

Approved: 4/11
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION

The meeting was called to order by Chairperson Barbara Lawrence at 9:00 a.m. on March 4, 1998 in Room 123-S of the Capitol.

All members were present except: Senator Hensley
Senator Oleen

Committee staff present: Ben Barrett, Legislative Research Department
Carolyn Rampey, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Rod Bieker, General Counsel, KSDE
Cynthia Lutz Kelly, Deputy General Counsel, KASB
Diane Gjerstad, Wichita Public Schools
Gerald Henderson, USA
Jane Rhys, KS Council on Developmental Disabilities
Ray Petty, Special Ed Advisory Council, DOE

Others attending: See attached list

SB 591--special education for exceptional children, revision of act

The meeting was called to order by Chairperson Lawrence, who called on Rod Bieker, General Council, KSDE, to begin his testimony. (Attachment 1)

Mr. Bieker stated that he was present to discuss the changes the State Board of Education proposes through **SB 591** to make the state special education law conform with the federal Individuals with Disabilities Education Act, (IDEA) as amended. In order to be eligible to receive this federal money, the state must comply with the numerous conditions imposed in the federal law.

Mr. Bieker drew attention to the bold letters in his testimony which stated, "none of the provisions proposed in SB 591 requires Kansas school districts to do anything more than is required by the federal law." He provided a brief summary of the provisions of the bill and amendments made to existing state law and new provisions added to address key provisions of the new federal law. He also included a list of technical changes. The balloon provided included references to the appropriate provisions of the federal law which are being included in state law. Kansas will be required to submit copies of state laws and regulations showing compliance with federal law.

Mr. Bieker stated that he was asked to add other amendments, but he chose not to do so as he wanted to comply strictly to federal law. He knows of other amendments that will be offered, one of which is to include a definition of 'a child with disabilities'. He chose to retain 'exceptional child'. Another area of amendment offered will be a statute of limitations for filing lawsuits. If it is not designated in state law, the court will tell the state what statute of limitations to apply. With regard to parental rights, the bill says the parents have a right to withhold full consent for evaluation or reevaluation of a child; this is clearly stated in federal law.

Mr. Bieker stated that previous federal law in 1975 did no more than give access to public education for children with disabilities, but guaranteed no particular level of education, just some educational benefit. Congress now talks about assisting the progress of children, requires state assessments, progress reports at stated intervals and much more. There will have to be some level of progress.

Mr. Bieker was asked how this could be done for individual disabilities.

He replied that the assessment would have to be adapted to the individual child. Persons connected with a particular child will have to come together to make an appropriate assessment; severely disabled children will have to have assessments also. A child will have the right to participate in any state-wide or district run assessment. If the IEP determines that those children cannot participate, it must be stated why the assessment is wrong for the child. This goes in the IEP file and an alternative assessment must be given.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION, ROOM 123-S-Statehouse, at 9:00 a.m. on March 4, 1998.

This law, as originated in 1975, was not a brainstorm of Congress, but rather a reaction to 27 court cases across the country requiring education to do something about those children who were being excluded altogether from a public education strictly because they were handicapped, while their peers were being provided an education. So the state has the obligation and might as well take the 8 percent.

Mr. Bieker was asked for a dollar figure in the amount of aid. Mr. Dennis, Deputy Commissioner, KSDE, replied in the mid thirties - approximately \$35 million. It is 8 percent of what is spent for special education.

On being asked what would happen if the state would not take the federal money, Mr. Bieker responded that it would probably be in court constantly. There are basic performance goals. If these goals are being set for non-handicapped kids, a parent can ask for what reason is this not being done for their disabled child. Under section 504, violation of a child's rights can result in federal funds being cut off. The State of Georgia fought this in court for three years and not only lost its special ed federal funds, but also lost its case.

After further comments from Mr. Bieker and others, Cynthia Kelly, Deputy General Counsel, KASB, appeared on the bill. (Attachment 2) Ms. Kelly stated that the bill would enact amendments to the Kansas Act for Exceptional Children to bring it into conformity with recent amendments to federal law. It will provide the state with the opportunity to make necessary changes to the current state law. It has been the Association's position that state law on this subject should not include requirements in excess of those imposed by federal law.

Ms. Kelly brought a balloon of proposed amendments and an attached sheet stating the description of the proposed amendments and the reason for the proposed amendments. She stated that there was one amendment that she did not include on the balloon was on page 22, end of section 22, to add language creating a statute of limitations for bringing an action in the court system.

Ms. Kelly was asked if the Association had run the amendments by anyone. She responded that they had run them by the State Board. The State Board is in agreement with most of the suggestions.

Mr. Bieker stated that, of what he has seen, he is in agreement with them.

Scott Hill, Department of Education, clarified that the Department of Education has seen these amendments; the State Board has not met as yet since these amendments have been put forth.

Ms. Kelly was asked if her association had done any research into the dollar amounts or increased time needed to put this legislation into implementation.

She replied that it had not.

The comment was made that the budgeted amount would not seem adequate to cover test adaptations, more data on staffing, dollars and extra time needed to be in compliance with federal law.

Ms. Kelly stated that the state would need to have QPA performance goals that would speak to the needs of children with disabilities.

Diane Gjerstad, Wichita Public Schools, spoke next on some of the nuances of the language contained in the bill. Her organization thinks it would be prudent to pass a simple conformity bill as state law is very different from federal law. If the state would need to expand upon it, it could come back in a year or so and do that. The regulations are very controversial in the area of discipline. Interpretation in courts of federal and state law will be difficult. In the Wichita system, state laws in the state courts are interpreted differently than the federal law which makes it very difficult for the school district.

In summation, Ms. Gjerstad stated that they would just like to play by one set of rules and a simple conformity bill would be enough at this time and then at a later date the state could deal with problematic issues.

