

CHAPTER 8

DISCONTINUING SPECIAL EDUCATION SERVICES

INTRODUCTION

There are times when a child's eligibility for special education and related services ends or when the parent or student chooses to end the provision of special education services. This chapter discusses several instances in which students currently receiving special education services "discontinue" or exit from their special education program. Such circumstances include the following:

- A. No Longer Eligible for Services
- B. Graduation
- C. Student Reaches the End of the School Year in Which They Turn Age 21
- D. Revocation of Consent for Special Education Services
- E. Student Drops Out of School
- F. Summary of Performance
- G. Prior Written Notice and Request for Consent

A. NO LONGER ELIGIBLE FOR SERVICES

When a parent or school personnel suspect that a child is no longer eligible for special education and related services, a reevaluation must be conducted to determine if the child is no longer a child with an exceptionality (K.S.A. 72-3428(l)(1)). As part of the reevaluation, the IEP team will review existing data and determine whether they need to conduct any additional assessments (See Chapter 7, Reevaluation.).

If it is determined by the IEP team through a reevaluation that the child is no longer a child with an exceptionality (no longer has a disability or is gifted and/or no longer needs special education and related services), the district will provide the parents with Prior Written Notice of this decision and obtain parent consent before discontinuing services (See the Prior Written Notice-Identification form at <https://www.ksde.org/Default.aspx?tabid=544>). Typically, if the IEP Team determines that a child is no longer eligible, the reason is that the child no longer has a need for special education and related services. For example, a child who was identified with speech and language delays as a young child has benefited from speech/language services, met the exit criteria determined by the IEP Team, and no longer needs such services. Services may be discontinued, with parent consent, if the IEP team determines that the data support that the child no longer has a need for special education services.

B. GRADUATION

All students receiving special education services will receive a regular high school diploma at the completion of their secondary program if they meet graduation requirements of the state and school district. IEP teams do not have the authority to award credits or issue diplomas under special education laws and regulations unless a school district has delegated such decisions to the IEP team in writing. A regular high school diploma does not include an alternative diploma that is not fully aligned with the State's academic standards, such as a certificate or GED (Federal Register, August 14, 2006, p. 46580). A modified or differentiated diploma or certificate may be used for students receiving special education services; however, such diplomas or certificates do not end eligibility for special education services.

When the student enters high school, progress toward graduation must be monitored annually and recorded on an official transcript of credits. If the student has completed the required courses for graduation, but the IEP team determines the student still needs additional special education and related services to meet IEP goals, graduation would be delayed and the student can continue to receive the needed special education services on the IEP through the school year in which the student turns 21. The district's obligation to provide special education services ends (a) when the student meets graduation requirements and receives a regular high school diploma; (b) at the end of the school year in which the child reaches age 21; or (c) an evaluation shows that the child is no longer eligible for special education services (K.A.R. 91-40-2(f)).

Students with exceptionalities who meet graduation criteria must be afforded the same opportunity to participate in graduation ceremonies as students without exceptionalities, even if the IEP team determines that services will continue after the student has met all of the required credits (but an official diploma has not been awarded). A student may require services through age 21 to meet IEP goals, or because he or she has not obtained all of the required credits for graduation. In either case, the student may be allowed to participate in graduation ceremonies with the student's classmates. Schools may have a policy regarding participation in graduation ceremonies; but it must apply equally to all students in the district, not just for students with exceptionalities.

No reevaluation is required prior to exiting a student due to graduation (K.S.A. 72-3428(l)(2); 34 C.F.R. 300.305(e)(2)). However, before the student completes the last semester of high school in which the student is expected to graduate, the district must provide the student (if over age 18) and the parents with Prior Written Notice of the discontinuation of services at the end of the school year. The Prior Written Notice will clearly state that the student will no longer be entitled to receive special education services from the district after graduation. Parental consent for discontinuing services is not required when a child graduates with a regular diploma (K.A.R. 91-40-27(a)(3); 34 C.F.R. 300.102(a)(3)(iii)).

