

# KANSAS SPECIAL EDUCATION ADVISORY COUNCIL

*Dedicated to the Education of  
"ALL"*



## **Annual Report** July 1, 2009 to June 30, 2010

Special Education Services  
Kansas State Department of Education  
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# Secretary's Report

The overarching focus of Kansas special education is to improve outcomes for students with disabilities and their families. Services for students with disabilities in Kansas are continuously improving because of the dedication and commitment of many exemplary teachers and administrators who are supported by concerned and invested parents who work in partnership with the schools. Another Kansas asset, often overlooked because of their work behind the scenes of Kansas education, is the Special Education Advisory Council (SEAC). The primary motivation for individuals to accept appointments to SEAC is the focus on quality improvement in the Kansas education system, particularly as it relates to students with disabilities. The SEAC members voluntarily meet on a regular basis, study issues of significance, provide a representative advocacy function, and advise the Special Education Services team and Kansas State Board of Education on matters of special education. This report summarizes the activity and accomplishments of SEAC for the 2009 – 2010 school year.

SEAC continues to function as an advisory panel to the Kansas State Board of Education. The State Board appoints members to SEAC. SEAC advises the State Board in five key areas as required by the implementing regulations of the Individuals with Disabilities Education Act, and by Kansas Statutes. Those areas include:

- Advise the Special Education Administrators (SEA) of unmet needs within the state in the education of children with exceptionalities;
- Comment publicly on any rules and regulations proposed by the state regarding the education of children with disabilities;
- Advise the SEA in developing evaluations and reporting on data to the secretary under Section 618 of the Act;
- Advise the SEA in developing corrective action plans to address findings identified in Federal Monitoring reports under Part B of the Act; and
- Advise the SEA in developing and implementing policies relating to the coordination of services for children with exceptionalities.

SEAC has represented its constituencies well during the past year and has been productively engaged in fulfilling its legal commitments and mission on behalf of students. SEAC's 2009 – 2010 accomplishments are wide ranging. To summarize, SEAC has been involved in these activities of importance:

- ✓ Provide oversight of the implementation of IDEA and state regulations through review of the Kansas Integrated Accountability System (KIAS) and focused monitoring, due process and formal complaints
- ✓ Review and comment on the Kansas Annual Performance Report (APR) submitted to OSEP
- ✓ Study and advise on issues identified in the Kansas State Performance Plan (SPP): Early Childhood least restrictive environment, positive behavioral support, secondary transition
- ✓ Study and promote use of Multi-Tiered System of Support (MTSS)
- ✓ Participate in combined meeting with State Interagency Coordinating Council (SICC)
- ✓ Promote interagency work through discussions with Vocational Rehabilitation Services and agencies collaborating on the Foster Care database
- ✓ Study practices impacting disproportionate representation in Special Education
- ✓ Study issues of state assessments as they relate to students with disabilities
- ✓ Review and comment on Statewide Professional Development Grant projects
- ✓ Review and comment on Kansas Statewide Technical Assistance & Resource System (KSTARS) projects
- ✓ Serve as a sounding board for the public
- ✓ Review the implementation of the redesign of teacher licensure
- ✓ Review and comment on the KSDE coordination of services
- ✓ Monitor and review state and federal legislative issues

SEAC serves a valuable role in representing the stakeholders of Kansas special education services. There is no question that because of SEAC investment in the future, students with special needs will have a better chance of fulfilling their lifelong dreams. The State of Kansas is fortunate to have an active and involved SEAC.

Colleen Riley,  
Director Special Education Services  
Secretary of the Kansas Special Education Advisory Council (2009 - 2010)



# Annual Report

## Kansas Special Education Advisory Council

July 1, 2009 to June 30, 2010

### Introduction

The Special Education Advisory Council (SEAC) has met for six one or two-day meetings during the 2009 - 2010 school year.

It is anticipated that the SEAC Action Plan priority areas for 2009 – 2010 will reflect the following areas:

- ✓ Priority Area 1: Advising the State Education Agency on unmet needs
- ✓ Priority Area 2: Comment publicly on any rules or regulations
- ✓ Priority Area 3: Advise the State Education Agency in developing evaluations and reporting on data
- ✓ Priority Area 4: Advise the State Education Agency in developing federal monitoring reports
- ✓ Priority Area 5: Advise the State Education Agency in developing and implementing policies related to coordination of services

For each priority area, key areas of activity are also identified and can be reviewed in the Appendix A (2008-09 SEAC Action Plan).

### Kansas Special Education Advisory Council

The major responsibilities of the council are to advise, consult and provide recommendations to the Kansas State Board of Education regarding matters concerning special education services. The SEAC is composed of individuals in, or concerned with, the education of children with exceptionalities. The council performs such duties as specified by law, statute or regulation and as outlined in the Kansas SEAC manual. Much of the work is directed through the Special Education Services team.

The primary role of the council is as an advocate for achieving excellence, equity and lifelong learning opportunities for all students in Kansas. As such, it is committed to representing individuals with diverse and changing educational needs. The role of advocate presupposes a sensitivity and responsiveness to these needs. This responsibility leads the SEAC to support the vision and mission of KSBE and the Division of Learning and Innovative Services - Special Education Services:

#### Vision

Schools will work with families and communities to prepare students for success.