Gerald W. Henderson, USA, spoke to the bill, stating that United School Administrators are very much in support of one set of statutes. It is the first step to bring state statutes into conformity with the federal. Costs will not be known until time is actually spent with the law and also time to implement the regulations.

It was commented that those people who are already directing a program would have better knowledge of what increased costs and staff would be than the budget division.

Mr. Henderson replied that budget requests will reflect that. School districts are going to have to determine whether or not they will be able to afford it. If they can't they may go to court. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION, ROOM 123-S-Statehouse, at 9:00 a.m. on March 4, 1998.

One of the Committee commented that, as a point of clarification, all the budget division has attempted to do is to place a cost on the changes in assessments and the two positions; no effort has been made to find the cost to provide services to children with disabilities who are enrolled in private schools or other things.

Jane Rhys, Kansas Council on Developmental Disabilities, spoke next to the bill (Attachment 4) The Council is a federally mandated, federally funded council composed of individuals appointed by the Governor. Over half the membership is composed of persons with developmental disabilities. She expressed concern with the proposal to eliminate parental consent to an initial placement of substantial change in placement and proposed that the requirement to get parental consent for change in placement be added to page 18, Sec. 17(b)(6) which would read: "consent, or refuse to consent, to the evaluation or reevaluation *or to an initial placement or subsequent substantial change in placement* of their child."

The Council also supports corrections from the State Department of Education such as page 18, line 31 which should read "request *mediation* in accordance with this act" instead of "request *medication*."

Ms. Rhys also distributed testimony from Sherry C. Diel, Deputy Director, Kansas Advocacy & Protective Services, Inc., which stated that KAPS concurs with the comments of Jane Rhys (Attachment 5)

In response to what could be done to make change since everything is done through IEP and there is no leverage there, Ms. Rhys responded that there is the power of the purse. Problem areas could be directed to the Department of Education. Teachers might have to be trained differently, with emphasis placed on curriculum areas that are in the statutes that students must pass. There are also some discretionary grants.

Ray Petty, Special Ed Advisory Council, Department of Education, made a few brief comments on the bill and asked the Committee to strike the word "Topeka" from the Council's by-laws so that they can meet other places. He mentioned Section 504 and the civil rights laws spoken of by Mr. Bieker. He said the purpose of the ADA is to enhance employment of people with disabilities and how well they are able to become productive members of society as opposed to beneficiaries of social security.

The Chairperson thanked all the conferees and appointed a subcommittee composed of Senator Downey, Senator Umbarger and Senator Emert along with the Chairperson to look into the bill and report back to Committee.

The meeting was adjourned.

The next meeting is scheduled for March 5, 1998.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: March 4, 1998

NAME	REPRESENTING
Jacyn Farmer	KASB
Rosilyn James-Martin	SRS- Children & Family Services
Dawn Burnett	USD 501#
Rod Bieker	KSDE
Carol Dormyer	KSDE
Mike Remus	KSDE
Beth M. Guard	Families Together
Jane Flynn	KCDJ
Peg Dunlap	KNFA
Cindy Kelly	KASB
Mark Callman	KASB
D. Gjerstad	USD 259
Jacque Jones	SOE
Gerald Henderson	USA of KS
Bob Vancouver	USD 229
Harshel Ross	C.T.
Jim Longford	SOB
Cynthia Rhodes	#618
Craig Kahan	KCDD



Kansas State Department of Education

120 S.E. 10th Avenue
Topeka, Kansas 66612-1182

TO: Senate Education Committee

SUBJECT: SB 591 - Proposed Legislation Conforming the State
Special Education Law with the Federal Special
Education Law

DATE: March 4, 1998

My name is Rodney Bieker and I am General Counsel for the State Department of Education. I am here today to discuss with you the changes the State Board of Education proposes through SB 591 to make the state special education law conform with the federal Individuals with Disabilities Education Act, as amended (IDEA).

As you know, Congress provides financial assistance to those states which choose to comply with IDEA. The State of Kansas has chosen to receive these federal funds for over 20 years. Of course, in order to be eligible to receive this federal financial assistance, the state must comply with the various and numerous conditions imposed in the federal law.

In 1997, Congress enacted major amendments to IDEA. It took Congress three years to develop the amendments finally adopted in 1997. The provisions proposed in 1998 SB 591 reflect the changes needed to conform state law with federal law.

Many of the provisions contained in SB 591 are direct quotes from IDEA. With the exception of those provisions related to gifted children, **none of the provisions proposed in SB 591 requires Kansas school districts to do anything more than is required by the federal law.** On the following pages, I have prepared a brief summary of 1) the provisions of the bill, and 2) amendments that have been made to existing state law and new provisions that have been added to address key provisions of the new federal law. Also, I have included a list of technical changes that we believe are necessary.

In addition, I have provided the Committee with a "balloon" version of SB 591 which includes references to the appropriate provisions of the federal law which are being included in state law. I also have provided an excerpt from the federal law which indicates those provisions that are set forth in SB 591.

To conclude my formal testimony, I would like to review with the Committee the changes indicated on the outline. Then, I will reply to questions by Committee members.

Senate Education
Attachment #1
3-4-98

WHAT DOES THIS BILL DO?