Letter to Runkel, 25 IDELR 387, is a letter from the federal Office of Civil Rights (OCR) that provides additional guidance about criteria for grading, graduation, and diplomas for students with disabilities.

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties.

(l) (2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.

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

- (f) (1) An agency shall not be required to provide FAPE to any exceptional child who has graduated from high school with a regular high school diploma.
(2) Each exceptional child shall be eligible for graduation from high school upon successful completion of state and local board requirements and shall receive the same graduation recognition and diploma that a nonexceptional child receives.
(3) The IEP of an exceptional child may designate goals other than high school graduation.
(4) When an exceptional child enters high school, progress toward graduation shall be monitored annually and recorded on an official transcript of credits.
(5) As used in this subsection, the term "regular high school diploma" means the same diploma as is awarded to nonexceptional students and shall not include certificates of completion or other certificates, or a general educational development credential (GED).

C. SERVICES THROUGH AGE 21

The district must make a free appropriate public education (FAPE) available to any student who has not graduated with a regular high school diploma until the end of the school year in which the student turns 21 (the school year ends on June 30). The IEP team may determine that the student needs extended school year services, which would be available through June 30 of the school year in which the student turns 21. The school must provide the student age 18 and over, and the parents with Prior Written Notice that the services will be discontinued at the end of the school year, however, parental consent is not required. A reevaluation is also not required when a student graduates or ages out of eligibility for services upon turning age 21 (K.S.A. 72-986(l)(2); (K.A.R. 91-40-10(s)(2); (K.A.R. 91-40-27(a)(3); 34 C.F.R. 300.305(e)(2)).

34 C.F.R. 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 300.530(d).

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties.

- (l) (1) Except as provided in paragraph (2), an agency shall reevaluate a child in accordance with this section before determining that the child is no longer an exceptional child.
(2) A reevaluation of a child shall not be required before termination of a child's eligibility for services under this act due to graduation from secondary school with a regular diploma, or due to exceeding the age for eligibility for services under this act.

D. REVOCATION OF CONSENT FOR ALL SPECIAL EDUCATION SERVICES

Parent consent is voluntary, and may be revoked by the parents at any time. Revocation of consent must be in writing. If a parent revokes consent in writing for all existing services, the LEA may meet with the parent to attempt to resolve the difficulty. If the parent cannot be convinced to continue the services, the LEA must honor the parent's revocation, provide Prior Written Notice a reasonable time before ceasing provision of the services and may not attempt to override the parent's revocation through mediation or due process. Further, the LEA is not required to hold an IEP team meeting or develop an IEP and will not be considered to be in violation of FAPE for the failure to provide further provision of special education and related services. The LEA is not required to amend a child's records to remove references to special education and related services. (K.A.R. 91-40-27(i) – (l)).

When parents revoke their consent the revocation is not retroactive but becomes effective on the date that it was revoked (K.A.R. 91-40-1(l)(3); 34 C.F.R. 300.9). Therefore, the revoking of consent does not negate any action that has occurred after the previous consent was given and before the consent was revoked. If a parent who revoked consent for all special education and related services later wishes his or her child to be reenrolled in special education, the agency must first conduct an initial evaluation to determine whether the child qualifies for special education (K.A.R. 91-40-27(l)).

K.A.R. 91-40-1. Definitions.

