CHAPTER 7

REEVALUATION

INTRODUCTION

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

Most components of the reevaluation process are identical to those required for initial evaluation. See Chapter 3, Initial Evaluation and Eligibility, for a complete explanation of the evaluation process. However, there may also be some differences from the initial evaluation. The specific individuals on the reevaluation team may be different than they were for the initial evaluation. The roles are the same, but the people themselves may be different. A report of the reevaluation must be written and provided to the parents. Under certain circumstances the reevaluation may be conducted without parent consent. This chapter includes a discussion of the following topics:

A. Purpose of the Reevaluation
B. Need for the Reevaluation
C. Prior Written Notice and Request for Consent
D. Members of the Reevaluation Team
E. Conducting the Reevaluation
F. Determining Continued Eligibility
G. Reevaluation for A Child Identified as Developmentally Delayed

A. PURPOSE OF THE REEVALUATION

The reevaluation process is required every three years, or more often, if needed, to determine:

1. If the child continues to be a child with an exceptionality;
2. the educational needs of the child;
3. the present levels of academic achievement and functional performance (related developmental needs) of the child;
4. whether the child continues to need special education and related services; and
5. 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.

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

K.S.A. 72-986(h)-(l)

(h) (1) Each agency shall ensure that a reevaluation of each exceptional child is conducted:

(A) If the agency determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a reevaluation; or

(B) if the child's parent or teacher requests a reevaluation.

(2) An agency shall conduct a reevaluation of a child:

(A) Not more frequently than once a year, unless the parent and the agency agree otherwise; and

(B) at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

(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.

C. PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

Whenever a school proposes to conduct a reevaluation, the school must provide Prior Written Notice to the parents of the child that describes any evaluation procedures the school proposes to conduct (K.S.A. 72-986(b); K.S.A. 72-988; 34 C.F.R. 300.304(a)). 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 a reevaluation) 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.
6. A description of other options considered and the reasons why those options were rejected.
7. A description of other factors that are 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 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 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 and that there is written evidence that this has been done (K.A.R. 91-40-26(a)(b)(c); 34 C.F.R. 300.503(c)).

1. Preparing the Prior Written Notice

The team must plan to administer the assessments and other evaluation measures as may be needed to produce the data required to meet the requirements of the continuation of eligibility (K.A.R. 91-40-8(e)(1); 34 CFR 300.305(c)). Every reevaluation should be approached and designed individually based on the specific concerns of the child to be evaluated. Thoughtful planning is required to insure that the team will use appropriate tools to collect the data needed, while eliminating time spent collecting information that is either unnecessary or overly time consuming for no clear purpose. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct an evaluation.

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

The purpose of reviewing existing data is to identify what additional data, if any, are needed to determine:

- if the child continues to be a child with an exceptionality and needs special education;
- whether the child needs special education and related services;
- the educational needs of the child;
- the present levels of academic achievement and functional performance (related developmental needs) of the child; and

- 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, as appropriate, in the general education curriculum. (K.S.A. 72-986(i)(2); 34 C.F.R. 300.305(a)(2))

After the team has reviewed the existing data, there must be a determination of what data, if any, will be collected during the evaluation, with the Prior Written Notice completed to reflect that determination.

a. Requirements if No Additional Data is Needed

If the team has determined that no additional data are needed to determine whether the child continues to be a child with an exceptionality, and to determine the child's educational needs, the school must notify the parents

i. of that determination and the reasons for it; and
ii. the right of the parents to request an assessment to determine whether the child continues to be a child with an exceptionality, and to determine the educational needs of the child (K.A.R. 91-40-8(c); 34 C.F.R. 300.305(d)).

The school district is not required to conduct the assessment described in (ii) above unless requested to do so by the child's parents. In addition, if the parents request an assessment of their child, the school district may refuse to do so, but it must provide the parents with Prior Written Notice of the refusal to conduct the assessment and the reasons for the refusal. The parents may request mediation or due process if they want the assessment conducted. (See Prior Written Notice form at http://www.ksde.org/Default.aspx?tabid=2832.)

b. Requirements if Additional Data Are Needed

If the team has determined that additional data are needed, the team should plan who will collect it and plan to insure all data will be collected within the evaluation timeline. The procedures to be used to collect the data should be described on the Prior Written Notice for the reevaluation and provided to the parents for their consent.