#### Mission

The Mission of the State Board of Education is to ensure that all students meet or exceed high academic standards and are prepared for their next steps (e.g., the world of work and/or post-secondary education).

## **SEAC Goal**

The Kansas Special Education Advisory Council will advocate for an educational system that achieves excellence, equity, and lifelong learning for all students in Kansas.

## **SEAC Beliefs**

The Kansas Special Education Advisory Council is committed to life long learning. SEAC believes that:

- Partnerships increase collaboration for better services.
- Visionary leadership is essential for appropriate services to meet the needs of all students.
- Innovation is essential to the process of life long learning.
- All child service systems must be provided in an integrated and collaborative manner.
- Education is an evolving process that requires innovation, continuous growth, and evaluation.
- The needs of individuals in a diverse community must be met.

## **Council Membership**

The 2009 – 2010 SEAC is composed of eighteen individuals concerned with the education of children with exceptionalities and the state director of Special Education Services. Nine of the members of the council are individuals with disabilities or parents of children with disabilities. The 2009 – 2010 membership include:

# *State Advisory Council for Special Education*

## *FY 2009-2010*

<b>Council Member</b>	<b>Address</b>	<b>Representation</b>	<b>Board Region</b>	<b>Appointment Expires</b>
Dr. Marcy Aycock	Prairie Elementary School 7101 S. Meridian Haysville KS 67060 316-554-2350 <a href="mailto:maycock@usd261.com">maycock@usd261.com</a>	LEA Official *	10	June 2012 (1 <sup>st</sup> term)
Luanne Barron	Kansas School for the Deaf 450 E Park Street Olathe KS 66061 913-791-0513 text: 913 375 0477 <a href="mailto:lbarron@ksd.state.ks.us">lbarron@ksd.state.ks.us</a>	State Official *	3	June 2011 (1 <sup>st</sup> term)
Susan Clayton	PO Box 86 Mullinville, KS 67109 620-548-2520 cell: 620-255-6172 <a href="mailto:ronandsusanc@yahoo.com">ronandsusanc@yahoo.com</a>	Public Charter Schools*	7	June 2011 (2 <sup>nd</sup> term)
Dr. Ann Elliott	USD 437 Auburn-Washburn 5928 SW 53 <sup>rd</sup> Topeka, KS 66610-9451 785-339-4000 cell: 785-633-2316 <a href="mailto:ellioann@usd437.net">ellioann@usd437.net</a>	Administrator of Exceptional Programs	4	June 2011 (1 <sup>st</sup> term)
Janice Frahm	1553 County Road T Colby, KS 67701 785-462-7388 cell: 620-779-2884 <a href="mailto:jfracm@st-tel.net">jfracm@st-tel.net</a>	LEA Official *	5	June 2012 (2 <sup>nd</sup> term)
Lesli Girard	Families Together, Inc. 501 SW Jackson Suite 400 Topeka, KS 66603 785-233-4777 cell: 785-608-7455 <a href="mailto:lesli@famieliestogetherinc.org">lesli@famieliestogetherinc.org</a>	Parent Training Center	4	June 2012 (1 <sup>st</sup> full term)
Bill Griffith	Southeast KS Education Service Center Lansing Correctional Facility PO Box 2, Mailbox 13 Lansing KS 66043 913-727-3235 ext 57521 <a href="mailto:Bill.Griffith@lcf.docs.ks.gov">Bill.Griffith@lcf.docs.ks.gov</a>	Adult Corrections	1	June 2012 (1 <sup>st</sup> term)
Neil Guthrie	201 N Water Wichita KS 67202 316-973-4425 cell: 316-258-4889 <a href="mailto:nguthrie@usd259.net">nguthrie@usd259.net</a>	Local Education Official	8 & 10	June 2010 (2 <sup>nd</sup> term)
Penny Hoffman	823 West 5th St. Larned, KS 67550 620-285-7364 <a href="mailto:phoffman@usd495.k12.ks.us">phoffman@usd495.k12.ks.us</a>	Juvenile Justice	5	June 2011 (1st term)

