Approved:
Date 3-5-02

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Dwayne Umbarger at 1:30 p.m. on February 20, 2002 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Ben Barrett, Legislative Research
Theresa Kiernan, Revisor of Statutes
Judy Steinlicht, Secretary

Conferees appearing before the committee: Dr. Jane Adams, Executive Director, Keys for Networking, Inc.
Lori Ellis, Parent
Deborah Howard, Grandparent
Theresa Kiernan, Revisor of Statutes

Others attending: See Attached List

SB516--Special education; due process hearings time-limitation for requests

Dr. Jane Adams, Keyes for Networking, gave testimony in opposition to **SB516.** They believe that the 60 day requirement of **SB516** targets parents of children with emotional behavioral disabilities. Children with emotional needs change frequently. Little research is available to guide parents or school personnel in special education decisions. Often there are disagreements between parents and school staff. Parents are always at a disadvantage because they frequently have a hard time finding resources or reliable information. It usually takes much longer than 60 days to get the education of a child with emotional behavioral disabilities back on tract. (Attachment 1)

Lori Ellis, a parent, offered testimony in opposition of **SB516** on behalf of her child who receives special services. She believes that this bill will not protect a child's right to a free appropriate public education. She believes that it will restrict parent's right to advocate for their child. It puts a time limit on parents to find the knowledge and resources they need. She has had to learn special education laws. If she makes a wrong decision because she is not properly informed, or because she believes the school district staff knows best, she loses her opportunity to advocate for her child's best interest. If she takes the wrong turn or asks the wrong agency for help, she could be compromising her child's education. If she does not act fast enough or waits too long to speak up, the district would no longer bear any responsibility. (Attachment 2) Attached to Lori's testimony is a copy of the 16 page Parent Rights in Special Education.

Debra Howard testified against **SB516** on behalf of her granddaughter who has no mother or father to advocate for her. Debra has to research every issue and every recommended treatment. This bill assumes that parents have vast knowledge. It takes weeks and months to figure out the process. She has to find organizations to help her evaluate her options and this takes time. She cannot afford a lawyer. The process is overwhelming to her personally and emotionally. She needs time to study strategy and time to assess the effectiveness of the strategies. (Attachment 3)

Jim Germer and Lynn Retz, from the Kansas Advocacy & Protective Services Inc. submitted written testimony in opposition to **SB516.** They believe this bill would force parents into a due process hearing before affording them the opportunities to resolve the issues through other means, such as advocacy, mediation, formal complaint or other alternative mechanisms with the school. It would destroy any chance for cooperative efforts between the parents and the school to resolve the differences amicably or in a non-adversarial environment. (Attachment 4)

After much discussion, hearings were closed on this bill and no action was taken.

SB531--U.S.D. No. 431, adjustment in school term and determination of enrollment due

MINUTES OF THE SENATE COMMITTEE ON EDUCATION at on February 20, 2002 in Room 123-S of the Capitol.

Theresa Kiernan, Revisor of Statutes, explained **SB531.** Hoisington School District No. 431 suffered loss of enrollment due to a devastating tornado in April, 2001. This bill will allow Hoisington School District to use the 2000-01 enrollment for one more year, 2002-2003. The provisions of this bill will expire 7-1-2003.

Senator Vratil offered a motion to amend **SB531** by deleting Section 1, and changing the date on Line 37 to September 20, 2000 and Section 2 would now be Section 1. Seconded by Senator Lee. Motion carried.

Senator Lee made a motion to pass **SB531** favorably as amended. Seconded by Senator Teichman. Motion carried.

SB551--School finance; consolidation and reorganization of districts

Theresa Kiernan, Revisor of Statutes explained **SB551.** The bill will make two amendments to current law. Currently when two districts consolidate the state board computes their state aid for two years by adding the two together and the new district gets that amount of state aid. The first change would extend that provision from two years to five years and secondly, this would also apply to districts that disorganize and attach to another district.

Jacque Oakes submitted written testimony in support of **SB551.** This bill would allow five-year funding of the state financial aid for districts who have disorganized and unified. This will make a hard task less difficult for school districts involved. (Attachment 5)

This bill was introduced to give some incentives to school districts to consolidate on their own and to accommodate their needs if they do consolidate. After discussion, Senator Teichman made a motion on **SB551** to reduce the time from five years to four years. The language would change on Line 43 and Line 27 to read "for the next succeeding three school years. Seconded by Senator Oleen. After more discussion, Senator Teichman offered to withdraw her motion. Chairman Umbarger asked Legislative Research to draw up new language for the Committee's consideration reducing the years from five to four and language for the amount of state aid the consolidated school would receive, which would be the total of the state aid both schools received based on the prior year. The consolidated school would get the total of both schools prior to the consolidation for the current fiscal year and they would not receive anything less that for the succeeding three years.

