IDEA & Gifted Requirements File Review: Frequently Asked Questions

INTRODUCTION

> This document addresses the most frequently asked questions about the IDEA & Gifted Requirements File Review. Additional resources that may be helpful to staff who are completing this file review include the IDEA & Gifted File Review Self-Assessment PDF with the 24 self-assessment questions, a recording of the IDEA & Gifted Requirements File Review Workshop, and the Kansas Special Education Process Handbook. Submit any lingering questions that are not addressed in these resources to filereview@ksde.org.

PARENT RIGHTS NOTICE [SELF-ASSESSMENT QUESTION 1]

QUESTION: Who are considered the parents or legal education decision-maker? If there are several adults who are active in a student's education, which of those people are entitled to receive the Parent Rights notice?

ANSWER: State and federal regulations specifically identify who is considered a parent for special education purposes. A parent can be: 1) a biological or adoptive parent; 2) a guardian authorized by a court to act as the child's parent or to make educational decisions for the child; 3) a relative, with whom the child lives, acting in the place of a biological or adoptive parent; or 4) an education advocate who has been appointed by Families Together because the child's parent has been determined to be unknown or unavailable. When more than one party is qualified to act as a parent and the biological or adoptive parent is asserting their rights, the biological or adoptive parent must be presumed to be the parent and education decision-maker unless a court has terminated their rights. For more, see the Kansas Special Education Process Handbook Chapter 1 Section B.; 34 C.F.R. 300.30; K.S.A. 72-3404(m) through (o); K.A.R. 91-40-27(c).

QUESTION: Did KSDE make a new requirement that the Parent Rights notice must go to both parents?

ANSWER: No. KSDE did not make a new requirement. A plain reading of the law makes it clear that the parent rights (procedural safeguards) notice must go to both parents. The law states: "A copy of the procedural safeguards available to the parent**s** of a child with a disability must be given to the parent**s** only one time a school year, except that a copy also must be given to the parent**s**…" [see 34 C.F.R. 300.504(a); K.S.A. 72-3430(e)]. KSDE has made this requirement clear in the Kansas Special Education Process Handbook for many years [see Chapter 1: Section B. and Questions and Answers About Parent Rights Q&A 3]. KSDE's interpretation of this requirement is based on guidance from the Office of Special Education Programs (OSEP): "One commenter requested clarifying to whom LEAs must provide notice, or obtain consent in situations where there are disputes between biological or adoptive parents. In situations where parents of a child are divorced, the parental rights established by the Act apply to both parents, unless a court order or State law specifies otherwise." 71 *Federal Register* 46,568 (Aug. 14, 2006).

QUESTION: If parents walk away without taking the parent rights do we need to just document that?

ANSWER: Documentation must show that the school district gave the Parent Rights notice to the parents. What the parents do with the notice after the notice is given to them is irrelevant. The Office of Special Education Programs (OSEP) has provided the following guidance: "If a parent declines the offered printed copy of the notice and indicates a clear preference to

obtain the notice electronically on their own from the agency's website, it would be reasonable for the public agency to document that it offered a printed copy of the notice that the parent declined." 71 *Federal Register* 46,693 (Aug. 14, 2006).

QUESTION: Parent Rights/Procedural Safeguards must be provided for initial evaluation, does this include for reevaluation?

ANSWER: No. The METHOD section under Question 1 in the Kansas IDEA and Gifted File Review Self-Assessment document, indicates every instance when Parent Rights must be given. This is also outlined in the following regulations and statutes: 34 C.F.R. 300.504(a); K.A.R. 91-40-26(d)(1); K.S.A. 72-3430(e) [also see Kansas Special Education Process Handbook, Chapter 1 Section C.]. These laws state that the procedural safeguards must be given to the parents "upon initial referral or parent request for evaluation." KSDE interprets this to mean that the procedural safeguards notice must be given when the school district proposes to conduct an initial evaluation or when a parent requests an initial evaluation.
However, note that a Prior Written Notice (PWN) [which is different than Parent Rights Notice] must be given any time an initial evaluation or reevaluation is proposed or requested by the school or the parent [see 34 C.F.R. 300.304(a); 300.503(a)(1)-(2); K.S.A. 72-3430(b)(2); also see Kansas Special Education Process Handbook, Chapter 1 Requirements for Parental Notice and Consent Chart].

QUESTION: Do we need to receive a signature from both parents that they received the Parent Rights Notice?

ANSWER: There is no requirement in the law to receive the parents' signatures acknowledging that they received a copy of the Procedural Safeguards. A school district may choose to use this method in order to document that it complied with the requirement to give the notice to the parents. Other methods of documentation could include, but are not limited to: retaining a copy of the electronic communications that were used (if any) to send the notice to the parents, writing in meeting notes that a copy of the notice was provided to both parents in their native language, or keeping a contact/communication log of each time notice is provided to the parents (similar to contact logs used when Notice of Meeting or PWN is given to parents).

QUESTION: If mom attends a meeting and dad does not (both parents live together), can the notice be given only to mom at the meeting or does dad need to be mailed a copy as well?

ANSWER: KSDE would accept documentation showing the following: a) one parent was given the proper Parent Rights Notice at a meeting, and b) both parents live in the same household.

QUESTION: Where does KSDE recommend to document information regarding whether Parent Rights Notice was provided in native language?