2. Request for Consent

The school must obtain informed consent from the parent of the child before conducting any reevaluation (K.A.R. 91-40-27(a)(1); 34 C.F.R. 300.300(c)). In determining that informed consent is obtained, the following must be insured (K.A.R. 91-40-1(l); 34 C.F.R. 300.9):

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).

3. Failure to Respond or Refusal to Consent

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

If the school can demonstrate that it has made reasonable efforts (i.e. minimum 2 contacts by 2 different methods) and parents have failed to respond, informed parental consent need NOT be obtained for the reevaluation.

If the parent refuses consent for the reevaluation the school may, but is not required to, pursue the reevaluation of the child by utilizing the procedural safeguards, including mediation. The school does not violate its obligation for child find or to conduct a reevaluation of the child if it declines to pursue the reevaluation (K.A.R. 91-40-27(f)(1)(3); 34 C.F.R. 300.300(c)(1)).

If a parent of a child who is home schooled or voluntarily placed in a private school by the parents does not provide consent for the reevaluation, or the parent fails to respond, the school may not use mediation or request a due process hearing (K.A.R. 91-40-27(f)(2); 34 C.F.R. 300.300(d)(4)).

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

K.S.A. 72-986

(b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;

(2) not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child;

(3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(4) in determining whether a child has a specific learning disability, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.

(h) (1) Each agency shall ensure that a reevaluation of each exceptional child is conducted:

(A) If the agency determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a reevaluation; or

(B) if the child's parent or teacher requests a reevaluation.

(2) An agency shall conduct a reevaluation of a child:

(A) Not more frequently than once a year, unless the parent and the agency agree otherwise; and

(B) at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

(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.

(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.

(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.

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:

(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;

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. 91-40-1(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. 91-40-17(e)(2)

(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.

K.A.R. 91-40-26(a)(b)(c)

(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.

K.A.R. 91-40-27(a)(1), (e), (f), (g)

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

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

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

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

(e) An agency shall not be required to obtain parental consent before taking either of the following actions:
(1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or
(2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.
(f) (1) If the parent of an exceptional child who is enrolled or is seeking to enroll in a public school does not provide consent for an initial evaluation or any reevaluation, or for a proposed material change in services or a substantial change in the placement of the parent's child, an agency may, but is not required to, pursue the evaluation or proposed change by initiating due process or mediation procedures.
(2) If the parent of an exceptional child who is being home schooled or has been placed in a private school by the parent does not provide consent for an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, an agency may not pursue the evaluation or reevaluation by initiating mediation or due process procedures.
(3) An agency shall not be in violation of its obligations for identification, evaluation or reevaluation if the agency declines to pursue an evaluation or reevaluation, because a parent has failed to provide consent for the proposed action.
(4) Each agency shall document its attempts to obtain parental consent for action proposed under this regulation.
(g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parents have failed to respond.
(h) An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities or services offered by the agency.

D. MEMBERS OF THE REEVALUATION TEAM

The membership of the team that conducts the reevaluation and determines continued eligibility is the same as the IEP Team with the addition of other qualified professionals if a child is suspected of having a specific learning disability, as appropriate. The additional professionals that would participate are based on the identified concerns to be addressed in the reevaluation process. The actual team members on each reevaluation team may differ; however, there are specific members and skills that must be represented on the team. The makeup of this team would include:

- The parents of the child.
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment).
    - If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or if the child is less than school age, an individual qualified to teach a child of his or her age;
- Not less than one special education teacher of the child, or where appropriate, not less than one special education service provider of the child.
- A representative of the local education agency who:
    - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of child with disabilities,
    - Is knowledgeable about the general education curriculum, and
    - Is knowledgeable about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of reevaluation results.
- At least one person qualified to conduct individual diagnostic examinations of children.
- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (K.S.A. 72-962(u); K.A.R. 91-40-11(a); 34 C.F.R. 300.321; 34 C.F.R. 300.308)

E. CONDUCTING THE REEVALUATION

The reevaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child continues to be an exceptional child, the educational needs of the child, and the content of the child's IEP, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities (K.S.A. 72-986(b)(1)). In addition, the procedures must also lead to the determination of the present levels of academic achievement and functional performance of the child. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data to determine:

1. if the child continues to be a child with an exceptionality;
2. the educational needs of the child;
3. the present levels of academic achievement and functional performance (related developmental needs) of the child;
4. whether the child continues to need special education and related services; and
5. 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, as appropriate, in the general education curriculum. (K.S.A. 72-986(i)(2); 34 C.F.R. 300.305(a)(2))

As stated previously, the data collected is critical not only for the purpose of determining whether a child continues to be eligible for special education services, but also to assist in the development of present levels of academic achievement and functional performance. Regulations clearly state that the reevaluation must result in determining the content of the child's IEP (if still eligible) including information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities) (K.S.A. 72-986(b)(1); 34 C.F.R. 300.304(b)(ii)). However, the reevaluation should also assist in the development of an instructional plan for the child if the child is not found to be eligible.