<b>Council Member</b>	<b>Address</b>	<b>Representation</b>	<b>Board Region</b>	<b>Appointment Expires</b>
Katherine Kersbrock-Ostmeyer <i>(Chair-Elect)</i>	NW ESC 703 West Second Oakley, KS 67748 785-672-3125 cell: 785-443-2479 <a href="mailto:kko@nkesc.org">kko@nkesc.org</a>	Vocational, community or business organization concerned with provision of transition services *	5	June 2010 (1 <sup>st</sup> term)
Karen Kroh	Archdiocese of KCKCS 12615 Parallel Parkway Kansas City KS 66109 913-721-1570 cell: 913-669-1357 <a href="mailto:kkroh@archkckcs.org">kkroh@archkckcs.org</a>	Private Schools	1	June 2010 (Partial term)
Shawn Mackay	Shawnee Mission North High 7401 Johnson Drive Shawnee Mission KS 66202 913-993-7150 <a href="mailto:shawnmackay@smsd.org">shawnmackay@smsd.org</a>	Teacher *	2	June 2012 (1 <sup>st</sup> term)
Mike Martin	2009 Carline Road Girard KS 66743 620-724-6610 cell: 620-249-4793 <a href="mailto:martinm@smcschools.org">martinm@smcschools.org</a>	Parent of a child or person with a disability *	9	June 2012 (1 <sup>st</sup> term)
Larry Meyer <i>(past Chair)</i>	SEKESC PO Box 19227 Topeka KS 66619 785-862-7840 cell: 620-724-3545 <a href="mailto:larry.meyer@greenbush.org">larry.meyer@greenbush.org</a>	Other state agencies involved in the financing or delivery of related services to exceptional children	4	June 2011 (2 <sup>nd</sup> term)
Anne Roberts	KVC Behavioral Healthcare Inc. 21350 W 153 <sup>rd</sup> St Olathe, KS 66061 913-322-4900 x 4902 cell: 816-550-4596 <a href="mailto:aroberts@kvc.org">aroberts@kvc.org</a>	Foster Care Agency	3	June 2011 (1 <sup>st</sup> term)
Vicki Sharp	5209 W 68th Prairie Village, KS 66208 cell: 913-634-5330 <a href="mailto:vlsharp@kc.rr.com">vlsharp@kc.rr.com</a>	Parent of a Child - with Giftedness *	2	June 2011 (1 <sup>st</sup> term)
Dr. Sean Smith <i>(Chair)</i>	University of Kansas 1122 W Campus Road JRP 538 Lawrence, KS 66045 785-331-2974 cell: 785 979 6517 <a href="mailto:seanj@ku.edu">seanj@ku.edu</a>	IHE Special Education *	4	June 2012 (2 <sup>nd</sup> term)
SueAnn Wanklyn	1461 20 <sup>th</sup> Road Frankfort KS 66427 Cell: 785-799-4531 <a href="mailto:swanklyn@yahoo.com">swanklyn@yahoo.com</a>	Parent of a child or person with a disability *	6	June 2011 (1 <sup>st</sup> term)

\* These representatives fulfill the majority requirement; persons who are individuals with a disability or parent of children with a disability and who may represent another required area.

Secretary to SEAC: Colleen Riley, Director of Special Education, Student Support Services, KSDE – [criley@ksde.org](mailto:criley@ksde.org) or (785)291-3097

Administrative Support to SEAC: Deb Burns, Special Education Services, KSDE [dburns@ksde.org](mailto:dburns@ksde.org) or (785)291-3097

## **Council Leadership**

The officers for the 2009-2010 year were: Chair, Dr. Sean Smith; Vice-Chair, Kathy Kersenbrock-Ostmeyer. They were unanimously elected to fulfill the obligations of these positions at the April 2009 council meeting.

The 2009-2010 Executive Committee was comprised of: Chair; Dr. Sean Smith, Vice-Chair, Kathy Kersenbrock-Ostmeyer; Colleen Riley, Secretary. The executive committee met one time prior to each SEAC meeting to establish the SEAC agenda, and represented the council at CEC and OSEP Leadership Conference.

## **Operational Standards**

The SEAC's 2009-2010 meeting schedule was as follows:

<b>Meeting Date</b>	<b>Location</b>
July 29 '09	Airport Hilton Hotel, Wichita KS
September 16 '09	KSDE, Topeka KS
November 18 '09	KSDE, Topeka KS (combined SEAC/SICC mtg)
January 12 & 13 '10	KSDE, Topeka KS
February 13 '10	KSDE, Topeka KS
April 14 '10	KSDE, Topeka KS

The Council must conduct a minimum of four (4) regular, one-day meetings. The 2009-2010 year exceeded this standard by holding six meetings, one of which was a two-day meeting.

Official minutes of the meetings were kept, reviewed at each following meeting for accuracy, and posted on the KSDE Special Education Services website at <http://www.ksde.org/Default.aspx?tabid=2466>

A public comment period was offered at each SEAC meeting. There were two occasions that this portion of the meeting was filled this year.

## **Council Accomplishments**

Appendix A provides a summary of the activities completed for the 2009-2010 school year by Priority and Action Area



# **Appendix A**

## **2009-2010 SEAC Action Plan**



**Special Education Advisory Council (SEAC)  
Action Plan  
2009-2010**

The purpose of the SEAC is to advocate for achieving excellence, equity, and lifelong learning opportunities for all students in Kansas. It is the responsibility of SEAC to:

- Advise the Special Education Administrators (SEA) of unmet needs within the state in the education of children and youth with exceptionalities;
- Comment publicly on any rules and regulations proposed by the state regarding the education of children and youth with exceptionalities;
- Advise the SEA in developing evaluations and reporting on data to the Secretary under Section 618 of the Act;
- Advise the SEA in developing corrective action plans to address findings identified in Federal Monitoring reports under Part B of the Act; and
- Advise the SEA in developing and implementing policies relating to the coordination of services for children and youth with exceptionalities.

To meet these responsibilities, the Kansas SEAC outlines the following action plan.