ANSWER: This is up to the discretion of the school district. Some options include, but are not limited to: asking the parents to sign a check list where they acknowledge they were given the Parent Rights notice in their native language, retaining a copy of the electronic communications that were used (if any) to send the notice to the parents in their native language, writing in meeting notes that a copy of the notice was provided to both parents in their native language, or keeping a contact/communication log of each time notice is provided to the parents in their native language (similar to contact logs used when Notice of Meeting or PWN is given to parents).

QUESTION: A district has in its form an assurance that both parents/legal ed decision maker received notices in native language checkbox, but does not document the address that the notices were sent to. Would this documentation be sufficient for compliance, or does the district need to document the address sent to for both parents as well?

ANSWER: The addresses of the parents are not required documentation to show compliance. KSDE is looking for documentation that verifies all of the following: a) both parents [and student if 18 or older] were given the proper Parent Rights notice; b) the Parent Rights notice was given in the native language or other mode of communication used by the parent [and student if 18 or older]; and c) the Parent Rights notice was given each time it was required. The way in which a district documents that it has complied with these requirements is within the discretion of the school district. Some options include, but are not limited to: asking the parents to sign a check list where they acknowledge they were given the Parent Rights notice in their native language, retaining a copy of the electronic communications that were used (if any) to send the notice to the parents in their native language, writing in meeting notes that a copy of the notice was provided to both parents in their native language, or keeping a contact/communication log of each time notice is provided to the parents in their native language (similar to contact logs used when Notice of Meeting or PWN is given to parents).

QUESTION: Language is not currently listed as part of the information on current forms about offering/providing Parent Rights notice to parents. Does that need to be added?

ANSWER: The way in which a district documents that it has complied with these requirements is within the discretion of the school district. Some options include, but are not limited to: asking the parents to sign a check list where they acknowledge they were given the Parent Rights notice in their native language, retaining a copy of the electronic communications that were used (if any) to send the notice to the parents in their native language, writing in meeting notes that a copy of the notice was provided to both parents in their native language, or keeping a contact/communication log of each time notice is provided to the parents in their

native language (similar to contact logs used when Notice of Meeting or PWN is given to parents).

QUESTION: Is it ok to have a form that says offer/provide parent rights or should it only say provide?

ANSWER: The Office of Special Education Programs (OSEP) has provided the following guidance: "If a parent declines the offered printed copy of the notice and indicates a clear preference to obtain the notice electronically on their own from the agency's website, it would be reasonable for the public agency to document that it offered a printed copy of the notice that the parent declined." 71 *Federal Register* 46,693 (Aug. 14, 2006).

QUESTION: How do you meet the requirement to provide the notice in the native language if parents speak an unusual dialect, and Spanish is their second language, and English is their third language?

ANSWER: The federal and state regulations require the Parent Rights notice to be provided in the native language or other mode of communication "unless it is clearly not feasible to do so" [see 34 C.F.R. 300.504(d), 300.503(c)(1)(ii); K.A.R. 91-40-26(b)]. In this instance, the district must provide documentation to show why it is clearly not feasible to provide the Parent Rights notice in the native language or other mode of communication used by the parent. In addition, if the native language or other mode of communication of a parent is not a written language, the regulations require the public agency to ensure the following: 1) the notice is translated orally or by other means, 2) the parent understands the content of the notice, and 3) there is written evidence that requirements 1) and 2) have been met [see 34 C.F.R. 300.504(d), 300.503(c)(2); K.A.R. 91-40-26(c)(1) through (3)].

QUESTION: Can the school district provide the Parent Rights notice to parents digitally?

ANSWER: Parents may choose to receive the Parent Rights notice by electronic mail communication if the school makes that option available [see 34 C.F.R. 300.505]. Note, however, that merely posting the Parent Rights notice on the school district's website does not meet the requirement to give the notice to parents. The Office of Special Education Programs (OSEP) has provided the following guidance on these topics:

> Section 300.505 permits public agencies to make the electronic mail option available for notices.... It would be an unnecessary paperwork burden to require a parent who elects to receive notices by electronic mail to do so in writing, particularly when there are other methods available to document such a request, for example, by the LEA making a notation of the parent's verbal request. We believe public agencies should have the flexibility to determine whether and how to document a parent elects to receive these notices by electronic mail....

> Section 300.504(b) permits, but does not require, a public agency to post a current copy of the procedural safeguards notice on its website, if one exists. The public agency would not meet its obligation in 300.504(a) by simply directing a parent to the website.... Posting the procedural safeguards notice on a public agency's website is clearly optional and for the convenience of the public and does not replace the distribution requirements of the Act [IDEA]. 71 *Federal Register* 46,693, 46,694 (Aug. 14, 2006)

QUESTION: Do you have to document the addresses that you sent the Parent Rights notice each time, when two parents are not living together?

ANSWER: The addresses of the parents are not required documentation to show compliance. KSDE is looking for documentation that verifies all of the following: a) both parents [and student if 18 or older] were given the proper Parent Rights notice; b) the Parent Rights notice was given in the native language or other mode of communication used by the parent [and student if 18 or older]; and c) the Parent Rights notice was given each time it was required. The way in which a district documents that it has complied with these requirements is within the discretion of the school district. Some options include, but are not limited to: asking the parents to sign a check list where they acknowledge they were given the Parent Rights notice in their native language, retaining a copy of the electronic communications that were used (if any) to send the notice to the parents in their native language, writing in meeting notes that a copy of the notice was provided to both parents in their native language, or keeping a contact/communication log of each time notice is provided to the parents in their native language (similar to contact logs used when Notice of Meeting or PWN is given to parents).