1. Provides a state special education law which mirrors the federal special education law, thus assuring the state's compliance with federal requirements.
2. Requires the State Board of Education to oversee and monitor the provision of special education services.
3. Defines key terms such as 1) appropriate public education, 2) special education and 3) related services.
4. Requires that children with disabilities be:
 - located and evaluated; and
 - provided an appropriate public education under a written individualized education program in the least restrictive environment.
5. Grants various rights to parents so they can be activate participants in the education of their disabled children.
6. Provides various procedural safeguards to parents, including the right to request mediation of disputes or due process hearings.
7. Repeats the federal provisions for services to children enrolled in private schools.
8. Adopts the federal requirements for the establishment of performance goals for children with disabilities and for their participation in state and district-wide assessments.
9. Adopts the federal provisions concerning:
 - discipline of children with disabilities;
 - reporting of crimes;
 - the transfer of rights at age 18;
 - advisory council membership and duties; and
 - interagency agreements for special education services.

WHAT CHANGES ARE MADE TO CURRENT LAW?

Provisions Added to Existing Sections:

Purposes of the Act	page 1
Definitions	pages 1-4
Mediation provisions	page 5
Special Education Advisory Council membership	pages 6-7
Requirement to identify and locate exceptional children	page 8
Services to children in private schools, including requirements for reimbursement for private school placement by parents	pages 8-9
Interagency agreement provisions	page 10
Rights of parents	pages 18-19
Education in the least restrictive environment	page 24
Correct language in 38-1513a on appointment of education advocates	page 32
Provision excusing services for incarcerated 18-21 year olds	pages 32-33

Added New Sections on:

Establishment of performance goals	page 10
Participation in state and district assessments	pages 10-11
Evaluations and reevaluations	pages 11-13
Individualized educational programs (IEPs)	pages 13-14
Parental notices	page 19
Rights at age 18	page 19
Discipline (3 sections)	pages 28-31
Kids not identified - discipline/evaluation	pages 31-32
Reporting criminal acts	page 32

LIST OF NECESSARY AMENDMENTS TO SB 591

1. The title and the repealer section of the act need to include repeal of K.S.A. 72-5392, 72-5393 and 72-5394.

These statutes concern special education services for children enrolled in private schools. These provisions are replaced by new provisions in Sec. 8 of SB 591 (pp. 8-9).

2. On page 13, in line 27, after "program" add "which meets the requirements of federal law".
3. On page 13, in line 31, substitute "1436" for "636."
4. On page 18, in line 16, strike the first comma and in lines 17 and 18, strike "in accordance with subsection (c),".
5. On page 18, in line 31, the word "medication" must be replaced with the word "mediation".
6. On page 20, in line 16, strike "lawful custodian" and add "parent".
7. On page 20, line 41 needs to be amended by inserting "31 or" after the word "section".

Expedited hearings are provided for in both sections 31 and 32.

8. On page 21, in line 8, the number "32" should be substituted for the number "30".
9. On page 24, in line 40, the second "the" should be "to".
10. On page 29, in line 14, the word "this" should be stricken and "31" added after the word "section".
11. Also, in line 16, the letters "ot" should be "to".
12. On page 30, lines 15 and 16 must be amended to read:
"weapon" has the meaning ascribed thereto ~~by subsection (h) of K.S.A. 1997 Supp. 72-89a01 and amendments thereto under paragraph (2) of the first subsection (g) of 18 U.S.C. 930.~~

As drafted, the wrong federal definition is incorporated into this law.

13. On page 33, in line 10, "18" needs to be replaced by "21" and in lines 13 and 14, each italicized word following "disability" must be stricken.

The right to special education services extends to age 21 and in regard to incarcerated persons age 18 to 21, services must be provided if the person was identified as a person with a disability prior to incarceration regardless of whether that person had an IEP.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

20 U.S.C. Chapter 33

PART A—GENERAL PROVISIONS

[Publisher's Note: Except as indicated, this Part is immediately effective]

Sec. 1400 Short title; table of contents; findings; purposes

- * (a) *Short title*
This Act may be cited as the "Individuals with Disabilities Education Act."

Sec. 1401 Definitions

Except as otherwise provided, as used in this Act:

(1) *Assistive technology device*

The term '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 functional capabilities of a child with a disability.

(2) *Assistive technology service*

The term '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. Such term includes—

- (A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;
- (B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;
- (C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
- (D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (E) training or technical assistance for such child, or, where appropriate, the family of such child; and
- (F) 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 such child.

(3) *Child with a disability*

(A) *In general*

The term 'child with a disability' means a child—

- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

(B) *Child aged 3 through 9*

The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child—

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

(4) Educational service agency

The term 'educational service agency'—

(A) means a regional public multiservice agency—

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(5) Elementary school

The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

(6) Equipment

The term 'equipment' includes—

(A) machinery, utilities, and built-in equipment and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(7) Excess costs

The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting—

(A) amounts received—

(i) under part B of this title;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; or

(iii) under part A of title VII of that Act; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(8) Free appropriate public education

The term 'free appropriate public education' means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under Sec. 614(d).

(9) Indian

The term 'Indian' means an individual who is a member of an Indian tribe.

(10) Indian tribe

The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska

Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

(11) Individualized education program

The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with Sec. 1414(d).

(12) Individualized family service plan

The term 'individualized family service plan' has the meaning given such term in Sec. 1436.

(13) Infant or toddler with a disability

The term 'infant or toddler with a disability' has the meaning given such term in Sec. 1432.

(14) Institution of higher education

The term 'institution of higher education'—

(A) has the meaning given that term in Sec. 1201(a) of the Higher Education Act of 1965; and

(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.

(15) Local educational agency

(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes—

(i) an educational service agency, as defined in paragraph (4); and

(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(16) Native language

The term 'native language', when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

(17) Nonprofit

The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(18) Outlying area

The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(19) Parent

The term 'parent'—

(A) includes a legal guardian; and

(B) except as used in Secs. 1415(b)(2) and 1439(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.

(20) Parent organization

The term 'parent organization' has the meaning given that term in Sec. 1482(g).

(21) Parent training and information center

The term 'parent training and information center' means a center assisted under Sec. 1482 or 1483.

