8) demand that their child remain in the child's current educational placement pending the outcome of a due process hearing, except as otherwise provided by federal law and this act;
  - (9) subject to the requirements of this act, request a due process hearing in regard to any complaint filed in accordance with provision (4) of this subsection, or as authorized in section 18, and amendments thereto;
  - (10) appeal to the state board any adverse decision rendered by a hearing officer in a local due process hearing;
  - (11) appeal to state or federal court any adverse decision rendered by a review officer in a state-level due process appeal;
  - and (12) recover attorney fees, as provided in the federal law, if they are the prevailing parties in a due process hearing or court action; however, only a court shall have the authority to award attorney fees, and such fees may be reduced or denied in accordance with federal law.
- (c) The state board shall develop a model form to assist parents in filing a complaint and due process complaint notice.
- (d) The state board shall develop, and thereafter amend as necessary, and distribute for use by agencies, a notice of the rights available to the parents of exceptional children under the federal law and this act. The notice shall include a full explanation of the rights and be made available in various languages and be written so as to be easily understandable by parents.
- (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). History. L. 1999, ch. 116, § 9; L. 2005, ch. 171, § 15; July 1.

**§ 300.504 Procedural safeguards notice.**

- (a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—
- (1) Upon initial referral or parent request for evaluation;
  - (2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;
  - (3) In accordance with the discipline procedures in § 300.530(h); and
  - (4) Upon request by a parent.
- (b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

- (c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, § 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, § 300.520, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to—
- (1) Independent educational evaluations;
  - (2) Prior written notice;
  - (3) Parental consent;
  - (4) Access to education records;
  - (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—
    - (i) The time period in which to file a complaint
    - (ii) The opportunity for the agency to resolve the complaint; and
    - (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
  - (6) The availability of mediation;
  - (7) The child’s placement during the pendency of any due process complaint;
  - (8) Procedures for students who are subject to placement in an interim alternative educational setting;
  - (9) Requirements for unilateral placement by parents of children in private schools at public expense;
  - (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
  - (11) State-level appeals (if applicable in the State);
  - (12) Civil actions, including the time period in which to file those actions; and
  - (13) Attorneys’ fees.
- (d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c). **300.505 Electronic mail.** A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

## D. PRIOR WRITTEN NOTICE

One of the procedural safeguards afforded to parents is the required Prior Written Notice of certain proposed special education actions. This notice must be provided to parents within a reasonable amount of time before the date the school proposes to initiate or change the

- identification,
- evaluation,
- educational placement of their child, or
- the provision of special education and related services (FAPE) to their child.

Prior Written Notice is also provided when the school refuses a parent's request to initiate or change the identification, evaluation, or educational placement of the child, or to make a change to the provision of special education and related services to the child (K.S.A. 72-988(b)(2); 34 C.F.R. 300.503(a)). When parents make a request for an evaluation (whether oral or written), KSDE has determined that 15 school days is a reasonable time for providing parents with a Prior Written Notice of the district’s proposal to conduct the evaluation or the district’s refusal to conduct the evaluation (See KSDE Memo, “Reasonable Time” to respond to parent request for evaluation, January 8, 2002 at <http://www.ksde.org/Default.aspx?tabid=614>).

Additionally, Prior Written Notice is provided to the parent when the school proposes to make a change in services or placement that is not substantial or material. However, parent consent is not required for either of these changes.

The Prior Written Notice provided to parents for each proposed special education action must contain specific information:

- a description of the action proposed or refused;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as basis for proposed or refused action;
- a description of the other options the IEP team considered and reasons why they were rejected;
- a description of any other factors relevant to the proposal or refusal;
- a statement that the parents have parental rights under the law; and
- sources for parents to contact to assist in understanding their rights. (K.S.A. 72-990)

- Additionally, if the notice is to propose to conduct an initial evaluation or a reevaluation, the notice must describe any evaluation procedures that the school proposes to conduct (K.S.A. 72-986(b); 34 C.F.R. 300.304(a)(1)).

The notice is to be provided in language understandable to the general public, and in the native language of the parent unless it is clearly not feasible to do so. Additionally, if the native language or other mode of communication of the parent is not a written language, the school must take steps to ensure that (a) the notice is translated orally, or by other means, to the parent in his or her native language or other mode of communication (such as sign language); (b) the parent understands the content of the notice; and (c) there is written documentation that these requirements are met. (K.A.R. 91-40-26(b)(c); 34 C.F.R. 300:503(b)(c))

Copies of these forms and notices may be accessed at the <http://www.ksde.org/Default.aspx?tabid=544>.