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

1. Procedures for Conducting the Reevaluation

The school shall ensure that a reevaluation meets all of the same requirements for an initial evaluation as described in Section E, of Chapter 3, in this Handbook. The reevaluation team members must utilize a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information from the parents, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities). The tools and strategies must yield relevant information that directly assists in determining the educational needs of the child.

Collecting relevant functional, developmental and academic information related to enabling the child to be involved in, and progress in, the general curriculum (or for a preschool child, to participate in appropriate activities) requires that data be collected not only about the child, but about the curriculum, instruction, and environment as well. Every evaluation should be approached and designed individually based on the specific concerns for the child and the selection of assessment tools based on the information needed to answer the eligibility questions. It would be inappropriate to use the exact same battery of assessments for all children or to rely on any single tool to conduct an evaluation. (K.S.A. 72-986(b)(c); K.A.R. 91-40-9)

Data should be collected from the five sources referred to in Kansas as GRIOT. GRIOT represents five sources of data that teams need to collect and use as appropriate. The following is a discussion of each of the five sources of data:

G – General Education Curriculum Progress: During the reevaluation, the team should thoroughly examine the child's progress in the general education curriculum. The team needs to understand how the child is progressing in general education curriculum across settings with the available supports. To do this they must understand the outcomes of the general education curriculum and how the skills represented in those outcomes relate to the needs of each child. Are the skills needed for this child's progress different than the skills that general education children need? Is the instruction required for the child to learn those skills different? The general education curriculum outcomes and the supports available through general education are unique to each school. Gaining an understanding of what support is available and the level of support needed by the child is one of the most important parts of the reevaluation.

R – Record Review: The evaluation team should also include as part of the reevaluation a review of records. These records would include such things as information provided by the parents, current classroom-based assessments, State assessments, information from previous services providers, screenings, previous evaluations, reports from other agencies, portfolios, discipline records, cumulative file, and other records.

I – Interview: It is important to understand the perceptions of significant adults in the child's life and of the child himself. Parents, teachers, and the child can all typically provide insight into areas of strengths and needs. Interviews can also provide information about significant historical events in the child's life as well as about his performance in the classroom and other settings.

O – Observation: A district must ensure the child is observed in the child's learning environment (including the regular education classroom setting) to document the child's academic performance and behavior in the areas of difficulty (K.A.R. 91-40-11(c); 34 C.F.R. 300.310). In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. If the child is already in an educational setting the observation should be done in that setting opposed to bringing them into a different setting just for observation. These observations could include structured observations, rating scales, ecological instruments (e.g., EBASS, TIES-II), behavioral interventions, functional analysis of behavior and instruction, anecdotal, and other observations (conducted by parents, teachers, related services personnel, and others). The purpose of the observation is to help the evaluation team understand the extent to which the child's skills are impacting their ability to participate and progress in a variety of settings. Observations allow you to see firsthand how a child is functioning in naturally occurring settings. Observation data can also allow you to compare the child's behavior to that of peers in the same setting. Observation data helps us to understand not only the child's current functional performance but also the level of independence demonstrated which can help determine necessary supports.

T – Test: A wide range of tests or assessments may be useful in determining an individual child's skills, abilities, interests, and aptitudes. Typically, a test is regarded as an individual measure of a specific skill or ability, while assessment is regarded as broader way of collecting information that may include tests and other approaches to data collection. Standardized norm-referenced tests are helpful if the information being sought is to determine how a child compares to a national group of children of the same age or grade. Criterion-reference tests are helpful in determining if the child has mastered skills expected of a certain age or grade level. Tests typically provide specific information but are never adequate as a single source of data to determine eligibility for special education. Because tests require a controlled testing environment, the result is that children are removed from their learning environments to participate. This is a very intrusive way of gathering data and the value of the data obtained should always be weighed carefully against the cost of missed class time. For this reason, tests should be thoughtfully selected and be used for specific purposes when data cannot be obtained through other sources. Some test information may already have been collected, especially if the child attends a school that uses school-wide benchmark assessment. However, additional information may need to be collected during the reevaluation. This might include curriculum-based assessments (e.g., CBA, CBM, or CBE), performance-based assessments (i.e., rubric scoring), or other skill measures such as individual reading inventories. The testing that needs to be done will vary depending on what information already has been collected and the needs of the individual child. Diagnostic testing might include measures of reading, math, written language, or other academic skills, or tests of motor functioning, speech/language skills, adaptive behavior, self-concept, or any domain of concern. As with all types of data collection, the information from testing needs to be useful for both diagnostic and programmatic decision-making.