(22) Related services

The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(23) Secondary school

The term 'secondary school' means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(24) Secretary

The term 'Secretary' means the Secretary of Education.

(25) Special education

The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

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

(B) instruction in physical education.

(26) Specific learning disability

(A) In general

The term 'specific learning disability' means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) Disorders included

Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) Disorders not included

Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(27) State

The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(28) State educational agency

The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(29) Supplementary aids and services

The term 'supplementary aids and services' means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Sec. 1412(a)(5).

(30) Transition services

The term 'transition services' means a coordinated set of activities for a student with a disability that—

(A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based upon the individual student's needs, taking into account the student's preferences and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

[Apr. 13, 1970, Pub. L. 91-230, Title VI, Part A, Sec. 602, as added, June 4, 1997, Pub. L. 105-17, Title I, Sec. 602, 111 Stat. 42.]



1401 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

(a) (4) *Individualized education program*

An individualized education program, or an individualized family service plan that meets the requirements of Sec. 1436(d), is developed, reviewed, and revised for each child with a disability in accordance with Sec. 1414(d).

[20 USC 1412(a)(4) becomes effective on July 1, 1998. Consult former IDEA until this date.]

(a) (5) *Least restrictive environment*

(A) *In general*

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) *Additional requirement*

(i) *In general*

If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

(ii) *Assurance*

If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

(6) *Procedural safeguards*

(A) *In general*

Children with disabilities and their parents are afforded the procedural safeguards required by Sec. 1415.

(B) *Additional procedural safeguards*

Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(7) *Evaluation*

Children with disabilities are evaluated in accordance with subsections (a) through (c) of Sec. 1414.

(8) *Confidentiality*

Agencies in the State comply with Sec. 1417(c) (relating to the confidentiality of records and information).

(9) *Transition from part C to preschool programs*

Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with Sec. 1437(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with Secs. 1414(d)(2)(B) and 1436(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under Sec. 1437(a)(8).

(a) (10) *Children in private schools*

(A) *Children enrolled in private schools by their parents*

(i) *In general*

Sec. 1412 State eligibility

(a) *In general*

A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

(a) (1) *Free appropriate public education*

(A) *In general*

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) *Limitation*

The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

(B) (ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:

(I) were not actually identified as being a child with a disability under Sec. 1401(3) of this Act; or

(II) did not have an individualized education program under this part.

(2) *Full educational opportunity goal*

The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

(a) (3) *Child find*

(A) *In general*

All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) *Construction*

Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in Sec.

To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

(II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

(ii) *Child-find requirement*

The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools.

(a) (10) (B) *Children placed in, or referred to, private schools by public agencies*

(i) *In general*

Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) *Standards*

In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.

(a) (10) (C) *Payment for education of children enrolled in private schools without consent of or referral by the public agency*

(i) *In general*

Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) *Reimbursement for private school placement*

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) *Limitation on reimbursement*

The cost of reimbursement described in clause (ii) may be reduced or denied—

(I) if—

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school,

the parents did not give written notice to the public agency of the information described in division (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 1415(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) *Exception*

Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if—

(I) the parent is illiterate and cannot write in English;

(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;

(III) the school prevented the parent from providing such notice; or

(IV) the parents had not received notice, pursuant to Sec. 1415, of the notice requirement in clause (iii)(I).

(a) (11) *State educational agency responsible for general supervision*

(A) *In general*

The State educational agency is responsible for ensuring that—

(i) the requirements of this part are met; and

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

(II) meet the educational standards of the State educational agency.

(B) *Limitation*

Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

(C) *Exception*

Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(a) (12) *Obligations related to and methods of ensuring services*

(A) *Establishing responsibility for services*

The Chief Executive Officer or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

(i) *Agency financial responsibility*

An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

(ii) *Conditions and terms of reimbursement*

The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) Interagency disputes

Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Coordination of services procedures

Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) Obligation of public agency

(i) In general

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in Secs. 1401(1) relating to assistive technology devices, 1401(2) relating to assistive technology services, 1401(22) relating to related services, 1401(29) relating to supplementary aids and services, and 1401(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(ii) Reimbursement for services by public agency

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

(C) Special rule

The requirements of subparagraph (A) may be met through—

(i) State statute or regulation;

(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer.

(13) Procedural requirements relating to local educational agency eligibility

The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

(14) Comprehensive system of personnel development

The State has in effect, consistent with the purposes of this Act and with Sec. 1435(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of Sec. 1453.

[20 USC 1412(a)(14) becomes effective on July 1, 1998. Consult former IDEA until this date.]

(15) Personnel standards

(A) In general

The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

(B) Standards described

Such standards shall—

(i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part.

(C) Policy

In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years.

(a) (16) Performance goals and indicators

The State—

(A) has established goals for the performance of children with disabilities in the State that—

(i) will promote the purposes of this Act, as stated in Sec. 1400(d); and

(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.

[20 USC 1412(a)(16) becomes effective on July 1, 1998. Consult former IDEA until this date.]

(a) (17) Participation in assessments

(A) In general

Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency—

(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

(B) Reports

The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments.

(ii) The number of those children participating in alternate assessments.

(iii)(I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

(II) Data relating to the performance of children described under subclause (I) shall be disaggregated—

(aa) for assessments conducted after July 1, 1998; and

(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

(18) *Supplementation of State, local, and other Federal funds*

(A) *Expenditures*

Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

(B) *Prohibition against commingling*

Funds paid to a State under this part will not be commingled with State funds.