State statute and regulations (K.S.A. 72-990; K.A.R. 91-40-26) reflect Federal requirements for the content and provision of the Prior Written Notice (34 C.F.R. 300.503):

**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.

**K.S.A. 72-988. Parental rights.**

- (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;
- (3) receive the notice required by provision (2) in their native language, unless it clearly is not feasible to do so;

**K.S.A. 72-990. Notice of parental rights; contents.** 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.

**K.A.R. 91-40-26. Notice requirements.**

- (a) In providing any notice to the parents of an exceptional child in accordance with K.S.A. 72-990 and amendments thereto, regarding action proposed or refused by an agency, the agency shall ensure that the notice includes the following descriptions:
  - (1) a description of other options the agency considered and the reasons why those options were rejected; and
  - (2) a description of other factors that are relevant to the agency's proposal or refusal.
- (b) The notice shall be is written in a language understandable to the general public and is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (c) If the native language or other mode of communication of a parent is not a written language, the agency shall take steps to ensure all of the following:
  - (1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.
  - (2) The parent understands the content of the notice.
  - (3) There is written evidence that the requirements of paragraphs (1) and (2) of this subsection have been met.

Sources for Parents to Contact to Obtain Assistance in Understanding Parent Rights

In addition to school staff, there are other resources parents can contact for more information to understand their parent rights. IDEA provides funding for a Parent Training and Information (PTI) Center in each state. In Kansas, Families Together, Inc., is the PTI and provides training, information and resources for parents. Schools are encouraged to include any additional resources, including local resources that are knowledgeable and available to parents, including any of the following:

- Kansas State Department of Education, 800-203-9462 (in-State only)
- Families Together, 800-264-6343
- Disability Rights Center of Kansas (DRC), 877-776-1541
- Keys for Networking, 785-233-8732

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## E. PARENT CONSENT

Federal and State laws and regulations have specific requirements for requesting parent consent. Consent is always to be "informed consent." The Prior Written Notice must accompany the request for consent for each proposed special education action. The parent must agree in writing to the action for which his or her consent is sought (K.A.R. 91-40-27(a); 34 C.F.R. 300.300). In determining that informed consent is obtained, the following must be insured:

- a. The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
- b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- d. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). (K.A.R. 91-40-1(l); 34 C.F.R. 300.9)

### Parent consent is required for the following actions:

1. Consent to conduct an initial evaluation: If the child is enrolled in a public school or seeks to be enrolled in a public school and the parent does not provide consent (refuses) for initial evaluation, or the parent fails to respond to a request to provide consent, the school may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards available under special education laws and regulations, including mediation. If the parent refuses or does not respond, the school does not violate its obligation for the provision of FAPE to the child if it declines to pursue the evaluation (K.A.R. 91-40-27(a), (f)(3); 34 C.F.R. 300.300(a)).
2. Consent to conduct a reevaluation: If the parent refuses to consent to a reevaluation, the school may, but is not required to, pursue the reevaluation by using mediation or due process procedures. Additionally, informed parental consent is not required to conduct a reevaluation if the school can demonstrate that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond (K.A.R. 91-40-27(a), (f)(3),(g); 34 C.F.R. 300.300(c)).
3. Consent for the initial provision of services on the IEP: If the parent fails to respond or refuses to consent to initial services the school cannot use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child. Under these circumstances, the school does not violate its obligation for the provision of FAPE to the child for failure to provide the child with the special education and related services for which the public agency requested consent. In addition, the school is not required to convene an IEP meeting or develop an IEP for the child (K.A.R. 91-40-27(a)(f)(3)(g); 34 C.F.R. 300.300(b)).
4. Consent to make a substantial change in placement (more than 25% of the child's school day): If the parent refuses to consent to a substantial change in placement, the school may, but is not required to, pursue the proposed substantial change in placement by using mediation or due process procedures. Additionally, informed parental consent is not required to make a substantial change in placement if the school can demonstrate that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond; or (c) if the change is made under the discipline provisions in K.A.R. 91-40-33-38 (K.A.R. 91-40-27(a)(f)(1)(g); K.A.R. 91-40-1(rrr)).
5. Consent to make a material change in services (25% or more of any one service): If the parent refuses to consent to a material change in services, the school may, but is not required to, pursue the material change in services by using mediation or due process procedures. Additionally, informed parental consent is not required to make a material change in services if the school can demonstrate that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond; or (c) if the change is made under the discipline provisions in K.A.R. 91-40-33-38 (K.A.R. 91-40-27(a),(f)(1)(g);



K.A.R. 91-40-1(mm)). A change in the instructional methodology used to provide a service, even if the methodology is specified in an IEP, is not a material change in services.