**1. Area of Focus: Advise the SEA of unmet needs**

Priority Areas	Data Sources	Action Completed	Result
1.1 Increase awareness & understanding of provision of services from the public perspective	<ul style="list-style-type: none"> <li>• SpEd Parent Survey</li> <li>• On-line public comment forum</li> <li>• Families Together, Inc.</li> <li>• Homeless Appointment</li> </ul>	<p>1/10 Members were invited to attend Families Together, Inc. 2010 Together We Can Learn Conference, and to the MTSS Symposium being held in September '10.</p> <p>11/09 Members received information on services provided by Families Together, Inc.</p>	Four Council members attended the Families Together, Inc. conference, and eight members attended the MTSS Symposium.
1.2 Promote the role of SEAC functions to the legislature, other advisory councils, committees, parents and organizations	<ul style="list-style-type: none"> <li>• IEP meetings</li> <li>• Public forums</li> <li>• Statewide projects</li> <li>• Website</li> <li>• Conferences</li> </ul>	1/10 Members were introduced to the KS State Board of Education (KSBE) and provided an overview of SEAC goals/activities to the KSBE	KSBE members attended breakfast and praised SEAC members for their excellent work in providing information to KSBE.

Priority Areas	Data Sources	Action Completed	Result
		<p>Members hosted an informational breakfast with the KSBE</p> <p>7/09 Members were invited to attend the Tri-State Regional Special Education Law Conference, November 5-6 '09 @ Omaha Embassy Suites.</p> <p>9/09 Several members participated in the OSEP Leadership Conference, August 17-19 '09, Washington DC.</p> <p>In a unanimous decision members decided that Public Comment will be made accessible via toll-free speaker phone during each meeting, and will be advertised through Sped Express and the SEAC website.</p> <p>11/09 SEAC hosted the first joint meeting of SEAC &amp; SICC, supported by a shared agenda.</p> <p>Several members participated in the Tri-State Law Conference, Omaha NE, November 6 '09.</p>	<p>Six members attended the Law Conference</p> <p>Three members attended the OSEP Leadership conference</p> <p>Information uploaded to the SEAC website and speaker phone access was implemented.</p> <p>Thirty-eight SEAC &amp; SICC members attended.</p> <p>Six members attended the Law Conference</p>

**2. Area of Focus: Comment publically on rules & regulations proposed by the state regarding the education of children & youth with exceptionalities**

Priority Areas	Data Sources	Action Completed	Result
2.1 Study and provide comment on proposed federal and state laws and regulations and assist in implementation of changes.	<ul style="list-style-type: none"> <li>State &amp; Federal websites</li> </ul>	<p>4/10 Members reviewed documents and had discussion regarding the proposed Regulation document 34 C.F.R. 300.300 Revocation of Consent.</p> <p>9/09 Members received a brief overview of ARRA funds.</p>	<p>SEAC input was provided to the KSBE at the board's June '10 meeting</p> <p>Members were updated at each meeting</p>

**3. Area of Focus: Advise the SEA in developing evaluations, reporting on data and in responding to federal monitoring.**

Priority Areas	Data Sources	Action Completed	Result
3.1 Provide oversight of the implementation of federal and state special education laws and regulations to ensure Kansas has effective systems in place to monitor compliance and support improved achievement and outcomes for children & youth with exceptionalities	<ul style="list-style-type: none"> <li>Data for SPP indicators</li> <li>Data &amp; review of due process hearings, mediation &amp; formal complaints</li> <li>KS Integrated Accountability System data (KIAS)</li> </ul>	<p>1/10 Members discussed concerns about gaps in education around secondary students who are unable to meet curriculum standards and not eligible for additional curriculum assistance, particularly in the area of math.</p> <p>Members reviewed documents and had discussion regarding the proposed Regulation document 34 C.F.R. 300.300 Revocation of Consent.</p> <p>Members received a report of data</p>	<p>Further study/discussion</p> <p>SEAC input was provided to the KSBE at the board's June '10 meeting</p> <p>Members were updated at each meeting</p>

Priority Areas	Data Sources	Action Completed	Result
		<p>for the FFY 2008 APR Indicator 1 – Graduation, and Indicator 2 – Dropout</p> <p>7/09 Members reviewed the Kansas Integrated Accountability System document.</p> <p>9/09 Members discussed Kansas SPP/APR Indicator #3 – statewide assessment accommodations and the impact on consistency to students throughout the year. Members agreed that the current set targets will remain for the upcoming year in order to accommodate incremental growth.</p> <p>Members received an overview of the KIAS, KSDEs current integrated accountability system to collect data for all districts and all 20 Indicators.</p> <p>11/09 Members received an overview of a recent KSDE/KDHE collaborative mock verification visit by an outside consulting firm, whose focus was to prepare &amp; strengthen both agencies for a future verification OSEP visit on compliance. The firm’s focus was to review electronic data strengths, areas for improvement, and next steps for both Part B and Part B.</p>	<p>Members were updated at each meeting</p>