(C) *Prohibition against supplantation and conditions for waiver by Secretary*

Except as provided in Sec. 1413, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

(19) *Maintenance of State financial support*

(A) *In general*

The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) *Reduction of funds for failure to maintain support*

The Secretary shall reduce the allocation of funds under Sec. 1411 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) *Waivers for exceptional or uncontrollable circumstances*

The Secretary may waive the requirement of subparagraph (A) for a State, for one fiscal year at a time, if the Secretary determines that—

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (18)(C) of this section for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

(D) *Subsequent years*

If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would

have been required in the absence of that failure and not the reduced level of the State's support.

(E) *Regulations*

(i) The Secretary shall, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary) for determining whether to grant a waiver under subparagraph (C)(ii).

(ii) The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.

(20) *Public participation*

Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(21) *State advisory panel*

(A) *In general*

The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(B) *Membership*

Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

(i) parents of children with disabilities;

(ii) individuals with disabilities;

(iii) teachers;

(iv) representatives of institutions of higher education that prepare special education and related services personnel;

(v) State and local education officials;

(vi) administrators of programs for children with disabilities;

(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(viii) representatives of private schools and public charter schools;

(ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(x) representatives from the State juvenile and adult corrections agencies.

(C) *Special rule*

A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities.

(D) *Duties*

The advisory panel shall—

(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under Sec. 1418;

(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

(22) *Suspension and expulsion rates*

(A) *In general*

The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

- (i) among local educational agencies in the State; or
- (ii) compared to such rates for nondisabled children within such agencies.

(B) Review and revision of policies

If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

Sec. 1414 Evaluations, eligibility determinations, individualized education programs, and educational placements

(a) Evaluations and reevaluations

(1) Initial evaluations

(A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

(B) Procedures

Such initial evaluation shall consist of procedures—

- (i) to determine whether a child is a child with a disability (as defined in Sec. 1401(3)); and
- (ii) to determine the educational needs of such child.

(C) Parental consent

(i) In general

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in Sec. 1401(3)(A) or 1401(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(ii) Refusal

If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under Sec. 1415, except to the extent inconsistent with State law relating to parental consent.

(a) (2) Reevaluations

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted—

- (A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and
- (B) in accordance with subsections (b) and (c).

(b) Evaluation procedures

(1) Notice

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3),

(b)(4), and (c) of Sec. 1415, that describes any evaluation procedures such agency proposes to conduct.

(b) (2) Conduct of evaluation

In conducting the evaluation, the local educational agency shall—

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

(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

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

(b) (3) Additional requirements

Each local educational agency shall ensure that—

(A) tests and other evaluation materials used to assess a child under this section—

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

(B) any standardized tests that are given to the child—

(i) have been validated for the specific purpose for which they are used;

(ii) are administered by trained and knowledgeable personnel; and

(iii) are administered in accordance with any instructions provided by the producer of such tests;

(C) the child is assessed in all areas of suspected disability; and

(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(b) (4) Determination of eligibility

Upon completion of administration of tests and other evaluation materials—

(A) the determination of whether the child is a child with a disability as defined in Sec. 1401(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

(c) Additional requirements for evaluation and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) whether the child has a particular category of disability, as described in Sec. 1401(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

(ii) the present levels of performance and educational needs of the child;

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

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

(2) *Source of data*

The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(C) (3) *Parental consent*

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(C) (4) *Requirements if additional data are not needed*

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency—

(A) shall notify the child's parents of—

(i) that determination and the reasons for it; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(C) (5) *Evaluations before change in eligibility*

A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(d) *Individualized education programs*

(1) *Definitions*

As used in this title:

(A) *Individualized education program*

The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

(i) a statement of the child's present levels of educational performance, including—

(I) how the child's disability affects the child's involvement and progress in the general curriculum; or

(II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to—

(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

(II) meeting each of the child's other educational needs that result from the child's disability;

(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

(I) to advance appropriately toward attaining the annual goals;

(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and

(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);

(v)(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and

(II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of—

(aa) why that assessment is not appropriate for the child; and

(bb) how the child will be assessed;

(vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;

(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);

(II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

(III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under Sec. 1415(m); and

(viii) a statement of—

(I) how the child's progress toward the annual goals described in clause (ii) will be measured; and

(II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

(aa) their child's progress toward the annual goals described in clause (ii); and

(bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(d)(1)(B) *Individualized education program team*

The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—

(i) the parents of a child with a disability;

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

(iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;

(iv) a representative of the local educational agency who—

(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(II) is knowledgeable about the general curriculum; and

(III) is knowledgeable about the availability of resources of the local educational agency;

(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

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

(vii) whenever appropriate, the child with a disability.

(d)(2) *Requirement that program be in effect*

(A) *In general*

At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) Program for child aged 3 through 5

In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in Sec. 1436, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

- (i) consistent with State policy; and
- (ii) agreed to by the agency and the child's parents.

(d) *(3) Development of IEP*

(A) In general

In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

- (i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and
- (ii) the results of the initial evaluation or most recent evaluation of the child.

(B) Consideration of special factors

The IEP Team shall—

(i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) consider whether the child requires assistive technology devices and services.

✓ *(C) Requirement with respect to regular education teacher*

The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).

(d) *(4) Review and revision of IEP*

(A) In general

The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

(i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and

(ii) revises the IEP as appropriate to address—

(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

(II) the results of any reevaluation conducted under this section;

(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

(IV) the child's anticipated needs; or

(V) other matters.

✓ *(B) Requirement with respect to regular education teacher*

The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child.

(5) Failure to meet transition objectives

If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

(d) *(6) Children with disabilities in adult prisons*

(A) In general

The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in Sec. 1412(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).

(ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

(B) Additional requirement

If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of Secs. 1412(a)(5)(A) and 1414(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

[20 USC 1414(d), except for paragraph 6 concerning children with disabilities in adult prisons, becomes effective on July 1, 1998. Paragraph 6 is effective immediately. Consult former IDEA until this date.]