6. Consent to add a new service, or to delete a service completely (100%): If the parent refuses to consent to add or delete a service, the school may, but is not required to, pursue the action by using mediation or due process procedures. Additionally, informed parental consent is not required to add or delete a service if the school can demonstrate that: (a) it made reasonable efforts to obtain such consent; and (b) the child's parent has failed to respond; or (c) if the change is made under the discipline provisions in K.A.R. 91-40-33-91-40-38. Consent is not required when the change in placement is due to graduation or exceeding the age of eligibility for special education services. (K.A.R. 91-40-27(a),(f)(1)(g))
7. Consent for evaluation or services in private school: If the parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent (refuses) for an initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the school may not use mediation or due process procedures to obtain consent. (K.A.R. 91-40-27(f)(2); 34 C.F.R. 300.300(d)(4)). When the school requests consent for an initial evaluation, a reevaluation or initial services and the parents of a private school or home-schooled child fails to respond or refuses to give consent, the school has met its obligation for child find.

The following requests for parent consent do not require that the parent be provided the Prior Written Notice as described in Section D above, however, parents must be fully informed about what they are being asked to provide consent.

8. Consent to excuse an IEP team member from IEP team meeting: A required member of the IEP Team, may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if, (a) the parent, in writing, and the school consent to the excusal; and (b) the IEP Team member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting (34 C.F.R. 300.321(e); K.S.A. 72-987(b)(2)(3)). (See Excusal from Attendance form at <http://www.ksde.org/Default.aspx?tabid=544> and see Chapter 4, Individualized Educational Program.)
9. Consent to invite outside agency: When the IEP team is considering a child's post-secondary goals and transition services needed to assist the child in reaching those goals, the school is required to invite a representative of any agency that is likely to provide or pay for transition services. The school must obtain parental consent to invite the representative from that agency because confidential information about the child would be shared at the meeting (K.A.R. 91-40-17(g)). (See Chapter 4, Individualized Educational Program and Consent to Invite Representative of Non-educational Agency to IEP Meeting at <http://www.ksde.org/Default.aspx?tabid=544>.)
10. Consent for Use of Private Insurance and Medicaid: When an IEP team has identified special education and related services for a child who is Medicaid eligible or is covered by private insurance the school must request parent consent at the time the services are determined, but at least annually, prior to accessing in order to access Medicaid or private insurance (See Memo Letter to Smith, January 23, 2007 at <http://www.ksde.org/Default.aspx?tabid=614>).

Parental consent is not required for the following actions:

- Review existing data as part of an initial evaluation or a reevaluation,
- Administer a test or other evaluation that is administered to all children unless consent is required of parents of all children (K.A.R. 91-40-27(e); 34 C.F.R. 300.300(d)); or
- Any other proposed special education action where parental consent is not specifically required by special education statutes and regulations. In these situations, only Prior Written Notice to the parent of the action proposed or refused is required (e.g., less than a material change in service or substantial change in placement, or the school refuses to conduct an initial evaluation or reevaluation).

**Requirements for Parental Notice and Consent  
(34 C.F.R. 300.503 K.S.A. 72-988)**

<b>Proposed Action by the School</b>	<b>Prior Written Notice (PWN)(300.503) or Notification</b>	<b>Requires Parental Consent</b>	<b>Due Process If Parent Refuses to Give Consent</b>
Initiate evaluation	PWN	Yes	May/not required
Refuse to initiate initial evaluation or reevaluation	PWN	No	N/A
Identification and Eligibility Determinations	PWN	No	N/A
Initial provision of IEP services (placement)	PWN	Yes	No
Reevaluation of a student	PWN	Yes	May/not required
Substantial change in placement (25% or more of student's day)	PWN	Yes	May/not required
Change in placement that is less than 25% of the student's day	PWN	No	N/A
Material change in services (25% or more of any one service), includes accommodations listed on the IEP	PWN	Yes	May/not required
Change in instructional methodology specified in IEP	PWN	No	N/A
Change in service that is less than 25% of the service being changed	PWN	No	N/A
Add a new service or delete one completely	PWN	Yes	May/not required
Evaluation reevaluation or initiate services for children parentally placed in private schools	PWN	Yes	No
Notification of the IEP meeting	Notification	No	N/A
Invite an outside agency to the IEP for secondary transition	Notification	Yes	N/A
Use of private insurance or Medicaid	Notification	Yes	N/A

**K.S.A. 72-988**

(b) (6) consent, or refuse to consent, to the evaluation, reevaluation or the initial placement of their child and to any substantial change in placement of, or a material change in services for, their child, unless a change in placement of their child is ordered pursuant to the provisions of section 17, and amendments thereto, or the agency can demonstrate that it has taken reasonable measures to obtain parental consent to a change in placement or services, and the child's parent has failed to respond. If the parent fails to respond to the request for parental consent to a substantial change in placement or a material change in services, the agency must maintain detailed records of written and verbal contacts with the parent and the response, if any, received from the parent;

**K.A.R. 91-40-1(l)**

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

- (1) A parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.
- (2) A parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom.