Priority Areas	Data Sources	Action Completed	Result
<p>3.2 Assist in the dissemination of information in the area of early childhood and secondary transition to help ensure Kansas can demonstrate compliance with IDEA 2004 and regulations.</p>	<ul style="list-style-type: none"> <li>• Data for SPP/APR indicators</li> <li>• Public meetings</li> <li>• KSDE workshops</li> </ul>	<p>11/09 Members received an historical overview of the statewide KS Inservice Training Service project (KITS) working with early intervention &amp; early childhood sped professionals to provide collaboration/linkages, information services, training, and technical assistance.</p> <p>11/09 Members received an overview of KS Early Childhood Collaboration that includes birth-3, Parents As Teachers, Tiny-K – infant/toddler services, Healthy Families (KS Children’s Service League), Healthy Start, 3-5 year old programs, Head Start, 4 year At-Risk program; Pre-K Pilot program; Early Childhood Special Education Section 619 Part B; Migrant Family Literacy.</p> <p>Members received an overview of the KS Division of Early Childhood (KDEC) established to provide developmental services to children age Birth – 5 children and their families.</p> <p>Members receive briefings on a variety of programs that serve EC families (B-5) – Parents As Teachers, 4 year old At-Risk, Pre-K program, School Readiness, Homeless, and other program information.</p> <p>Members received information around KS Early Learning Collaborative</p>	<p>Members were updated at each meeting</p>

Priority Areas	Data Sources	Action Completed	Result
		(through EC block grant funds) at 12 communities; Ford, Finney, Cherokee, Crawford, Saline, Wyandotte, Johnson, Ellis, Leavenworth, Shawnee County, Harvey, Montgomery – partners were brought together to discuss inclusion.	
3.3 Analyze the data on the educational progress of students with exceptionalities and make recommendations to enhance their educational program, services, and achievement.	<ul style="list-style-type: none"> <li>• AYP results</li> <li>• State assessment data</li> <li>• Suspension/expulsion data</li> <li>• Graduation/drop-out rates</li> <li>• EC outcomes</li> <li>• Post-secondary outcomes</li> <li>• Transition data (TOPS)</li> <li>• APR/SPP data</li> <li>• Seclusion Data</li> </ul>	<p>9/09 Members reviewed and provided input to assist KSDE’s goal to improve the data collection system the 2008-09 Special Education Seclusion verified data.</p> <p>11/09 Members received an overview of Part C SPP/APR Indicators B7, B12, C2, C3, C4, C8: Natural Environment, EC Outcomes, Family Outcomes, Transition.</p>	<p>Members received information from KSDE’s Patty Gray</p> <p>Members were updated at each meeting</p>
3.4 As stakeholders, assist in the interpretation of Kansas data in reporting to the public and federal government.	<ul style="list-style-type: none"> <li>• APR &amp; SPP</li> </ul>	<p>7/09 Members reviewed OSEP’s response to the FFY 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP) submitted to the Office of Special Education Program/USDOE by KSDE, February ‘09.</p>	<p>Members were updated at each meeting</p>

**4. Area of Focus: Advise the SEA on personnel development**

Priority Areas	Data Sources	Action Completed	Result
<p>4.1 Evaluate the working conditions of special education teachers in Kansas. Study relevant issues including licensure &amp; endorsement and assist with dissemination of related information .</p>	<ul style="list-style-type: none"> <li>• Personnel reports</li> <li>• KEEB</li> <li>• SPDG</li> <li>• University partnerships</li> <li>• Project Alive</li> <li>• KSDE, TEAL &amp; SES team</li> </ul>	<p>1/10 Members received an update on IHE high incidence (adaptive) personnel preparation grants funded through OSEP</p> <p>Members received an update on the upcoming evaluation process for the State Personnel Development Grant (SPDG)</p> <p>Members received a review of current and future licensure issues, and discussed licensure issues that educators, administrators and IHEs are facing, and lack of training for paras due to budget cuts.</p> <p>9/09 Members received an update on KU's planning grant for high incidence &amp; adaptive areas of teacher education, with hopes to incorporate other IHEs into the project.</p>	<p>Members will remain informed</p> <p>Members received information from KSDE's Kerry Haag</p> <p>Members were updated at each meeting</p> <p>Members were updated at each meeting</p>

**5. Area of Focus: Advise the SEA in developing and implementing policies related to coordination of services**

Priority Areas	Data Sources	Action Completed	Result
<p>5.1 Enhance school-family-community partnerships by encouraging and developing coordinated programs and/or services.</p>	<ul style="list-style-type: none"> <li>• Parent survey for SPP Indicator 8</li> <li>• Families Together, Inc. (FT)</li> </ul>	<p>4/10 A representative of Families Together, Inc. (FT) shared recent data indicating the number of persons &amp; families served during 2008-09, and education advocates assigned.</p> <p>1/10 Members were made aware that Families Together, Inc – Kansas parent center, has begun assigning Education Advocates to homeless youth under the age of 16</p> <p>11/09 Members received an overview of the KS Instructional Support Network Project (KISN) who’s focus is on tertiary support &amp; training to service providers and families that work with learners that present multiple needs, specifically directed in the area of ASD and other neurologic disorders.</p> <p>11/09 Members received information on some of the services provided by Families Together, Inc.</p>	<p>Members received a FT update at each meeting</p> <p>Members were updated at each meeting</p> <p>Members were updated at each meeting</p>