(e) Construction

Nothing in this section shall be construed to require the IEP Team to include information under one component of a child's IEP that is already contained under another component of such IEP.

***** *(f) Educational placements*

Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

[Apr. 13, 1970, Pub. L. 91-230, Title VI, Part B, Sec. 614, as added, June 4, 1997, Pub. L. 105-17, Title I, Sec. 614, 111 Stat. 81.]

Sec. 1415 Procedural safeguards

✓ *(a) Establishment of procedures*

Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

✓ *(b) Types of procedures*

The procedures required by this section shall include—

(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public

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education to such child, and to obtain an independent educational evaluation of the child;

(b) (2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

(b) (3) written prior notice to the parents of the child whenever such agency—

- (A) proposes to initiate or change; or
- (B) refuses to initiate or change;

the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free appropriate public education to the child;

(b) (4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

(b) (5) an opportunity for mediation in accordance with subsection (e);

(b) (6) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

(b) (7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)—

(A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6); and

(B) that shall include—

(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

(ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(iii) a proposed resolution of the problem to the extent known and available to the parents at the time; and

(b) (8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7).

✓ (c) *Content of prior written notice*

The notice required by subsection (b)(3) shall include—

(1) a description of the action proposed or refused by the agency;

(2) an explanation of why the agency proposes or refuses to take the action;

(3) a description of any other options that the agency considered and the reasons why those options were rejected;

(4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(5) a description of any other factors that are relevant to the agency's proposal or refusal;

(6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(7) sources for parents to contact to obtain assistance in understanding the provisions of this part.

✓ (d) *Procedural safeguards notice*

(1) *In general*

A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum—

- (A) upon initial referral for evaluation;

(B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and

(C) upon registration of a complaint under subsection (b)(6).

(d) (2) *Contents*

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

(A) independent educational evaluation;

(B) prior written notice;

(C) parental consent;

(D) access to educational records;

(E) opportunity to present complaints;

(F) the child's placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) mediation;

(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(K) State-level appeals (if applicable in that State);

(L) civil actions; and

(M) attorneys' fees.

✓ (e) *Mediation*

(1) *In general*

Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

(2) *Requirements*

Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process—

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

(i) a parent training and information center or community parent resource center in the State established under Sec. 1482 or 1483; or

(ii) an appropriate alternative dispute resolution entity; to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation

process may be required to sign a confidentiality pledge prior to the commencement of such process.

✓ (f) *Impartial due process hearing*
(1) *In general*

Whenever a complaint has been received under subsection (b)(6) or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(f) (2) *Disclosure of evaluations and recommendations*
(A) *In general*

At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(B) *Failure to disclose*

A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(f) (3) *Limitation on conduct of hearing*

A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.

✓ (g) *Appeal*

If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

✓ (h) *Safeguards*

Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of Sec. 1417(c) (relating to the confidentiality of data, information, and records) and shall also be transmitted to the advisory panel established pursuant to Sec. 1412(a)(21)).

✓ (i) *Administrative procedures*

(1) *In general*

(A) *Decision made in hearing*

A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2) of this subsection.

(B) *Decision made at appeal*

A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

◀ (2) *Right to bring civil action*

(A) *In general*

Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with

respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(B) *Additional requirements*

In any action brought under this paragraph, the court—

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(i) (3) *Jurisdiction of district courts; attorneys' fees*

(A) *In general*

The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) *Award of attorneys' fees*

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(C) *Determination of amount of attorneys' fees*

Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) *Prohibition of attorneys' fees and related costs for certain services*

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section.

(E) *Exception to prohibition on attorneys' fees and related costs*

Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) *Reduction in amount of attorneys' fees*

Except as provided in subparagraph (G), whenever the court finds that—

(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7);

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) Exception to reduction in amount of attorneys' fees

The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) Maintenance of current educational placement

Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

*(k) Placement in alternative educational setting**(1) Authority of school personnel*

(A) School personnel under this section may order a change in the placement of a child with a disability—

(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—

(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—

(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

(k) (2) Authority of hearing officer

A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

(B) considers the appropriateness of the child's current placement;

(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

*(k) (3) Determination of setting**(A) In general*

The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

(B) Additional requirements

Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

*(k) (4) Manifestation determination review**(A) In general*

If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(B) Individuals to carry out review

A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

(C) Conduct of review

In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including—

(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

(II) observations of the child; and

(III) the child's IEP and placement; and

(ii) then determines that—

(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

*(k) (5) Determination that behavior was not manifestation of disability**(A) In general*

If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in Sec. 1412(a)(1).

(B) Additional requirement

If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

*(k) (6) Parent appeal**(A) In general*

(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

(B) Review of decision

(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).

(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

(K) *(7) Placement during appeals*

(A) In general

When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

(B) Current placement

If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

(C) Expedited hearing

(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

(K) *(8) Protections for children not yet eligible for special education and related services*

(A) In general

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(ii) the behavior or performance of the child demonstrates the need for such services;

(iii) the parent of the child has requested an evaluation of the child pursuant to Sec. 1414; or

(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or per-

formance of the child to the director of special education of such agency or to other personnel of the agency.

(C) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(K) *(9) Referral to and action by law enforcement and judicial authorities*

(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(K) *(10) Definitions*

For purposes of this subsection, the following definitions apply:

(A) Controlled substance

The term 'controlled substance' means a drug or other substance identified under schedules I, II, III, IV, or V in Sec. 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug

The term 'illegal drug'—

(i) means a controlled substance; but

(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Substantial evidence

The term 'substantial evidence' means beyond a preponderance of the evidence.

(D) Weapon

The term 'weapon' has the meaning given the term 'dangerous weapon' under paragraph (2) of the first subsection (g) of Sec. 930 of title 18, United States Code.