(3) A parent understands the following:

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

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

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

**K.A.R. 91-40-27. Parental consent.**

(a) Except as otherwise provided in this regulation, each agency shall obtain parental consent before taking any of the following actions:

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

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

(3) making a material change in services to, or a substantial change in the placement of, an exceptional child, unless the change is made under the provisions of K.A.R. 91-40-33 through 91-40-38 or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids and services. Vol. 29, No. 27, July 8, 2010 Kansas Secretary of State 2010 Regulations Kansas Register 1099

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

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

(k) If a parent revokes consent for the continued provision of particular special education, related services, supplementary aids and services, or placements, or any combination of these, and the IEP team certifies in writing that the child does not need the service or placement for which consent is being revoked in order to receive a free appropriate public education, the following shall apply:

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

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

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

## F. PARENTAL CONSENT REQUESTED BUT NOT PROVIDED

### 1. Parents Do Not Respond

The school must make reasonable attempts to obtain consent from the parents for each special education action as required. Reasonable attempts are defined as at least 2 contacts by 2 different methods and documentation of such attempts should be kept 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. 91-40-27(g); K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)).

As indicated previously, parent consent is required to conduct a reevaluation, or to make a material change in services or a substantial change in placement. However, parent consent is not required for these actions if the parent does not respond to the schools requests for consent and the school can document its attempts to obtain parental consent as outlined above (K.S.A. 72-988(b)(6)). Additionally, under the disciplinary protections, the school would not be deemed to have knowledge of the child's disability if the parent has not allowed an evaluation or refused services; or the child has been evaluated and determined not to have a disability (K.S.A. 72-994(c)).

### 2. Parents Revoke Consent

Parent consent is voluntary, and may be revoked by the parents at any time. Revocation of consent must be in writing (K.A.R. 91-40-27(i); 91-40-1(l)(3)(c)). When parents revoke their consent for a specific special education action the revocation is not retroactive but becomes effective either on the date that it was revoked or, if a future effective date is specified in the written revocation document, on that date (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 previous consent was revoked.

If a parent revokes consent for all existing special education and related services, the LEA may meet with the parent to attempt to resolve the difficulty, but if the parent cannot be convinced to continue the services, the LEA must honor the parent's revocation, however the LEA must provide prior written notice a reasonable time before ceasing provision of the services. Moreover the LEA may not attempt to override the parent's revocation of consent through mediation or due process. The LEA will not be considered in violation of FAPE for the failure to further provide special education and related services to the student and is not required to convene an IEP team meeting or develop an IEP for the child (K.A.R. 91-40-27(i); 34 C.F.R. 300.300(b)(4)). Further, the LEA is not required to amend the child's education records to remove any reference to the child's receipt of special education and related services because of the revocation of consent (K.A.R. 91-40-27(j)). If a parent who revoked consent for all special education and related services, later wishes his or her child to be reenrolled in special education, the agency must first conduct an initial evaluation to determine whether the child qualifies for special education (K.A.R. 91-40-27(l)).

A parent's right to revoke consent to a particular service or placement, is conditioned upon written certification by the IEP team that the discontinuation of that service or placement will not deny the child a free appropriate public education (K.A.R. 91-40-1(l)(3)). If the IEP team so certifies, the LEA must provide prior written notice a reasonable time prior to ceasing provision of that service or placement for which parent consent was revoked and the LEA will not be considered in violation of FAPE for the failure to further provide the special education services or placement for which parental consent was revoked (K.A.R. 91-40-27(j)). If the IEP team refuses to certify that discontinuation of the particular service or placement will not deny the child a free appropriate public education, the parents may pursue due process or mediation to attempt to end the services or placement at issue.

If the parent refuses or revokes consent for one service or activity the school cannot deny the parent or child any other service, benefit or activity on the child's IEP (K.A.R. 91-40-27(h)).

**K.S.A. 72-961**

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

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

**K.A.R. 91-40-27(i)-(l)**

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

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

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

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

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

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

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

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

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

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services, under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

## G. NOTICE OF IEP TEAM MEETING

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 days prior to the meeting (K.A.R. 91-40-17(a)(2)) and inform the parents that their child is invited to attend the meeting. The written notice must indicate:

1. the purpose;
2. date;
3. time;
4. location of the meeting;
5. the titles or positions of the persons who will attend on behalf of the school (The school is to notify the parents about who will be in attendance at an IEP team meeting, however, individuals may be indicated by position only. The school may elect to identify participants by name, but they have no obligation to do so.); and
6. inform the parents of their right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child;

7. inform the parents that if their child was previously served in Part C they may request that the local Part C coordinator or other representative be invited to participate in the initial IEP meeting to ensure a smooth transition of services.

In addition, beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team the notice must:

8. indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services;
9. indicate that the school will invite the student; and
10. identify any other agency that will be invited, with parent consent (or student consent if age 18), to send a representative. (K.A.R. 91-40-17(b); 34 CRF 300.322(b))

See sample Notice of Meeting form at <http://www.ksde.org/Default.aspx?tabid=544>. Also see Chapter 4, Individualized Education Program.