QUESTION: Is a school district required to give the Parent Rights notice to the parents if the student is 18 or older and own decision maker?

ANSWER: Yes. See 34 C.F.R. 300.520(a)(1)(i) and K.S.A. 72-3431(a).

EVALUATION & ELIGIBILITY [SELF-ASSESSMENT QUESTIONS 2-10]

QUESTION: If a school district has never conducted an initial evaluation or reevaluation for a student selected for file review, is the school district responsible for the evaluations that took place at the student's previous school district?

ANSWER: KSDE has created KIAS business rules for pulling KIDS IDs in an attempt to ensure that student files selected for IDEA & Gifted Requirements File Review either received their initial evaluation from the current school district or have been receiving services from the current school district for at least 4 years.
With that said, if a school district has not conducted any initial evaluation or reevaluation for a student selected for file review because the student transferred in after their initial evaluation

or most recent reevaluation was completed by a previous district and the student's 3-year reevaluation has not yet come due, the school district will not be held responsible for an evaluation conducted in another district. In this instance, the school district would answer "Yes" to each of the evaluation/eligibility Self-Assessment questions (2 through 10) and explain in the LEA Comment Box that the school district has never had the opportunity to conduct an initial evaluation or reevaluation for the student. Include the date of the students most recent evaluation conducted in the previous school district and the date of the student's transfer to the current school district.

However, if the student's initial evaluation or most recent reevaluation was conducted by a previous district and the current school district and parent agreed that the 3-year reevaluation was not necessary (waiver) for the student when it came due, the school district will use the most recent evaluation that was conducted by the previous district to answer the self-assessment questions. The district may also use any other data it relied on to determine that the reevaluation was unnecessary.

It is important to note that a review of existing evaluation data [under 34 C.F.R. 300.305 and K.S.A. 72-3428(i) and (k)] is **not** a waiver of a reevaluation. In addition, such review of existing evaluation data alone may constitute a reevaluation in toto if the IEP Team and other qualified professionals as appropriate determine, on the basis of the review and input from the parents, that no additional data are needed to establish continuing eligibility and to determine the child's current educational needs [see OSEP Letter to Redacted, Question 3, Feb. 6 2007]. When this determination is made, the parents must be provided with notification of that determination and the reasons for it and the right of the parents to request an assessment [see 34 C.F.R. 300.305(d)(1); K.S.A. 72-3428(k)].

QUESTION: How should a school district approach answering the evaluation and eligibility Self-Assessment questions (2 through 10) if, at the time of the child's 3-year reevaluation, the school district and parent agreed that a reevaluation was unnecessary (waiver)?

ANSWER: Answer the evaluation and eligibility Self-Assessment questions based on the most recent evaluation that was conducted prior to the determination that a 3-year reevaluation was unnecessary (waiver). Note that when a school district and parent agree to waive a 3-year reevaluation, the law requires that they must have determined that a reevaluation was **unnecessary** [see 34 C.F.R. 300.303(b)(2); K.S.A. 72-3428(h)(2)(B)]. If the IEP team and other qualified professionals, as appropriate, believe the last evaluation conducted was insufficient, school districts should be cautious when agreeing that a 3-year reevaluation is unnecessary. Keep in mind that, as stated in the answer above, a reevaluation (or initial evaluation) can be a review of existing evaluation data- including evaluations and information provided by the parents, current classroom-based assessments and observations, and teacher and related services providers' observations- IF the IEP team determines that no additional data are needed to determine whether the child continues to be eligible or to determine the child's educational needs [see 34 C.F.R. 300.305(a) and (d) ; K.S.A. 72-3428(i) and (k)].

QUESTION: When is it appropriate to determine that a 3-year reevaluation is unnecessary (waiver)?

ANSWER: Federal and state regulations require that a reevaluation must be conducted "if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation or if the parent or a teacher requests a reevaluation." See 34 C.F.R. 300.303(a)(1)-(2); K.S.A. 72-3428(h)(1)(A)-(B). The regulations also require that a reevaluation "must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary." See 34 C.F.R. 300.303(b)(2); K.S.A. 72-3428(h)(2)(B). Note that the question here is whether a reevaluation is unnecessary; so, the default is to assume that a reevaluation is needed every 3 years unless the parent and school district agree that neither a review of existing evaluation data nor additional assessments are needed to determine continued eligibility or to address the student's current educational needs [see OSEP Letter to Redacted, Question 2, Feb. 6 2007]. This must be an individualized determination based on each child's needs. Also note that, as explained in the two answers above, a review of existing evaluation data itself is not a waiver and may constitute a reevaluation in toto. The Office of Special Education Programs (OSEP) also offers this guidance:

> Many commenters requested that the opportunity to waive a reevaluation occur only after the IEP Team has reviewed extant data to determine whether additional data are needed to determine the child's eligibility and the educational needs of the child. The review of existing data is part of the reevaluation process. Section 300.305(a), consistent with section 614(c)(1) of the Act, is clear that, as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data, and on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine whether the child continues to have a disability, and the educational needs of the child. Therefore, the opportunity for a parent and the public agency to agree that a reevaluation is unnecessary occurs before a reevaluation begins.... One commenter recommended that the regulations clarify that waiving a three-year reevaluation must not be adopted as routine agency policy or practice and should only be used in exceptional circumstances.... It is not necessary to add language [to the regulations] clarifying that waiving three-year reevaluations must not be a routine agency policy or practice because the regulations are clear that this is a decision that is made individually for each child by the parent of the child and the public agency. Section 300.303(b)(2), consistent with section 614(a)(2)(B)(ii) of the Act, states that a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.... Also, public agencies have a continuing responsibility to request parental consent for a reevaluation if they determine that the child's educational

> or related services needs warrant a reevaluation. 71 *Federal Register* 46,641 (Aug. 14, 2006).