✓ *(1) Rule of construction*

Nothing in this part shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

(K) *(m) Transfer of parental rights at age of majority*

(1) In general

Individuals with Disabilities Education Act

A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

(A) the public agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

[Apr. 13, 1970, Pub. L. 91-230, Title VI, Part B, Sec. 615, as added, June 4, 1997, Pub. L. 105-17, Title I, Sec. 615, 111 Stat. 88.]



TO: Senate Committee on Education
FROM: Cynthia Lutz Kelly, Deputy General Counsel
DATE: March 4-5, 1998

RE: Testimony on S.B. 591 - Act for Exceptional Children Amendments

Madam Chair, Members of the Committee:

We appreciate the opportunity to offer comments on S.B. 591, which would enact amendments to the Kansas Act for Exceptional Children to bring it into conformity with the recent amendments to federal law. These comprehensive amendments to federal law provide us with an opportunity to make necessary changes to our current state law. It has long been the position of our Association that the state law on this subject should not include requirements in excess of those imposed by federal law. S.B. 591 goes far in accomplishing this goal, and we are in firm agreement with most of its provisions.

In conjunction with this testimony, we have provided you with proposed amendments to the legislation. The purpose of these amendments is:

- to ensure that the provisions of this law are not interpreted to create greater rights than those created in federal law;
- to create conformity with federal definitions;
- to ensure local school districts have access to procedures for settling disputes with other state agencies that refuse to cooperate in providing services to children with disabilities;
- to ensure mediation and due process hearings under the act are requested and can be afforded in a timely manner; and
- to ensure compliance with federal law without repeating unnecessary detail in state law.

The chart on the next page fully explains our proposed amendments.

With these amendments we urge you to recommend S.B. 591 favorably for passage.

*Senate Education
Attachment 2
3-4-98*

Description of the Proposed Amendments	Reason for the Proposed Amendment
<p>Section 1. Add a provision which makes it clear the state law is not intended to create broader rights than federal law (except for including gifted children in its scope).</p>	<p>Without full funding for the excess costs of special education, school districts cannot afford to assume greater responsibilities. Further, the federal law provides a multitude of protections for parents and children with disabilities.</p>
<p>Section 2. Renumber the definitional section so that words defined are in alphabetical order.</p> <p>Change the definition of "exceptional children" to include reference to "children with disabilities" and add a definition of "children with disabilities."</p> <p>Amend the definition of person acting as parent for purposes of this act to exclude persons who do not have legal custody and are not providing for the support of the child.</p> <p>For the definitions of elementary and secondary school, include the provisions previously found in the definitions in 72-5392.</p> <p>Amend the definition of independent educational evaluation to include a requirement that it meet with local as well as state standards.</p>	<p>Easier to find.</p> <p>Conformity with federal law. To be eligible under federal law, the child must fall into one of the stated disability categories.</p> <p>Although this definition is used for creating residency, the definition is too broad for granting rights (rights to notice, due process, etc., under this act).</p> <p>Federal law allows for state law definition.</p> <p>Federal law allows this.</p>
<p>Section 3. Delete reference to section 31 (page 5; line 33).</p>	<p>The federal discipline provisions should not be included in this act.</p>
<p>Section 8. Make it clear that procedures must be established which will allow school districts to seek reimbursement from other state agencies who refuse to pay.</p>	<p>Such procedures are required by federal law.</p>
<p>Section 10. Delete references to before and after July 1, 1998.</p>	<p>Because the state requires disaggregation of such data, these provisions are unnecessary.</p>
<p>Section 11. Make it clear that a school district is not required to pursue mediation or due process if a parent refuses to consent to evaluation.</p>	<p>Eliminate confusion. Provide clarity for hearing officers and courts.</p>
<p>Section 12. Delete provisions on IEP development and require compliance with federal requirements.</p>	<p>Because this just repeats federal law, a reference to federal law should be sufficient. If these provisions are not deleted, provisions which speak to the content of the IEP from federal law should also be added.</p>
<p>Section 17. Federal law provides parents also have a right to consent to initial placement.</p>	<p>Conform with federal law and eliminate confusion. Consent to change of placement after initial placement is not required by federal law and should not be required by state law.</p>

<p>Although federal law clearly states a court can award attorney's fees, a note in the proposed regulations suggests a state could allow a hearing officer to award these fees.</p>	<p>Make clear that fees can only be awarded by courts, entities which have some expertise on determining what is reasonable. Hearing officers should have no authority to award fees.</p>
<p>Section 20. Delete reference to section 32 and delete language which suggests a hearing must be commenced even if a request is not received.</p>	<p>School districts should not be forced to initiate due process proceedings. The discipline provisions should reference federal law and be deleted from state law.</p>
<p>Section 21. Provide the timeline by which parents must disqualify potential hearing officers, and make it clear that failure to do so in a timely manner waives the right. Allow the state board to simply appoint a hearing officer if the district prefers not to maintain a list of potential hearing officers.</p>	<p>The current system creates too many delays. If the hearing must be completed within 30 days after the request for a hearing is filed, the parties cannot afford to spend a protracted amount of time getting a hearing officer.</p>
<p>Section 22. Most prehearing discovery is duplicative of what occurs at hearing, is costly, and serves only to delay the process. Federal law requires the timely exchange of evaluations, access to records, etc.</p>	<p>Discovery should be limited to conserve time and cost. A party should have to make a strong showing of the need for discovery in order for it to be allowed in a due process proceeding.</p>
<p>Section 29. The threshold amount to be paid by a district to qualify for catastrophic aid should be lowered, as proposed in several other bills this session.</p>	<p>Districts cannot afford to bear these costs without cutting significantly into general fund moneys which should appropriately be used to meet the educational needs of all children in the district.</p>
<p>Section 30 - 33. The provisions dealing with the discipline of children with disabilities should be deleted from state law and replaced with</p> <ul style="list-style-type: none"> • a statement indicating schools shall comply with the requirements of federal law, and • a definition of "expedited hearing." 	<p>There is considerable debate in the field about the meaning of the federal law. The U.S. Department of Education's proposed regulations provide reasonable interpretations of the provisions in light of Congress' stated intent in enacting the confusing provisions. However, the proposed provisions in state law do not incorporate these proposed interpretations. Until these provisions are fully clarified in the regulations, in court cases, or by amendments at the federal level, they should not be included in state law in their current format.</p>
<p>New Section _____. We suggest that a provision which more clearly defines mediation rights be included in the law.</p>	<p>The proposed language complies with federal law requirements.</p>