**K.A.R. 91-40-17. IEP team meetings and participants.**

- (a) Each agency shall take steps to ensure that one or both of the parents of an exceptional child are present at each IEP 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;
  - (2) except as otherwise provided in K.A.R. 91-40-37, providing written notice, in conformance with subsection (b) of this regulation, to the parents of any IEP team meeting at least 10 days in advance of the meeting.
- (b) The notice required in subsection (a) of this regulation shall meet the following requirements:
- (1) The notice shall indicate the purpose, time, and location of the IEP team meeting and the titles or positions of the persons who will attend on behalf of the agency, including, if appropriate, any other agency invited to send a representative to discuss needed transition services.
  - (2) If the meeting is for a child who has been receiving special education services under the infant and toddler provisions of the federal law but is now transitioning to the provisions for older children, the notice shall inform the parents that they may require that a representative of the infant and toddler program be invited to attend the initial IEP team meeting to assist with the smooth transition of services.
  - (3) The notice shall indicate the following information, if a purpose is to consider postsecondary goals and transition services for the child:
    - (A) The agency will invite the parents' child to attend.
    - (B) One of the purposes of the meeting will be to consider the postsecondary goals and needed transition services for the student.
  - (4) The parents have the right to invite to the IEP team meeting individuals whom the parents believe to have knowledge or special expertise about their child.
- (e) (1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to 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 parent to provide notice of the meeting and to secure the parent's participation. The record shall include at least two of the following:
- (A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;
  - (B) detailed records of visits made to the parent's home or homes, including the date, time, and person making the visit and the results of the visit;
  - (C) copies of correspondence sent to the parent and any responses received; and
  - (D) detailed records of any other method attempted to contact the parent and the results of that attempt.

## H RIGHTS FOR PARENTS OF GIFTED STUDENTS

The State statute also includes the category of giftedness. 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:

- There are no Special Education protections for students who are gifted under the discipline provisions (K.A.R. 91-40-34(c));
- Preschool children under the age of 5 are not eligible for gifted services (K.A.R. 91-40-1(ddd));

- Students who are gifted do not have the same considerations for least restrictive environment (LRE) as students with disabilities (K.A.R. 91-4-1(II)), but the IEP Team must make placement decisions based on their individual needs (K.A.R. 91-40-21(c)(2));
- Students who are gifted are not eligible for all of the related services (See Management Information System Data Dictionary at <http://www.ksde.org/Default.aspx?tabid=519>);
- The Kansas Alternate Assessment (KAA) is not available to students who are gifted;
- Extended school year services are not provided to students who are gifted (K.A.R. 91-40-1(yx));
- Students in JJA or DOC facilities do not receive gifted services (K.A.R. 91-40-5); and
- Requirements for secondary transition (K.A.R. 91-40-1(uuu)); and summary of performance (K.S.A. 72-986(m)) are not applicable to gifted students.

## I. EDUCATION ADVOCATES

An education advocate (referred to as "surrogate parents" in Federal law) is appointed to act on behalf of the child when parents are unknown, unavailable, or parental rights have been severed. The State Special Education for Exceptional Children Act gives the Kansas State Board of Education (KSBE) the authority to appoint education advocates to act on behalf of the child, if parents are unknown, unavailable, or parental rights have been severed.

The State statute defines education advocate as "a person appointed by the state board [of education] in accordance with the provisions of section 13 [K.S.A. 38-1513a], and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child" (K.S.A. 72-962(o)).

In Kansas, a foster parent must receive the required training and be appointed by the State Board of Education as an education advocate to act as a parent in making educational decisions for a child. In other circumstances when a judge orders someone to serve as the child's legal education decision maker the district must follow the judge's orders. Documentation from the court should be retained in the student's file.

### **K.S.A. 38-1513a**

When the court has granted legal custody of a child in a hearing under the Kansas code for care of children to an agency, association or individual, the custodian or an agent designated by the custodian shall have authority to make educational decisions for the child if the parents of the child are unknown or unavailable. When the custodian of the child is the secretary, and the parents of the child are unknown or unavailable, and the child appears to be an exceptional child who requires special education, the secretary shall immediately notify the state board of education, or a designee of the state board, and the school district in which the child is residing that the child is in need of an education advocate. As soon as possible after notification by the secretary of the need by a child for an education advocate, the state board of education, or its designee, shall appoint an education advocate for the child.

### **K.S.A. 72-962**

(o) "Education advocate" means a person appointed by the state board in accordance with the provisions of section 13, and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child.

## **1. Assigning Education Advocates**

KSDE and the Kansas Department of Social and Rehabilitation Services (SRS) have developed a system for assigning education advocates when necessary. Details of the education advocate system are given in K.A.R. 91-40-24. KSDE contracts with Families Together (the State's Parent Information and Training Center) to:

- provide training for potential education advocates,
- receive referrals for students who need an education advocate,
- match an education advocate to the student,
- notify KSDE to appoint the education advocate, and
- provide support for education advocates.