- (l) (3) A parent understands the following:
- (A) The granting of consent is voluntary on the part of the parent and may be revoked at any time.
 - (B) If the parent revokes consent, the revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked.
 - (C) The parent may revoke consent in writing for the continued provision of a particular service or placement only if the child's IEP team certifies in writing that the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

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

- (i) If, at any time after the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of all special education, related services, and supplementary aids and services, the following shall apply:
- (1) The agency shall not continue to provide special education, related services, and supplementary aids and services to the child but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of those services.
 - (2) The agency shall not use the procedures in K.S.A. 72-3415 or K.S.A. 72-3438, 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. 72-3429, 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.
- (l) If a parent who revoked consent for all special education, related services, and supplementary aids and services under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

E. STUDENT DROPS OUT OF SCHOOL

Under K.S.A. 72-3120, students without disabilities are, under specified circumstances, allowed to drop out of school at age 16. However, K.S.A. 72-3421 gives parents of a child with a disability the responsibility to provide for the special education services for their child, either within the public school or through private means, for the entire period of their child's eligibility. If for some reason a student with a disability drops out of school, documentation that the parents were informed of the requirements of the compulsory attendance statute for special education students (K.S.A. 72-3421) should be placed in the student's confidential file. The school is obligated to consider the student's FAPE entitlement and the school's obligation to report truancy to the District or County Attorney for students with disabilities younger than age 18. The school may want to consult with the school's attorney if they believe the parents of a student with a disability will not provide the special education services for the child.

The school must inform the parents that special education services continue to be available to the student. KSDE recommends that the school send a letter to the parents, stating that the school remains ready to provide special education services to their child if or when the child reenrolls in school. If the student reenrolls, the previous IEP must be implemented until a new IEP is developed.

Revoking consent for all special education and related services prior to dropping out of school. If a parent revokes consent for all special education and related services, and the parent's child is 16 years of age or older, the student should be treated as a general education student and permitted to use the procedures in K.S.A. 72-3120 to drop out of school. If a parent who revoked consent for all special education and related services later wishes his or her child to be reenrolled in special education, the agency must first conduct an initial evaluation to determine whether the child qualifies for special education (K.A.R. 91-40-27(l)).

K.S.A. 72-3120. Compulsory school attendance; exemptions.

- (b) If the child is 16 or 17 years of age, the child shall be exempt from the compulsory attendance requirements of this section if: (1) The child is regularly enrolled in and attending a program recognized by the local board of education as an approved alternative educational program; (2) the child and the parent or person acting as parent attend a final counseling session conducted by the school during which a disclaimer to encourage the child to remain in school or to pursue educational alternatives is presented to and signed by the child and the parent or person acting as parent. The

disclaimer shall include information regarding the academic skills that the child has not yet achieved, the difference in future earning power between a high school graduate and a high school drop out, and a listing of educational alternatives that are available for the child; or (3) the child is regularly enrolled in a school as required by subsection (a) and is concurrently enrolled in a postsecondary educational institution, as defined by K.S.A. 74-3201b, and amendments thereto. The provisions of this clause (3) shall be applicable to children from and after July 1, 1997, and shall relate back to such date. (d) Any child who is determined to be an exceptional child, except for an exceptional child who is determined to be a gifted child, under the provisions of the special education for exceptional children act is subject to the compulsory attendance requirements of such act and is exempt from the compulsory attendance requirements of this section.

K.S.A. 72-3421. Compulsory attendance of exceptional children at school for receipt of services; provision of services privately; nonapplicability to gifted children.

(a) Except as otherwise provided in this section, it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately.

(b) The provisions of subsection (a) do not apply to gifted children or to parents of gifted children.

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

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

F. SUMMARY OF PERFORMANCE (SOP)

A Summary of Performance (SOP) is required for a child with a disability whose eligibility under special education terminates due to graduation with a regular diploma, or due to exceeding the age of eligibility. The local education agency must provide the child with a summary of the child's academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals (K.S.A. 72-3428(m); 34 C.F.R. 300.305(e)(3)). This requirement applies only to children with disabilities, therefore, an SOP does not need to be completed for students identified as gifted.

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

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

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

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

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

<https://www.ksde.org/Default.aspx?tabid=544.>)

K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; reevaluation; notice; procedure; duties of IEP team; child no longer eligible for services, duties.