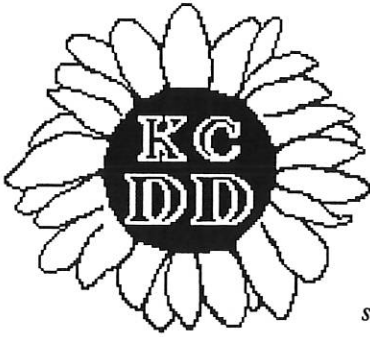
SB 591

Testimony presented before the Senate Committee on Education
by Gerald W. Henderson, Executive Director
United School Administrators of Kansas
March 4, 1998

Madam Chairman and Members of the Committee:

United School Administrators of Kansas is supportive of the efforts by the State Board of Education to bring Kansas law into exact compliance with federal law. Our members who direct special education systems in the state believe that services to children can be delivered more effectively and efficiently under one set of statutory guidelines rather than two. We encourage you to act favorably on **SB 591**.

*Senate Education
Attachment 3
3-4-98*



Kansas Council on Developmental Disabilities

BILL GRAVES, Governor
TOM ROSE, Chairperson
JANE RHYS, Ph. D., Executive Director

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*"To ensure the opportunity to make choices regarding participation in
society and quality of life for individuals with developmental disabilities"*

SENATE EDUCATION

March 4, 1998

Testimony in Regard to SB 591 REVISING THE SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN ACT.

Madame Chairwoman, Members of the Committee, I appear today on behalf of the Kansas Council on Developmental Disabilities in support of SB 591 - Revising the Special Education for Exceptional Children Act.

The Kansas Council is a federally mandated, federally funded council composed of individuals appointed by the Governor. Over half of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Also represented are the major agencies who provide services for individuals with developmental disabilities. Our mission is to advocate for individuals with developmental disabilities, to see that they have choices in life.

We appreciate the efforts to bring state law closer to federal law. However, we are concerned with the proposal to eliminate the requirement for parental consent to an initial placement of substantial change in placement. The requirement for parental consent to initial placement is in current federal placement. This has been a requirement in Kansas for many years and, as a former Department of Education staff member, I have been proud of this pro-parent law. Kansas can and does currently deviate from federal law in their statutes. We require programs for gifted and treat these children the same as we do children with disabilities. In addition, federal law uses the term "surrogate parent" and in Kansas we refer to these individuals as "educational advocates." Please reconsider eliminating this tool which parents use as a method of maintaining an active partnership with the school in the education of their child.

*Senate Education
Attachment 4
3-5-98*

I would propose that the requirement to get parental consent for change in placement be added to page 18, Section 17(b)(6) as the following:

(6) consent, or refuse to consent, to the evaluation or reevaluation *or to an initial placement or subsequent substantial change in placement* of their child:

This law has been in effect for a long time and schools have been able to effectively serve Kansas children with disabilities through use of this law. To remove it would place limits on parental participation which Kansans do not currently have. Parents do not want to lose rights that they have had for many years and become second class citizens when it comes to the education of their children.

We would also support the corrections from the State Department of Education such as Page 18, Line 31 which should read “request *mediation* in accordance with this act” instead of “request *medication*.”

I appreciate the opportunity to testify and would be happy to answer any questions you might have.

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Kari Ramos, Advocate

Michelle Rola', CFO

Ron Pavelka, Attorney

To: Senate Education Committee
From: Sherry C. Diel, Deputy Director
Date: March 4, 1998

KAPS Information

Kansas Advocacy & Protective Services, Inc. ("KAPS") is a federally funded non-profit corporation which advocates for the rights of individuals with disabilities. Our Agency also has federal authority to serve as an independent agency to investigate claims of abuse or neglect involving persons with disabilities. Our Agency is authorized to advocate for the rights of Kansans with disabilities using legal, administrative and other appropriate remedies. Similar organizations exist in each state and territory of the United States.

Comments Regarding SB 591

In the interest of the valued time of the Committee, KAPS concurs with the comments of Jane Rhys, Executive Director of the Kansas Council on Developmental Disabilities.

KAPS has grave concerns regarding the elimination of the requirement for parental consent for a substantial change in placement. Kansas has deviated from federal law in several respects for many years. Parents would be token members of the Individual Education Plan (IEP) Team concerning the power to make meaningful choices in their child's education without resort to mediation or due process proceedings. This will serve as drain on state dollars because the state is responsible for paying for special education mediation pursuant to federal law. We believe that the parental consent for a substantial change in placement allows the parties to attempt to resolve their disputes amicably through informal means, rather than resort to more formal administrative and legal remedies.

We respectfully request the Committee to consider the amendment proposed by the Kansas Council on Developmental Disabilities. This protection will serve as a valuable check and balance for parents and students with disabilities. Thank you for your consideration. Should you have any questions, I can be reached at (785) 232-0889.

*Senate Education
Attachment 5
3-4-98*