Priority Areas	Data Sources	Action Completed	Result
<p>5.2 Improve communication &amp; collaboration between SEAC &amp; SICC Councils to enhance services to children &amp; families in Kansas.</p>	<ul style="list-style-type: none"> <li>Meeting minutes of each Council</li> </ul>	<p>1/10 SICC member provided members with an overview of issues currently addressed by SICC</p> <p>11/09 SEAC hosted the first joint meeting of SEAC &amp; SICC, supported by a shared agenda.</p> <p>Members received an overview of Part C SPP/APR Indicators B7, B12, C2, C3, C4, C8: Natural Environment, EC Outcomes, Family Outcomes, Transition.</p> <p>9/09 Member Kathy Kersenbrock-Ostmeyer announced her appointment by the Governor to the State Interagency Coordinating Council (SICC).</p>	<p>SICC will provide monthly activity updates to SEAC. Both Councils agreed to meeting once yearly.</p>

Priority Areas	Data Sources	Action Completed	Result
<p>5.3 Promote and enhance the blending of services between special and general education, including federal, state, and local programs (Title I, Special Ed.)</p>	<ul style="list-style-type: none"> <li>• KSDE multi-tiered model for statewide use (MTSS)</li> </ul>	<p>1/10 Member received an update of MTSS initiatives</p> <p>Members discussed concern that the math component of MTSS was not being developed.</p> <p>11/09 Members received an overview of KS Early Childhood Collaboration that includes birth-3, Parents As Teachers, Tiny-K – infant/toddler services, Healthy Families (KS Children’s Service League), Healthy Start, 3-5 year old programs, Head Start, 4 year At-Risk program; Pre-K Pilot program; Early Childhood Special Education Section 619 Part B; Migrant Family Literacy.</p> <p>7/09 Members reviewed the MTSS Parent Brochure which provides parents with an overview of the basic components of the MTSS process.</p>	<p>Members were updated at each meeting</p> <p>Further study/discussion scheduled for July ’10 meeting</p> <p>Members were updated at each meeting</p> <p>Members were updated at each meeting</p>

Priority Areas	Data Sources	Action Completed	Result
5.4 Review & acknowledge blended programs including mental health issues.	<ul style="list-style-type: none"> <li>• KSDE</li> <li>• SRS</li> <li>• Juvenile Justice</li> <li>• Mental Health Agency</li> <li>• DRC</li> <li>• KPIRC</li> <li>• Seclusion data</li> <li>• Families Together, Inc.</li> </ul>	<p>4/10 Members received an overview of the new Technical Assistance Statewide Network (TASN) grant projects derived from needs of personnel and disability specific and designed to align w/KSBE goals and MTSS.</p> <p>11/09 Members received an overview of the KS Instructional Support Network Project (KISN) who's focus is on tertiary support &amp; training to service providers and families that work with learners that present multiple needs, specifically directed in the area of ASD and other neurologic disorders.</p>	<p>Members were updated at each meeting</p> <p>Members were updated at each meeting</p>

**6. Area of Focus: Advise the SEA in interpretation of suitable use of funds**

Priority Areas	Data Sources	Action Completed	Result
6.1 Study funding changes made due to decisions in 2008-09 state legislature that impacted federal, state & local funding.	<ul style="list-style-type: none"> <li>• Changes to categorical aid</li> <li>• Voc-Rehab</li> <li>• Medicaid</li> <li>• Legislative changes</li> <li>• Student impact</li> <li>• Gifted program</li> </ul>	<p>1/10 Members received an overview of the recommendations made by the KS Facilities Closure Commission concerning the future of the Kansas School for the Blind (KSB) &amp; the Kansas School for the Deaf (KSD)</p>	

Priority Areas	Data Sources	Action Completed	Result
		<p>Members discussed the Catastrophic Aid Bill that would change the way cat. aid would be distributed in the Special Education system</p> <p>9/09 Members reviewed information to Kansas Senate Bill 41 Disabilities Awareness Week, Oct. 19-23 '09, to coincide with Disability Employment Month and Disability Mentoring Month.</p> <p>Members received an overview of current legislative activities.</p> <p>Members received a brief overview of ARRA funds.</p> <p>Members reviewed recent changes to the Catastrophic Aid formula.</p> <p>11/09 Members received an update on the severity of current education finances and expected changes to 2010 funding by the Governor.</p>	<p>Members were updated at each meeting</p> <p>Further study/discussion at a future meeting</p> <p>Members were updated at each meeting</p>

# **Appendix B**

## **Council Advise and Recommendations to State Board of Education (KSBE)**



## Kansas State Department of Education

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**To:** Interim Commissioner Diane DeBacker  
**From:** Deb Burns, Colleen Riley  
**Subject:** Receive Special Education Advisory Council's (SEAC) response to changes to revocation of parental rights regulations  
**Date:** 04/27/2010  
**Board Goals:** Governmental responsibility

Current state special education regulations regarding a parent's right to revoke consent for special education services after the initial provision of services has occurred must be amended to incorporate the additional requirements imposed by the new federal special education regulations. The proposed amendments to the state special education regulations do not impose any requirement that is not set forth in state laws, federal regulations or written federal policy.

Kansas State Board members asked Mark Ward and Colleen Riley to "run the proposed regulations" back through Special Education Advisory Council (SEAC) and to bring comments back to the May Board meeting for further discussion.