GRIOT offers a framework in which to organize and structure data collection. It is not that any data source or assessment procedure is inherently good or bad. All procedures and tools are appropriate as long as they are selected thoughtfully and for the appropriate purposes. A team will not necessarily use all data sources every time an evaluation is conducted, but it does mean that thoughtful planning will need to be given for each child to ensure that the team is collecting the appropriate data using the appropriate tools to ensure the correct information to make the continued eligibility determination.

The instruments utilized in the reevaluation must meet all of the requirements as described in Section E. of Chapter 3 in this Handbook. Federal and State laws and regulations specify requirements for evaluation and reevaluation (K.A.R. 91-40-8(e)(f)(g); 34 C.F.R. 300.304)

K.A.R. 91-40-8

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

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

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

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

(C) observations by teachers and related services providers.

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

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

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

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

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

(d) The team described in subsection (e) of this regulation may conduct its review without a meeting.

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

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

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

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

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

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

(1) Conduct the evaluation of the child;

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

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

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

(1) The parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation.

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

(h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services.

K.A.R. 91-40-9. Evaluation procedures.

(a) If assessment instruments are used as a part of the evaluation or reevaluation of an exceptional child, the agency shall ensure that the following requirements are met:

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

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

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

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

(3) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved and progress in the general

curriculum or, for a preschool child, to participate in appropriate activities that could assist in determining whether the child is an exceptional child and what the content of the child's IEP should be.

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

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

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

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

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

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

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

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

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

(A) Health;

(B) vision;

(C) hearing;

(D) social and emotional status;

(E) general intelligence;

(F) academic performance;

(G) communicative status; and

(H) motor abilities.

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

(c) If a child is suspected of having a specific learning disability, the agency also shall follow the procedures prescribed in K.A.R. 91-40-11 in conducting the evaluation of the child.

K.A.R. 91-40-11

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

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

(i) Oral expression;

(ii) listening comprehension;

(iii) written expression;

(iv) basic reading skill;

(v) reading fluency skills;

(vi) reading comprehension;

(vii) mathematics calculation; and

(viii) mathematics problem solving; and

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

(ii) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development that is determined by the group conducting the evaluation to be relevant to the identification of a specific learning disability, using appropriate assessments.

(2) A child shall not be determined to be a child with a specific learning disability unless the group evaluating the child determines that its findings under paragraphs (b)(1))(A) and (B) are not primarily the result of any of the following:

(i) A visual, hearing, or motor disability;

(ii) mental retardation;

(iii) emotional disturbance;

(iv) cultural factors;

(v) environmental or economic disadvantage; or

(vi) limited English proficiency.

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

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

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

(B) have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

F. DETERMINING CONTINUED ELIGIBILITY

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

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

When the meeting is convened, the reevaluation team, including the parents, reviews the results of the reevaluation to determine:

- if the child continues to be a child with an exceptionality;
- the educational needs of the child;
- the present levels of academic achievement and the functional performance (related developmental needs) of the child;
- whether the child continues to need special education and related services; and
- whether any additions of 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.

As is the case in all reevaluations, when making the determination of whether the child continues to be a child with an exceptionality and whether the child continues to need special education and related services, teams must take into account that the child has made progress since the time he/she was initially evaluated and determined to be eligible for services. The fact that the child's performance gap may be less than at the time of the initial evaluation would not necessarily mean that the child is no longer a child with an exceptionality and no longer in need of special education services.

The data collected at the time of the reevaluation should assist the team in decision making. Teams should thoroughly discuss the child's present levels of educational performance and consider the child's rate of progress. Teams should also consider what level of support is needed in order for the child to access and progress in the general curriculum and whether that level of support would continue to require specially designed instruction. If at the time of reevaluation, a student needs only general accommodations, then the student is no longer eligible for special education, but should be referred for consideration of eligibility for a 504 plan. These careful considerations should drive the determination of continued eligibility.