QUESTION: KSDE provides a sample "Re-Evaluation Not Needed Agreement Form" on its website. If a school district uses this form, does this mean their determination that a 3-year reevaluation is unnecessary is per se compliant?

ANSWER: Teams should certainly use this form (or a similar form) to document that the team has agreed a re-evaluation was unnecessary; however, this form does not show how that decision was reached. Using this form simply documents the agreement. School districts should keep documentation, such as team meeting notes or a PWN, that records what factors, data, input, etc. were used to come to such an agreement.

QUESTION: Must a school district obtain parent consent before initiating the review of existing data under 34 C.F.R. 300.305 and K.S.A. 72-3428(i) and (k)?

ANSWER: No. The school district is not required to obtain parent consent before reviewing existing data as part of an initial evaluation or reevaluation. See 34 C.F.R. 300.300(d)(1)(i) and K.A.R. 91-40-27(e)(1). Also see OSEP Letter to Redacted Letter to Redacted, Question 1, Feb. 6 2007. After the review of existing evaluation data, if the IEP Team and qualified professionals as appropriate with input from the parent determine that additional assessments are necessary, the school district must obtain informed parental consent, in accordance with 34 C.F.R. 300.300(a)(1) and K.S.A. 72-3428(a)(5) and (j) prior to conducting any additional assessments needed [also see OSEP Letter to Redacted, Questions 6 & 7, Feb. 6 2007].

QUESTION: If an evaluation was not completed last school year for a student selected for this file review, are we looking at the last evaluation that was completed to answer Self-Assessment questions 2 through 10?

ANSWER: Yes. Answer the questions based on the most recent evaluation.

QUESTION: What is the process if the school district cannot convince the parent to provide their input/opinion on the eligibility or continued eligibility?

ANSWER: The Office of Special Education Programs (OSEP) has provided the following guidance:

> [T]here is no requirement that eligibility be determined at an IEP Team meeting and it would not be appropriate for a public agency to provide documentation of the determination of eligibility prior to discussing a child's eligibility for special education and related services with a parent. Section 300.306(a)(1) and section 614(b)(4)(A) of the Act require that a group of qualified professionals and the parent determine whether the child is a child with a disability. Therefore, providing documentation of the eligibility determination to a parent prior to a discussion

> with the parent regarding the child's eligibility would indicate that the public agency made its determination without including the parent and possibly, qualified professionals, in the decision. 71 *Federal Register* 46,645 (Aug. 14, 2006)

If the school district conducts a meeting to determine eligibility or continued eligibility without a parent in attendance, documentation would need to show that the school district provided meeting notice in compliance with K.A.R. 91-40-17(a) [also see K.A.R. 91-40-8(f)(2)] and 34 C.F.R. 300.322(a) and (b) [also see 34 C.F.R. 300.501(b)(2)]. Documentation would also need to show that the school district made at least two attempts to contact the parents to provide the meeting notice using at least two methods of communication detailed in K.A.R. 91-40-17(e)(2)(A) through (D) and 34 C.F.R. 300.322(d). Finally, documentation would need to show that the school district gave the parent the opportunity to provide their input/opinion on the child's eligibility when the evaluation/eligibility report is given to the parent.

QUESTION: Self-Assessment Question 6 asks whether the team determined the child has an exceptionality, but the explanation speaks about eligibility. What if a child has an exceptionality but does not need special education and related services?

ANSWER: If a child does not need special education and related services, the child – by law – does not have an exceptionality and is not eligible. Under the IDEA and the Kansas Special Education for Exceptional Children Act, a child is only considered to be a "child with a disability" or a "child with an exceptionality" if the child is evaluated as 1) having a disability specified in the IDEA or having giftedness and 2) needing special education and related services by reason of the disability or giftedness. If a child does not have both of these things, the child is not a "child with a disability" or a "child with an exceptionality" under federal and state special education laws. See 34 C.F.R. 300.8(a)(1) and (2); K.S.A. 72-3404(g); K.A.R. 91-40-1(k) and (bb).

QUESTION: Where is it recommend to document what the native language is of the student?

ANSWER: This is a decision best made at the local level, but native language or other mode of communication must be documented somewhere. The native language or other mode of communication of the student (and parent) should be documented wherever relevant staff are most likely to easily see that information. Staff who are responsible for assessing the student in his/her native language/mode of communication and for sending notice to parents in their native language/mode of communication need to know where this information is and be able to access it easily. If staff do not know the native language/mode of communication of the student or parent, they will have difficulty complying with the requirements to provide notices to parents in their native language/mode of communication and to assess the student in his/her native language/mode of communication.