On April 14, 2010 Mark Ward and Elena Lincoln provided the following information to the SEAC:

*Federal regulations, which became effective on December 31, 2008, were amended to provide parents of children with disabilities the right to revoke consent for all special education services, even after initial services had been provided. Accordingly, the KSDE has proposed an amendment to state regulations to make the state regulations consistent with federal regulations.*

*This change to the federal regulations is based on a new interpretation by the United States Department of Education (USDE) of the term "consent." In both state and federal regulations, part of the definition of the term "consent" is that it is voluntary and may be revoked at any time. The new federal regulation specifies that the right to revoke consent may now be exercised even after initial services have been provided, but that right is limited to revocation of consent for all services.*

*However, unlike the federal statute and regulations, Kansas statutes give parents of children with disabilities a right to consent or refuse to consent to a material change in services or a substantial change in placement. Therefore, because the definition of consent includes the right to revoke consent at any time, parents in Kansas must also have the right to revoke consent they give for material changes in services and substantial changes in placement.*

*What must also be considered, however, is that current federal regulations, at 34 C.F.R. 300.300(d), state that if a state has given parents additional rights to grant or withhold consent, as Kansas has, the state must establish and implement effective procedures to ensure that a parents refusal to consent does not result in a failure to provide the child with a free appropriate public education (FAPE). In the Summary of the new federal regulations, the USDE stated that 34 C.F.R. 300.300(d) also requires states to have effective procedures to ensure that a parent's exercise of the right to revoke consent does not result in a failure to provide a child with a disability with a FAPE.*

*Accordingly, the proposed amendments to the state regulations permit a parent to revoke consent for all services and placement, but also include a provision giving parents the additional right to revoke consent to particular services and placements. To comply with federal regulations, however, the proposed regulations state that a parent may exercise the right to revoke consent for a particular service or placement only if the IEP team certifies in writing that the exercise of that right will not result in a failure to prove the child with a FAPE.*

There was also discussion regarding why the USDE regulations only permitted parents to revoke consent to all special education services. Among the reasons discussed was that an IEP is an educational program developed by a team of educators and the parent. These team members have unique knowledge of the student through personal contact and evaluation data. Often the educational program described in the IEP is a set of services, supports and placement, all of which the team believes is needed for the child to be successful. If one member of the team is empowered to selectively remove particular services or placements, it would undermine a central component of the IDEA - that the IEP is developed by an IEP team.

One parent member asked a question for clarification regarding if there is parent disagreement with the IEP team decision that revocation of consent for a particular service or placement will result in a failure to provide FAPE, what is the recourse for the parent. The response provided was that, as in any disagreement between the parent and the IEP team, the dispute resolution processes remain intact and the parent can take that course of action if desired.

SEAC members were asked to review documents provided regarding the proposed regulations and to send any comments to Mark Ward. In addition, the Families Together representative was asked if there were any concerns or comments about the proposed regulations, and the representative indicated there were none at that time. Both SEAC and Families Together were reminded about the public comment that will be held at the June State Board meeting. To date no further comments have been submitted to Mark Ward, Elena Lincoln or Colleen Riley regarding the proposed regulations.

These proposed amendments have also been posted on the KSDE website for public review and comment at <http://www.ksde.org/>.

Special Education Services  
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## REVOCATION OF CONSENT - THE KANSAS REQUIREMENT

**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:

(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 K.S.A. 2006 Supp. 72-991a, 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 (emphasis added);

\* **Comment:** In addition to the consent requirements of the IDEA, this Kansas statute also requires parental consent for a material change in services (a change of the frequency or duration of a service by 25% or more) or a substantial change in placement (movement of an exceptional child for more than 25% of the child's school day to a more restrictive or less restrictive educational environment).

34 C.F.R. 300.300(d) Other consent requirements.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE. Federal Register, Vol. 71 No. 156, August 14, 2006, p. 46784

- In the summary of the new federal regulations regarding a parent's right to revoke consent, is this statement:

Additionally, under the regulations in Sec. 300.300(d)(2), States are free to create additional parental consent rights, such as requiring parental consent for particular services, or allowing parents to revoke consent for particular services, but in those cases, the State must ensure that each public agency in the State has effective procedures to ensure that the parents' exercise of these rights does not result in a failure to provide FAPE to the child. Federal Register, vo. 73, No. 231, December 1, 2008, p. 73011

Sec. 300.100 Eligibility for assistance.

A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in Sec. Sec. 300.101 through 300.176.

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a))

FAPE Requirements

Sec. 300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in Sec. 300.530(d).