The appointment of an education advocate is to be made within 3 business days of receiving a request for an appointment. The school or agency making the request will be notified by KSDE of the name, address, and the telephone number of the person appointed to serve as the child's educational advocate. KSDE sends the formal letter of appointment to the education advocate, with a copy to the special education director, the building principal at the student's school, and the student's primary SRS, DOC, or JJA caseworker. KSDE and Families Together retain copies of the appointment letter.

Education advocates are appointed for students ages 3 to 18 who are homeless youth, in the custody of SRS, the Department of Corrections (DOC), or the Juvenile Justice Authority (JJA), and; are receiving special education services or need an evaluation to determine eligibility for services; and: (a) whose parents are unknown or unavailable;; (b) whose parent rights have been severed;; or (c) whose parents have a court order of "no contact" against them. An education advocate is also appointed for an unaccompanied homeless youth, with a disability, when there is no available person who meets the definition of the term "parent" under state law (see section B of this chapter). Like all other students with disabilities students in SRS, JJA or DOC custody, at age 18 students with exceptionalities become their own educational decision makers, unless a judge has determined that they are not capable of doing so and has appointed a guardian. For a 2-year-old who is transitioning from Infant-Toddler Services, if parents are unknown or unavailable, an education advocate may be appointed to provide consent to conduct a Part B evaluation, attend an IEP meeting, and be involved in other special education actions required.

For more information about obtaining an education advocate, contact Families Together, 800-264-6343 or 785-233-4777, or the Kansas State Department of Education, 800-203-9462.

## **2. School District Responsibilities**

School districts have a responsibility to identify and locate a child's parents before taking special education action and to have methods in place to determine when an education advocate is needed. If the parent is determined to be unknown or unavailable, the school district must request that proceedings be initiated to determine whether the child is a child in need of care and notify Families Together within 3 business days to request an education advocate be appointed for the child. Sometimes it is difficult to determine the situation with parents. There is a difference between "unavailable" and "unwilling." An uncooperative parent is not unavailable. A parent who can be located by mail, personal visits, or phone is not unavailable, even though s/he does not respond to the school's attempts to involve him or her in the student's education. If a parent has not responded to a request for consent to conduct a reevaluation, or to make a substantial or material change in the IEP; under Federal and State regulations, the district may conduct the reevaluation without parent consent as long as they have documentation of required attempts made and the parent did not respond. (See Chapter 7, Reevaluation.)

If a parent is in jail, s/he is technically not "unknown or unavailable". The parent's participation may be obtained by telephone and consent may be obtained through contact by mail, unless not feasible to do so. If, as a result of a court order, the parent cannot have any contact with the child, the school should request an education advocate.

## **3. Social and Rehabilitation Services Responsibilities**

The Kansas Statute at K.S.A. 38-1513a of the SRS Children and Family Services Commission states that when SRS staff determine that a child in SRS custody appears to be a student with an exceptionality who may require special education services and the parents are unknown, unavailable, or have their rights terminated, SRS must:

Document in the case record that the parents are unknown, unavailable, or their rights have been terminated; and Contact Families Together (800-264-6343 or 785-233-4777) within three business days to request that an education advocate be appointed.

"Unavailable" means SRS has documented that at least two pieces of certified mail were sent to the parent's last known address, and were sent back unclaimed.



#### 4. Juvenile Justice Authority and Department of Corrections Responsibilities

If a student is in a juvenile correctional facility or an adult correctional facility, the Juvenile Justice Authority (JJA) or the Department of Corrections (DOC) is obligated to follow the same procedures for appointment of an education advocate as SRS, as stated above.

A student age 18 or over, who is incarcerated in an adult correctional institution or facility and was not identified as a child with a disability and did not have an IEP in their educational placement prior to incarceration, is not entitled to FAPE (K.A.R. 91-40-5(c)(3)). A student previously identified as gifted only is not entitled to receive special education services while incarcerated.