QUESTION: How should a school district document compliance with the requirement in Self-Assessment Question 2?

ANSWER: The documentation for Self-Assessment Question 2 should vary for each student. When planning a non-biased assessment, It is helpful for teams to remember that by definition special education means (in part) "specially designed instruction" [34 C.F.R. 300.39(a)(1); K.A.R. 91-40-1(kkk)(1)], and that specially designed instruction means "adapting the content, methodology or delivery of instruction to address the unique needs of a child that result from the child's exceptionality to ensure access of the child to the general education curriculum in order to meet the educational standards that apply to all children" [34 C.F.R. 300.39(b)(3)(i)-(ii); K.A.R. 91-40-1(lll)]. This means in order to have a need for special education, the child has specific needs **because of an exceptionality** that are so unique as to require specially designed instruction in order to access and progress in the general education curriculum.

The team must plan and conduct the evaluation in such a way as to understand the extent of the child's needs with regard to specially designed instruction. Teams should be able to use the data to describe the intensity of the support needed to assist the child in accessing and progressing in the general education curriculum. It is only through this discussion that the team can determine whether or not the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided without the support of special education.

- The indicators for Prong 2 for each of the exceptionality categories are listed in the KSDE Eligibility Indicators Guidance Document. Consider whether the data are congruent with the indicators for Prong 2. Most data for Prong 2 come from the General Education Interventions process or from interventions conducted during the evaluation. For a student with racial or cultural differences, evaluation teams need to consider needs in relation to the student's similar peers, so that it is clear what are needs due to the presence of the exceptionality and what are needs due to the student's differences in racial or cultural circumstances.

- Documentation indicating how elimination of cultural and racial discrimination will be/was considered for a particular student when selecting and administering evaluation materials. This documentation could be found in PWN for evaluation consent, MDT report, case notes for planning the evaluation, PWN for placement, or other places in the educational records.

- Demographics (race, ethnicity, language of the student), report of tests administered, and signature/roles for who attended eligibility/re-evaluation meeting when evaluation results discussed.

- Demographics (race, ethnicity, language of the student), report of tests administered, and relevant information from the assessment technical manual.

KSDE recommends adding a question prompt. **How were the assessments and other evaluation materials used to assess the student (for an initial evaluation or reevaluation) selected and administered so as not to be discriminatory on a racial or cultural basis?**

> *….XXXX was assessed in her native language, which is YYYY. The following standardized assessment XXXXX was selected as part of this evaluation and was determined to be nondiscriminatory on a racial and cultural basis for this student based on professional understanding of the assessment and bias mitigation as noted in the ZZZZ technical manual …Multiple measures were used to mitigate the impact of bias in this evaluation and will be further described in this report. Any limitations that may exist and result in bias due to racial or cultural factors were reviewed and considered as part of this evaluation and determined to not be a significant factor in current eligibility determination.*

QUESTION: Under what circumstances does a district have to pay for an autism evaluation at KU Med Center?

ANSWER: The school district must pay for a medical diagnosis if the school district **requires** it as part of the evaluation.

QUESTION: How do the requirements in Self-Assessment Question 4 apply to early childhood students or students who have or are suspected of having only a speech or language impairment?

ANSWER: The evaluation requirements for early childhood students and students who have or are suspected of having only a speech or language impairment are the same as any other student going through the initial evaluation or reevaluation process. Self-Assessment Question 4 asks whether the requirements of 34 C.F.R. 300.304(c)(4) and K.A.R. 91-40-9(b)(1)(A)-(H) are met. These regulations require each student undergoing an evaluation or reevaluation to be assessed in all areas related to the suspected exceptionality, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. These areas are not an exhaustive list. Decisions regarding the areas to be assessed are determined by the suspected needs of the child. Keep in mind that "each evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, **whether or not commonly linked to the disability category in which the child has been classified**" [34 C.F.R. 300.304(c)(6); K.A.R. 91-40-9(b)(2)].

QUESTION: Are Self-Assessment Questions 4 and 9 contradictory? Question 4 says the team determines the appropriate areas are assessed, but Question 9 says all those areas must be considered as part of the evaluation. Is this correct?

ANSWER: No, school districts are not required to assess every student in all areas listed in Question 9 (aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior), which comes from 34 C.F.R. 300.306(c)(1)(i)-(ii). Prior to the release of the updated IDEA regulations in 2006, this regulation was found at 34 C.F.R. 300.535(a)(1)-(2). Nothing in this regulation has changed except for the citation number. The Office of Special Education Programs (OSEP) offered this interpretation of the regulation in 1999:

> [C]onsistent with the statute and these final regulations, the point of 300.535(a)(1) [now 300.306(c)(1)(i)] is to ensure that more than one source is used in interpreting evaluation data and in making these determinations, and that although that subsection includes a list of examples of sources that may be used by a public agency in determining whether a child is a child with a disability, as defined in 300.7 [now 300.8], the agency would not have to use all the sources in every instance. 64 *Federal Register* 12,636 (Mar. 12, 1999)

Question 9 in the IDEA & Gifted Requirements File Review Self-Assessment has now been amended to reflect this interpretation.

QUESTION: Regarding Self-Assessment Question 4, are teams required to assess the child in every area listed in the question (health, vision, hearing, social/emotional, general intelligence, academic performance, communicative status, and motor abilities)?