(b) FAPE for children beginning at age 3. (1) Each State must ensure that--

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with Sec. 300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade. (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

(Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(1)(A))

Federal Register Vol. 71, No. 156, August 14, 2006, p. 46762



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

STEVE SIX  
ATTORNEY GENERAL

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January 26, 2010

Bertha Hackett  
Office of the General Counsel  
Kansas Board of Education  
120 SE 10<sup>th</sup> Avenue  
Topeka, Kansas 66612-1182

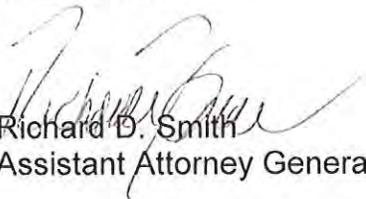
Re: **K.A.R. 91-40-1 and 91-40-27**

Dear Ms. Hackett:

Pursuant to K.S.A. 77-420(b), we have determined that the above-referenced regulations are within the statutory authority of the agency and do not present any other legal issues of concern. We have therefore approved these regulations for legality.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
STEVE SIX

  
Richard D. Smith  
Assistant Attorney General

RDS:jm

Enclosure: Original documents

cc: Senator Vicki Schmidt, Chair, Joint Committee on Rules and Regulations  
Representative Carl Holmes, Vice Chair, Joint Committee on Rules and Regulations  
Representative Janice L. Pauls, Ranking Minority Member, Joint Committee on  
Rules and Regulations  
Raney Gilliland, Legislative Research, State Capitol

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

(b) "Agency" means any board or state agency.

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

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

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

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

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

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

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

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

(e) "Audiology" means the following:

(1) Identification of children with hearing loss;

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

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

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

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

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

(f) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational

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performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.

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

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

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

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

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

(1) A child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability,

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deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services; and

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

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

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

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

(3) A parent understands that the following:

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

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

(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

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the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

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

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

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

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

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

- (1) Physical;
- (2) cognitive;
- (3) adaptive behavior;
- (4) communication; or
- (5) social or emotional development.

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

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

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

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

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

- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (3) inappropriate types of behavior or feelings under normal circumstances;
- (4) a general pervasive mood of unhappiness or depression; or
- (5) a tendency to develop physical symptoms or fears associated with personal or school problems. The term shall include schizophrenia but shall not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

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

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

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

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

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

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

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

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

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

(2) meet the standards of the state board;

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

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

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

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

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

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

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

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

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

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

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

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

(1) The parent or parents of a child;

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

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

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

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

(B) is knowledgeable about the general curriculum; and

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

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

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

(7) whenever appropriate, the exceptional child.

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

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

(kk) "Interpreting services" means the following:

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

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

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

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

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

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

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

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

(qq) "Native language" means the following:

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

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

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

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

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

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

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

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

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

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

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

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

(4) other concepts, techniques, and tools.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Physical and motor fitness;

(2) fundamental motor skills and patterns; and

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

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

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

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

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

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

(1) Related services shall include the following:

- (A) Art therapy;
- (B) assistive technology devices and services;
- (C) audiology;
- (D) counseling services;
- (E) dance movement therapy;

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- (F) early identification and assessment of disabilities;
- (G) interpreting services;
- (H) medical services for diagnostic or evaluation purposes;
- (I) music therapy;
- (J) occupational therapy;
- (K) orientation and mobility services;
- (L) parent counseling and training;
- (M) physical therapy;
- (N) recreation, including therapeutic recreation;
- (O) rehabilitation counseling services;
- (P) school health services;
- (Q) school nurse services;
- (R) school psychological services;
- (S) school social work services;
- (T) special education administration and supervision;
- (U) special music education;
- (V) speech and language services;
- (W) transportation; and
- (X) other developmental, corrective, or supportive services.

(2) Related services shall not include the provision of any medical device that is surgically implanted, including a cochlear implant, the optimization of the

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device's functioning, including mapping and maintenance of the device, and replacement of the device.

(ddd) "School age" means the following:

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

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

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

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

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

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

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

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(2) interpreting assessment results;

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

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

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

(6) assisting in developing positive behavioral intervention strategies.

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

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

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

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

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

(5) assisting in developing positive behavioral intervention strategies.

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

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(kkk) "Special education" means the following:

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

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

(B) instruction in physical education;

(2) paraeducator services, speech-language pathology services, and any other related service, if the service consists of specially designed instruction to meet the unique needs of a child with a disability;

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

(4) travel training; and

(5) vocational education.

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

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

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

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

- (1) Visual, hearing, or motor disabilities;
- (2) mental retardation;
- (3) emotional disturbance; or
- (4) environmental, cultural, or economic disadvantage.

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

- (1) Identification of children with speech or language impairments;
- (2) diagnosis and appraisal of specific speech or language impairments;
- (3) referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

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

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

(ooo) "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

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

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

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

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

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

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

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

(vvv) "Transportation" means the following:

- (1) Travel to and from school and between schools;
- (2) travel in and around school buildings; and
- (3) specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

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

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

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

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

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

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

(zzz) "Vocational education" means any organized educational program that is directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. (Authorized by and implementing K.S.A. ~~2007~~ 2008 Supp. 72-963; effective May 19, 2000; amended March 21, 2008; amended P-\_\_\_\_\_.)

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

- (1) Conducting an initial evaluation or any reevaluation of an exceptional child;
- (2) initially providing special education and related services to an exceptional child; or
- (3) making a material change in services to, or a substantial change in the placement of, an exceptional child, 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 parental 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.

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

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

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

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

(f)(1) If 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.

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(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.

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(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

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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

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child is determined to be eligible, the agency shall develop an initial IEP.

(Authorized by K.S.A. 2007 2008 Supp. 72-963; implementing K.S.A. 2007 2008 Supp. 72-988; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008; amended P-\_\_\_\_\_.)

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