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

G. PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

For some situations discussed within this chapter, parents must receive Prior Written Notice, and for some situations the school must obtain informed parent consent. (See sample Prior Written Notice and Consent forms at <https://www.ksde.org/Default.aspx?tabid=544>.)

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

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

QUESTIONS AND ANSWERS ABOUT DISCONTINUING SPECIAL EDUCATION SERVICES

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

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

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

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

3. May a student participate in graduation exercises with his or her classmates, if the student is not actually graduating?

Yes, the student may participate in graduation exercises unless a local policy would not allow it. However, if there is such a policy, it must apply to all students and not just students receiving special education services. Some students may require services until age 21 to meet IEP goals, which should be addressed within the student's transition plan. The student could participate in graduation exercises with the student’s class, but not actually receive a diploma at that time.

4. If a child with a disability is 18 years of age or older and is still eligible for special education and related services, can a school district require that child to participate in an “18-to-21 program”, or must the child’s IEP Team individually determine the educational placement, services and supports that are appropriate for that particular child?

As long as a child remains eligible for special education, they continue to be a “child with a disability” as that term is defined in special education statutes and regulations, and, as such, continue to have all of the rights of a child with a disability, including the right to be educated in the least restrictive environment and to continue to participate in the general curriculum.

The special education and related services within the IEP of a child with a disability must be individually determined and designed to enable that particular child to make appropriate progress (in light of his or her circumstances) towards attaining the IEP goals and in the general education curriculum. That requirement does not change when a child turns 18. The term “18-to-21 program” implies that all students in a certain age category receive the same services and LRE placement, which is inconsistent with the requirement to develop and implement an individualized education program (IEP) for each child with a disability who qualifies for services.

Further, a child’s participation in an “18-to-21 program” that consists of a set of predetermined services and that does not enable interaction with non-disabled peers could constitute a material change in services and a substantial change in placement, depending on the content of the child’s IEP. Before a school district can make a material change in services or a substantial change in placement, the parent or adult student must provide written consent (see K.S.A. 72-3430(b)(6)). A material change in services is defined as “an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service or a supplementary aid or service specified in the IEP of an exceptional child” K.S.A. 72-3404(bb). A substantial change in placement is defined as “the movement of an exceptional child, for more than 25% of the child’s school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment” K.S.A. 72-3403(aa).

5. Are students who drop out of school and later begin working on a General Education Diploma (GED) eligible for special education and related services?

The student must be enrolled in the public school in order to receive special education and related services. A student who drops out of school and later enrolls in a program to obtain a General Education Diploma (GED) would not be entitled to special education services under IDEA. However, if the student reenrolls in the public school, the student is entitled to receive services until June 30 following the student’s 21st birthday or graduation with a regular education diploma. Obtaining a GED does not end a student’s eligibility for special education services (34 C.F.R. 300.102(a)(3)(iv)).

6. What if the team decides that the child is no longer eligible for special education services, but the parents refuse to consent to the child exiting from services?

Services must continue. However, the team could continue to try to reach consensus with the parent. If parents continue to refuse to provide consent, then the school could request mediation and/or a due process hearing.

7. What if a parent who revoked consent for all special education services subsequently requests his or her child be provided special education services again?

The agency must conduct an initial evaluation to determine whether the child qualifies for special education before providing the child special education and related services.

8. What is the school’s responsibility if the parents of a child want the child dismissed from special education, but the school representatives on the team feel this is inappropriate?

Parents always have the right to revoke their written informed consent to the provision of special education and related services for their child. The school representatives may meet with the parent to attempt to resolve the difficulty, but if the parent cannot be convinced to continue the services, the school must honor the parent’s revocation, provide prior written notice a reasonable time before ceasing provision of the services and may not attempt to override the parent’s revocation through mediation or due process. The school district will not be considered in violation of the requirement to make a free, appropriate public education available to the student because of the failure to provide the child with further services.