ANSWER: No, unless all of those areas are related to the child's suspected exceptionality. The text in this question is taken directly from the regulations, which state "Each public agency must ensure that the child is assessed in **all areas related to the suspected exceptionality**, including, **if appropriate**, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities" [see 34 C.F.R. 300.304(c)(4); K.A.R. 91-40-9(b)(1)(A) through (H)]. As stated in the SPECIAL NOTES section under Question 4 in the Kansas IDEA and Gifted File Review Self-Assessment document, the list of areas in the question is not an exhaustive list of areas that must be assessed. Decisions regarding the areas to be assessed are determined by the suspected needs of the child.

Teams often look at the areas listed above during the General Education Intervention (GEI) process. If the GEI data indicate that the team considered any of these areas and there was information that indicated an area was not a problem, then those results could be included in the psychological or team report. For example, GEI information might indicate that the physical education teacher reports that this student's gross motor skills are typical for students of his age and grade. Or the classroom teacher or art teacher might indicate that the student does not have any difficulty with fine motor skills. That information would be included with the reported assessment results so that it is available for consideration by the eligibility determination team.

QUESTION: Regarding Self-Assessment Question 4, what should be used for documentation to show that the student has been assessed in all areas related to the suspected exceptionality and where should this documentation be located?

ANSWER: This is a decision best made at the local level. Take note that school districts and other public agencies are required to maintain records to show compliance with program requirements [see 34 C.F.R. 76.731]. Neither the IDEA nor its implementing regulations specify how to document that the student has been assessed in all areas related to the suspected exceptionality to demonstrate compliance with the requirements of 34 C.F.R. 300.304(c)(4). Therefore, evaluation teams must document consideration of the requirements of 34 C.F.R. 300.304(c)(4) with sufficient detail to show compliance with this regulation in conducting a comprehensive evaluation. Suggestions for this documentation are provided in the METHOD section under question 4 in the IDEA and Gifted File Review Self-Assessment PDF.

QUESTION: Regarding Self-Assessment Question 6, how do districts document parental input on eligibility? Where in this section would the documentation be located?

ANSWER: This is a decision best made at the local level. Take note that school districts and other public agencies are required to maintain records to show compliance with program requirements [see 34 C.F.R. 76.731]. Neither the IDEA nor its implementing regulations specify how to document parental input on eligibility to demonstrate compliance with the requirements of 34 C.F.R. 300.306(a)(1). Therefore, eligibility teams must document consideration of the requirements of 34 C.F.R. 300.306(a)(1) with sufficient detail to show compliance with this regulation in determining eligibility. Suggestions for this documentation are provided in the METHOD section under question 6 in the IDEA and Gifted File Review Self-Assessment PDF.

QUESTION: Regarding Self-Assessment Question 9, what is the definition of adaptive behavior?

ANSWER: There is no definition in the law. However, the general meaning of **a**daptive behavior is those skills and behaviors essential for someone to live independently and to function safely in daily life. This is pretty specific when looking at specific deficits in adaptive behavior.

A broader definition of adaptive behavior is an individual's ability to apply social and practical skills in everyday life.

> *Conceptual skills*: receptive and expressive language, reading and writing, money concepts, self- direction
>
> *Social skills*: interpersonal, responsibility, self-esteem, follows rules, obeys laws, is not gullible, and avoids victimization.
>
> *Practical skills*: personal activities of daily living such as eating, dressing, mobility and toileting; instrumental activities of daily living such as preparing meals, taking

> medication, using the telephone, managing money, using transportation and doing housekeeping activities, occupational skills; maintaining a safe environment.

These examples can be applied to all exceptionalities; however, they will look different for each student and the impact their exceptionality has on their adaptive skills.

QUESTION: Regarding Self-Assessment Question 9, must the eligibility team draw upon information from an aptitude test when determining eligibility for every student?

ANSWER: No, not in every instance. Self-Assessment Question 9 is based on 34 C.F.R. 300.306(c)(1)(i)-(ii). Prior to the release of the updated IDEA regulations in 2006, this regulation was found at 34 C.F.R. 300.535(a)(1)-(2). Nothing in this regulation has changed except for the citation number. The Office of Special Education Programs (OSEP) offered this interpretation of the regulation in 1999:

> [C]onsistent with the statute and these final regulations, the point of 300.535(a)(1) [now 300.306(c)(1)(i)] is to ensure that more than one source is used in interpreting evaluation data and in making these determinations, and that although that subsection includes a list of examples of sources that may be used by a public agency in determining whether a child is a child with a disability, as defined in 300.7 [now 300.8], the agency would not have to use all the sources in every instance. 64 *Federal Register* 12,636 (Mar. 12, 1999)

Question 9 in the IDEA & Gifted Requirements File Review Self-Assessment has now been amended to reflect this interpretation.

IEP DEVELOPMENT, REVISION, & REVIEW [SELF-ASSESSMENT QUESTIONS 11-22]

QUESTION: Please define functional performance.