##### **K.A.R. 91-40-24. Educational advocates.**

- (a) (1) Before taking any special education action in regard to any child, an agency shall attempt to identify the parents of the child and the parents' current whereabouts.  
(2) If the parental rights of the parents of an exceptional child have been severed, the secretary of social and rehabilitation services or the secretary's designee shall notify the state board or its designee of this fact and request the appointment of an educational advocate for the child.  
(3) If the identity of the parent or the parent's current whereabouts cannot be determined, the agency shall take the following action:
  - (A) Request that proceedings be initiated, pursuant to the Kansas code for the care of children, to determine whether the child is a child in need of care; and
  - (B) notify the state board or its designee, within three business days, of the agency's determination and request the appointment of an educational advocate for the child.
- (b) Within three business days of receiving a request for the appointment of an educational advocate, the agency making the request shall be notified by the state board or its designee of the name, address, and telephone number of the person appointed to serve as the child's educational advocate.
- (c) Each person appointed as an educational advocate shall meet the following requirements:
  - (1) Be at least 18 years of age;
  - (2) have completed a training program offered or approved by the state board concerning the powers, duties, and functions of an educational advocate;
  - (3) not be an employee of the state board or any agency that is involved in the education or care of the child; and
  - (4) have no interest that conflicts with the interest of any child whom the person represents.
- (d) (1) A person who is an employee of a nonpublic agency that provides only noneducational care for the child and who meets the requirements of subsection (c) of this regulation may be appointed as an educational advocate.  
(2) A person who otherwise qualifies to be an educational advocate shall not be considered an employee of an agency solely because that person is paid by the agency to serve as an educational advocate.
- (e) Any person appointed as an educational advocate shall perform the following duties:
  - (1) Assert the child's rights in the education and decision-making process, including the identification, evaluation, and placement of the child;
  - (2) comply with applicable confidentiality requirements imposed by state and federal law;
  - (3) participate in the development of the child's individualized education program; and
  - (4) exercise all the rights given to parents under the special education for exceptional children act.

##### **K.A.R. 91-40-5(c)(3)**

- (c) State adult correctional facilities.
  - (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.

#### J. STUDENT RIGHTS AT AGE 18

On or before the student's 17th birthday, the IEP of the student must contain a statement that the student has been informed that at age 18, students have attained the age of majority in Kansas and all parent rights transfer to the student (K.S.A. 72-987(c)(9)). Thus, at age 18, students become their own educational decision makers. (This Handbook will refer to the student who is age 18 or over as an adult student.)

When a student reaches the age of majority, school personnel must provide all required special education notices to both the student and to the parents and obtain informed consent for specified special education actions from the student (same requirements as for parents). Parents are not entitled to attend the IEP meeting, however, either the school or the student may, but are not required to, invite the parents to attend IEP meetings as persons who are knowledgeable about the student. When a court has judged a student to be unable to fulfill these

responsibilities, schools must provide Prior Written Notice and obtain informed consent from the person whom the court has appointed as the legal guardian. Schools may provide parents information about other options and resources about this topic.

Federal regulations and Kansas law (K.S.A. 72-989; 34 C.F.R. 300.520 and 34 C.F.R. 300.625) provide specific requirements for school personnel regarding this issue.

**K.S.A. 72-987**

(c) The IEP for each exceptional child shall include:

(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.

**72-989. Rights of child with disability upon reaching 18 years of age.** When a person who has been determined to be a child with a disability reaches the age of 18, except for such a person who has been determined to be incompetent under state law:

- (a) An agency shall provide to both the person and to the person's parents any notice required by this act;
- (b) all other rights accorded to parents under this act transfer to the person;
- (c) the agency shall notify the person and the parents of the transfer of rights; and
- (d) all rights accorded to parents under this act transfer to the person if incarcerated in an adult or juvenile federal, state or local correctional institution.

## QUESTIONS AND ANSWERS ABOUT PARENT RIGHTS

### 1. Who can give consent for a student's educational program?

Regarding Parents and/or legal educational decision makers must be given Prior Written Notice and request for consent whenever a school proposes to initiate or change (or refuses to initiate or change) the identification, evaluation, placement or educational services of a child with an exceptionality. The school must also request parent consent if it is proposing to: (a) conduct an evaluation or reevaluation; (b) begin to provide a child with special education services for the first time (initial services); (c) change the frequency or duration of a service (material change of service); or (d) change a placement for more than 25% of the school day (substantial change in placement). Parents may then provide or withhold consent for decisions regarding these matters. Consent from one parent is sufficient, even if the other parent refuses to consent. If an Education advocate is officially appointed, that is the person who will work with the school in planning and monitoring the student's school program, and who may grant or withhold consent just as parents may. See the chart on page 1-5 within this chapter for further information about determining who may grant consent for educational decisions.

Unless a judicial order specifies to the contrary, a school shall recognize the biological or adoptive parent of an exceptional child who is a minor as the educational decision maker for the child, even if other persons meet the definition of a parent for the child.

### 2. What if there is disagreement about an action that requires consent?

Parents and other legal educational decision makers should clarify the issues about which there is no disagreement. Those actions, or portions of the IEP, should be implemented without delay.

For the area of disagreement requiring consent, there are two options: (1) Mediation as an impartial proceeding whereby a mediator works with the parents and the school representative to reach consensus and develop a written agreement, and (2) a due process hearing in which a hearing officer makes the decision. In mediation, both parties must first agree that they want to mediate. There is no cost to the parents or to the school for mediation. In due process, either the parents or the school may request a hearing. Also see Chapter 10, Mediation and Chapter 12, Due Process Hearings.