Documenting Continued Eligibility

After completion of appropriate reevaluation procedures, the team of qualified professionals and the parent of the child shall prepare a written reevaluation report. A copy of the reevaluation report and documentation of whether or not the child continues to be a child with an exceptionality must be given to the parents. See Section F, of Chapter 3, in this Handbook for a complete discussion of the requirements for determination of continuing eligibility and a description of the reevaluation and continued eligibility report. (See Evaluation/Eligibility Report Checklist at http://www.ksde.org/Default.aspx?tabid=2863).

G. REEVALUATIONS FOR A CHILD IDENTIFIED AS DEVELOPMENTALLY DELAYED

Special considerations impacting reevaluation are needed for children who have been determined eligible for special education services under the category of developmental delay (DD). These considerations must be made in accordance with regulations regarding a child's continuing eligibility for services.

State Statute and regulations (K.S.A. 72-962(z)(2); K.A.R. 91-40-1(k)) allow schools to identify children ages three through nine as a child with a developmental delay(DD). Federal regulations clarify that the use of the category of developmental delay is optional for the school and may be used for children ages three through nine or any subset of that age range (i.e., 3-5, 6-9. etc.) (34 C.F.R. 300.111(b)).

If a child ages 3-9 was determined eligible as a child with DD, a reevaluation must be conducted before the child turns age 10 to determine whether the child continues to be a child with an exceptionality as defined by any of the categorical areas under the law and whether the child continues to have a need for special education and related services. The reevaluation to determine continued eligibility as a child with an exceptionality may take place any time prior to the child's 10th birthday.

K.A.R. 91-40-1

(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, need special education and related services; and

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

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

(A) Physical;

(B) cognitive;

(C) adaptive behavior;

(D) communication; or

(E) social or emotional development. The deviation from average development shall be documented and measured by appropriate diagnostic instruments and procedures.

K.A.R. 91-40-2. FAPE

(c) (1) Each agency shall make FAPE available to any child with a disability even though the child is advancing from grade to grade.

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

K.A.R. 91-40-10(i)

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

QUESTIONS AND ANSWERS ABOUT REEVALUATION

1. What does the school do if parents refuse consent for a reevaluation?

The school must try to obtain consent from the parents. The school may, but is not required to seek to mediate the dispute or file for a due process hearing to pursue the reevaluation. The school would not violate the requirement to conduct a reevaluation if it declines to pursue the reevaluation when the parent refuses to provide consent. The school would continue to serve the child according to the IEP.

2. What does the school do to document reasonable measures were taken to obtain consent, if parents do not respond to the request to reevaluate?

If the parent does not respond the school must keep detailed records of its attempts to obtain parental consent including written correspondence sent to the parents, phone calls made or attempted and visits made to the parent's home or place of employment, and the response, if any, from the parent. At minimum, schools must make two attempts, using at least two different methods. If the school is not successful after repeated reasonable measures, then the school may continue with the reevaluation procedures. (K.A.R. 91-40-17(e)(2)(A); 34 C.F.R. 300.303(d)(5); 34 C.F.R. 300.300(d))

3. What does the school do if parents want a specific test conducted, but the rest of the reevaluation team believes no additional data are needed? Must the school conduct the test?

The school would have the option of conducting the test, or providing Prior Written Notice to the parents of refusal to test and the reason they do not think the testing is necessary. If the parents do not agree, they may request mediation or due process.

4. If no additional data are needed, does the reevaluation team need to write a report just to determine continued eligibility and need?

Yes. Upon the completion of the reevaluation (which may include only existing data) and determination of continued eligibility, the team develops a reevaluation and eligibility report as described in Chapter 3. The report includes what data were examined and their reasons for determining continued eligibility for special education and related services. The parents are to receive a copy of this report.

5. May staff discuss information related to a child's instruction without the parents?

Yes, Kansas regulations clarify that, "a meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. 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)).

6. 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.

7. When a student with an exceptionality is graduating and exiting from special education services, must the school conduct a reevaluation to determine post-school program eligibility?

Schools are not required to conduct a reevaluation for a child to meet the entrance or eligibility requirements of a post-school institution or agency because to do so would impose a significant cost on the school that is not required by the law (Federal Register, August 14, 2006, p. 46644).