ANSWER: There is no definition in the law. However, when addressing functional performance in the PLAAFP, the general meaning of "functional" is nonacademic, as in routine activities of everyday living. The purpose of addressing functional performance for all students with exceptionalities is to prepare children with exceptionalities for life after school. Some examples of the type of information that is considered “present levels of functional performance” are:

- Social/emotional Issues
- Adaptive Behavior
- Social skills with peers (e.g.: can the student work with a group in the classroom to complete a project?)
- Vocational/Career interests and skills related to those interests
- Independent living skills
- Motor skills/mobility

- Task persistence
- Memory issues
- Communication
- Impact of perceptual or attention issues
- For Early Childhood, participation in appropriate activities
- And, of course, parent concerns

QUESTION: Regarding Self-Assessment Question 12, what might a functional performance statement include?

ANSWER: The three parts of the PLAAFP move from broad information to very specific information about the student's academic achievement and functional performance.

Functional performance should be reported in relationship to the General Curriculum and can include issues related to behavior, motor, speech/language or any other concern.

The statement needs to clearly describe how the student's exceptionality manifests itself in regards to nonacademic needs. When creating functional performance statements for the PLAAPF, the team should ask and answer these questions:

- What does one see about this student that is different from typical peers that is a result of the exceptionality?
- How is the student's exceptionality getting in the way of being involved in or having access to the general curriculum? Or, for gifted students, how is the exceptionality impacting the student's ability to access a more advanced curriculum that is at their level of functioning/skills?
- How is the student's exceptionality getting in the way of progressing in the general curriculum? Or for gifted students, how is the exceptionality impacting progress at an advanced level in the scope and sequence of the curriculum?

Examples of information that can be included in the statements of Functional Performance:

- Score on ABAS II (Adaptive Behavior Assessment System)
- Results of behavior rating scale
- Observation reporting student's task persistence across domains/environments
- Number of times student initiated verbal interaction with peers
- Observation of student's interaction with peers during classroom group project
- Rate of turning in homework on time
- Expressive vocabulary
- Receptive vocabulary
- Range of motion
- Number of disciplinary office referrals
- Results of Career Cruising inventory
- Results of interview about student's career interests
- Description of visual or auditory perceptual problems

- Engagement in community activities
- Length of time student has stamina to engage in a task

QUESTION: Parents have the opportunity to express their concerns, and those concerns must be considered by the IEP team, but are school districts obligated to place these written concerns within the IEP itself?

ANSWER: Parent concerns for enhancing the education of their child must be considered by the IEP Team in developing the IEP [see 34 C.F.R. 300.324(a)(1)(ii)]. Nothing in the law requires parent concerns to be part of the IEP document itself. The required contents of the IEP document are listed in 34 C.F.R. 300.320(a) through (c); nothing in that regulation requires the IEP to include parent concerns. 34 C.F.R. 300.320(d) states "Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act [IDEA]." The parent's written concerns could simply be placed in the student's education record, or could incorporate the content of the parent's written concerns into the IEP Team meeting notes.
Note that the parent should be provided with a PWN that responds to each of their requests, whether the response is to refuse the request or to implement the request. This must be done even if the parent's requested changes were put in the IEP. Any time a parent makes a request to initiate or change something in the IEP, the school must respond with a PWN.

QUESTION: Regarding Self-Assessment Question 21, must the IEP Team consider and use positive behavior supports?

ANSWER: Self-Assessment Question 21 asks if the IEP team "considered the use of positive behavioral interventions and supports." The text for this question was taken directly from federal regulations and state statutes which state that IEP Teams must- when developing, reviewing, or revising the IEP - "in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior" [34 C.F.R. 300.324(a)(2)(i); K.S.A. 72-3429(d)(4)]. Nothing in these laws states the IEP Teams must use positive behavior supports, but IEP Teams must consider their use. The Office of Special Education Programs (OSEP) provides this guidance:

> Whether a child needs positive behavioral interventions and supports is an individual determination that is made by each child's IEP Team. Section 300.324(a)(2)(i) requires the IEP Team, in the case of a child whose behavior impedes the child's learning or that of others, to consider the use of positive behavioral supports, and other strategies to address that behavior. We believe that this requirement emphasizes and encourages school personnel to use positive behavioral interventions and supports.... The requirements in 300.324 are not intended to imply that a particular method, strategy, or technique should be used to develop a child's IEP. For example, while 300.324(a)(2)(i) requires the IEP Team to consider the use of positive behavioral interventions and supports, and other strategies, it does not specify the particular interventions, supports, or strategies that must be used. 71 *Federal Register* 46,683 (Aug. 14, 2006)

QUESTION: Does a child with behavior problems have to have a BIP?

ANSWER: It depends. If the child is a child with a disability who is subjected to a disciplinary change of placement, a manifestation determination review (MDR) must be conducted. If the school district, the parent, and relevant members of the IEP Team determine that the conduct that led to the disciplinary change of placement was a manifestation of the disability, the IEP Team must conduct a functional behavioral assessment (FBA) and implement a behavior intervention plan (BIP) [see 34 C.F.R. 300.530(f)(1)]. Outside of this scenario, there is no requirement for a child with an exceptionality to have a BIP. For more on this topic, see the Kansas Special Education Process Handbook Chapter 13 Sections E.1 and E.2.

QUESTION: If a child has a BIP must the IEP include a behavior goal?

ANSWER: Each IEP must include measurable annual goals, including academic and functional goals designed to a) meet the child's needs that result from the child's disability or giftedness to enable the child to be involved in and make progress in the general education or advanced curriculum, and b) meet each of the child's other educational needs that result from the child's

disability or giftedness [see 34 C.F.R. 300.320(a)(2)(i)(A)-(B); K.S.A. 72-3429(c)(2)(A)-(B)]. Whether the child's IEP must include a behavior goal is determined by the needs resulting from the exceptionality.