### 3. What are the school's responsibilities for notice and consent with divorced parents?

If parents are divorced, regardless of which parent has primary custody, the school must provide notice to both parents, even if only one parent has the right to consent, unless a court order precludes this from

happening. This applies to all special education notice requirements including notice of an IEP meeting. If the school is only aware of one parent's address, the school must make reasonable efforts to locate the other parent in order to provide notice.

Consent from one parent is sufficient. In the event that the school receives responses from both parents, with one providing consent and the other denying consent, the school is deemed to have received consent and must fulfill its obligation to provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

#### **4. What are the qualifications of an education advocate?**

Requirements for education advocates are established in K.A.R. 91-40-24(c). Education advocates must:

- be 18 years or older,
- attend the Families Together training for education advocates so they have knowledge and skills to be sure the student is adequately represented, and
- provide three references for appointment as an education advocate.

Education advocates cannot be:

- employees of the agency required by law to provide special education services,
- employees of KSDE or any agency directly involved in providing care or educational services for the student, or
- people with a professional or personal interest that would conflict with the student's best interests.

Professionals not providing care or educational services to the student, retired professionals such as teachers, school administrators, school psychologists, counselors, and social workers, and local community volunteers may be education advocates, if they receive the training from Families Together.

#### **5. May an education advocate be assigned to represent a student over the age of 18?**

In Kansas, students from age 18 through 21 years have attained the age of majority, and so they become their own advocates. If the student is a ward of the State and determined to be a Child in Need of Care by SRS, s/he would have an education advocate appointed at age 18, or before if necessary. If the student has been judged to be unable to represent himself/herself, a guardian may be appointed by the court.

#### **6. Are education advocates appointed for a student who is gifted?**

Yes. In Kansas, services for students who are gifted are provided through the special education system in public schools. An Education advocate would be appointed in the same way for students ages 5 to 18 who are gifted.

#### **7. May parents revoke consent to a special education service, but not the goals for that service; or in reverse, consent to goals, but not the service necessary to implement the goals?**

Parents provide consent only for placement and services, including supplemental aids and services, in the IEP. They do not have the option of consenting to the individual annual goals in the IEP. Parents should consider which individual services they wish to consent to; the annual goals are the method for measuring the progress made by the provision of the service. Parents may revoke consent for some services and not others pursuant to K.A.R. 91-40-1(l), but need to realize that when they revoke consent for a service, they have also eliminated the goal(s) that would have measured progress for that service.

#### **8. What is the difference between "Prior Written Notice" and "10-Day IEP Notice?"**

"Prior Written Notice" is provided to the parents before the school proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of special education and related services (FAPE) to the child. Each Prior Written Notice must contain the information required in 34 C.F.R. 300.503(b). This Notice is to ensure that parents are fully informed about any action that the school is proposing and is provided with each request for consent for a special education action. If a change in

identification, educational placement, educational services, or the need for more evaluation information is determined to be needed by the IEP team, then the Prior Written Notice and, if required, request for consent for the specific action(s) would be given to parents before that action could take place.

"The 10-Day IEP Notice" is given to parents at least 10 calendar days before the IEP meeting to develop, review and/or revise the IEP. The 10-day IEP notice is to ensure that the parent has an opportunity to participate in the IEP meeting as well as any meeting with respect to the identification, evaluation, placement and special education and related services for the child. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance; and inform the parents that may invite others who have knowledge or special expertise about the child.

**9. If a student who is identified as gifted, and does not also have a disability, is incarcerated in a juvenile or adult correctional facility, will they be eligible to receive special education services?**

No. Students who are incarcerated in a juvenile or adult correctional facility are not eligible to receive gifted services even if they were identified prior to incarceration.

**10. What if the biological parent and another individual meet the definition of parent? Must the school seek consent from the biological parent or can they accept consent from the other qualified individual?**

If there is more than one party qualified to act as a parent, and the biological or adoptive parents attempt to act as the parent, the biological or adoptive parents must be presumed to be the parents and legal decision makers, unless they do not have legal authority to make educational decisions for the child.

**11. What obligation does a school have to allow parents or other non-school personnel to observe or video tape a child in the educational setting?**

Neither federal or state laws nor regulations give parents the right to observe their children in class. A district may, however, give a parent permission to observe a child in class if doing so would not disrupt school activities and would help the district and the parent work together to develop an appropriate IEP. Many districts have policies that define the conditions under which parents and others may observe children in school and for videotaping children in the classroom.

**12. If a parent calls the school and verbally revokes their consent for special education and related services and tells the school they want services stopped immediately, what should the school do?**

The parent must revoke consent for special education and related services in writing. The school should inform the parent that it must continue providing services until they receive written notice that consent is being revoked. This could be in the form of a letter or a signature on the document where the parent provided informed consent for the child's current services.