QUESTION: Does a child in an alternate setting (e.g., special day school) have to have a BIP if the building's system/program of behavior management is working well for that student?

ANSWER: If the child is a child with a disability who is subjected to a disciplinary change of placement, a manifestation determination review (MDR) must be conducted. If the school district, the parent, and relevant members of the IEP Team determine that the conduct that led to the disciplinary change of placement was a manifestation of the disability, the IEP Team must conduct a functional behavioral assessment (FBA) and implement a behavior intervention plan (BIP) [see 34 C.F.R. 300.530(f)(1)]. Outside of this scenario, there is no requirement for a child with an exceptionality to have a BIP. For more on this topic, see the Kansas Special Education Process Handbook Chapter 13 Sections E.1 and E.2.

PLACEMENT [SELF-ASSESSMENT QUESTIONS 23 & 24]

QUESTION: Is there any justification for an IEP Team not to determine placement at least annually?

ANSWER: No. The law provides no exceptions.

QUESTION: Regarding Self-Assessment Question 23, if a school district always provides the parent with a PWN at the IEP annual review, does that documentation show that placement was determined annually?

ANSWER: Providing a PWN at the IEP meeting COULD show that placement was determined annually depending on the content of the PWN and whether it addresses the placement determination.

QUESTION: What are some examples of how to better document the LRE continuum when making changes?

ANSWER: See the Kansas Special Education Process Handbook, Chapter 6 Section C. Also see the LRE Decision Tree and accompanying chart at the end of the chapter.

MISCELLANEOUS QUESTIONS

QUESTION: As a director what does the state recommend that I can do to make sure I am compliant in all areas not just those in KIAS? Or would I be considered in compliance if I follow everything in the process handbook. Should the process handbook be my go-to for compliance?

ANSWER: For each three-year monitoring cycle, KSDE selects certain legal requirements on which to focus in the self-assessment questions for IDEA and Gifted Requirements File Review. The requirements on which the self-assessment questions are focused are not all special education legal requirements. School districts are required to follow all federal and state special education legal requirements, not just those addressed in the IDEA and Gifted Requirements File Review.
KSDE has several compliance-related resources on its website. You can find the federal and state special education legal requirements (statutes and regulations) on the KSDE website along with several relevant memorandums and letters interpreting certain legal requirements. Additionally, KSDE created the Kansas Special Education Process Handbook to provide guidance, resources, and supports necessary for those professionals who work to improve results for exceptional children. The information provided in the Kansas Special Education Process Handbook attempts to clarify and define legal requirements of special education statutes and regulations.
Additionally, the U.S. Department of Education has a page on its website with federal special education statutes and regulations as well as a page with relevant policy letters and support documents.

QUESTION: Why were the questions in this cohort review not shared last summer or at least at the beginning of this year so directors could have been providing support and training to their staff prior to the file review so corrections to forms or procedures could have been adjusted – to be proactive rather than reactive to a negative review and have to write DCAPs? Cohort 2 and 3 could have an advantage (if they are proactive) of reviewing the new questions far ahead of their review and make adjustment accordingly.

ANSWER: School districts are required to follow all federal and state special education legal requirements at all times, not just when the district is being monitored and not just those legal requirements addressed in the IDEA and Gifted Requirements File Review. If a district is following all special education legal requirements, a shift in requirements addressed in the IDEA and Gifted Requirements File Review should not create additional noncompliance for a district.
KSDE historically shares revised self-assessment questions for the IDEA and Gifted Requirement File Review a few months prior to Cohort 1 monitoring as KSDE takes the entire three year monitoring cycle to learn from the existing File Review, and its general supervision system, as to where KSDE could make improvements to further drive improved educational

results and functional outcomes for all exceptional children and to ensure both KSDE and school districts are meeting special education legal requirements, with a particular focus on those requirements that are most closely related to improving educational results for children with disabilities. 20 U.S.C. § 1416(a)(2). Releasing the self-assessment questions prior to thoroughly conducting this review would not permit KSDE to meet these important federal monitoring requirements.

QUESTION: Under what conditions would it be appropriate to request a student file (KIDS ID) to be removed from the initial data collection phase?

ANSWER: Unless the school district can explain unique circumstances, KSDE consultants will not approve requests to remove student files for the following reasons: student moved, student transferred, student graduated, student no longer attends, student exited special education. It is not appropriate to remove a student from the sample because he/she moved out of district or state. School districts can still answer the file review questions for those students because the file review is based on previous years' documentation. The student's file is still relevant to the school district's overall practices and a District Corrective Action Plan is still warranted to correct any identified noncompliance. Per OSEP guidance, school districts will not be required to complete an Individual Corrective Action Plan to correct individual noncompliance for a student who is no longer within the jurisdiction of the LEA [see OSEP Memo 09-02 Reporting on Correction of Noncompliance, Oct. 17, 2008].
Removal requests will be considered on a case-by-case basis and decisions will be made based on the justification provided by the school district. One example of an instance when KSDE approved a student removal from file review was when a student transferred into the school district, stayed only for a couple of weeks, and then transferred out of the school district.

For more information, contact:

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