Senator Teichman made a motion to approve minutes for February 11, 12 and 13, 2002. Seconded by Senator Schodorf. Motion carried.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE - 2/20/07

NAME	REPRESENTING
Meaghan Canning	Keys for Networking, Inc.
Deborah Howard	Consumer/Parent
Lori Ellis	Parent, Circleville, Ks.
Jane Adam	Keys for Networking
Sarah Adams	Keys for Networking
Kirk Lowrey	TILRC
Dale Huffman	Families TOGETHER Inc.
Josie Torrez	KCDD
Dean Dwelle	KAPS
Brad Stanley	TPS, USD 501
Denise Apt	USA - USD 500
Megan Ummel	Mother of child with disability, Kansas for Idea Compliance
JOSEPH BLECHA	Shadow with Sen. Lee
Kerri Spielman	Sen Maj Ldr Ofc.
Vicki Conner	Intern for Senator Olsen
Don Gilmore	U.S.A.
Bill Brady	SFFF
Mark Desetti	KNEA
Jessi Heiard	Families Together

Keys for Networking, Inc.

The Kansas Parent Information and Resource Cer

The State Organization of the Federation of Families for Children's Mental Health

February 20, 2002

To: Members of the Committee
From: Jane Adams, Ph.D., Executive Director

I appear before you today in opposition to SB 516. I am the Executive Director of Keys for Networking. Keys is a state parent organization for families who have children with serious emotional disabilities. Last year we served over 10,000 families.

We believe the 60 day requirement of SB 516 targets parents of children with emotional behavioral disabilities.

Unlike children with developmental disabilities, the child with Serious Emotional Disabilities changes frequently, related to environmental and staff controls, developmental changes and the always unpredictable side effects of mental illness and medications. Moreover, little if any research exists to guide parents or school personnel in special ed. decisions. Often there are disagreements between parents and school staff. Parents are always at a disadvantage because they frequently have a hard time finding resources or reliable information. In Kansas, one source of such information is Keys for Networking. An example of a recent call for help to Keys is that of parents from Miami County, who asked if Keys could help get their 16 yr. old daughter back into school. The daughter who I will call, Amanda, had been receiving homebound tutoring for 1 hr. a day for over two years by a paraprofessional, with no training, with minimal supervision from the school. Her parents had signed the IEP to authorize this because school staff told them they had to.

The request of this family to get their child's education back on track is way past the 60 day elimination rule of SB 516. In fact, SB 516 would prevent them from righting this incredible wrong. In the last few months Keys staff traveled to Paola, (the parents would be here today but they have no transportation) taught the parents their rights under IDEA, and supported them in filing the due process. Senate Bill 516 would deny their right to do this. It would assume they could read the 16 page document explaining their rights.

Often times parents simply do not know what they can do.

Federal and state laws protect the rights of these Kansas to protect their children, to speak for them in educational decisions parents and allows them to ask for the appropriate educational services for their children. These emotionally disturbed children number 4,735 according to the latest data from the Department of Education. As the representative of these families, I stand before you today to ask you to protect the rights of parents to see that their children have access to Kansas education.

Thank you for the opportunity to be here. I really believe this bill will not help families or their children.

Senate Education
2-20-02
Attachment 1

1301 S. Topeka Blvd. • Topeka, Kansas 66612
(785) 233-8732 • (800) 499-8732 msg line • Fax (785) 235-6659 fax line • www.keys.org

February 20, 2002

To: Members of the Committee
From: Lori Ellis, Parent, 201 Grant Street, Circleville, Kansas

Thank you, Senators for the opportunity to testify today on behalf of my child who receives special services. I oppose Senate Bill 516. I believe this bill will not protect a child's right to a free appropriate public education. I believe that it will restrict parent's right to advocate for their child. It puts a time limit on parents to find the knowledge and resources they need to do just that. This bill will restrict children's services.

As the parent of a seriously emotionally disturbed child, I have had to learn special education laws. I have had to protect my child's rights. School people do not love my child. I do. Most parents are in the dark when it comes to these matters and do not know where to turn to for help. After 9 years of experience of my child being in special education, and valuable trainings provided to me by Keys for Networking, I have gained this much needed knowledge. Through my connections with Keys for Networking, attending meetings and events that they have sponsored, I have had the opportunity to visit with literally hundreds of parents who have children with disabilities much like my own child's. I have yet to meet a parent who does not want services for their child. It is usually the parents begging the school to evaluate or to provide needed services and the school denying this because of costs. I know of parents in Kansas who have had to file due process just to get their child evaluated for eligibility for services.

My son, Charlie, has both a behavior disorder and a learning disability. For over 6 months the school district has refused to provide him with services and assistive technology for his learning disability. During the meeting when I made the request for these services, my husband and I were presented with a 16 page list of our parental rights and were told to call them if we had any questions. We still have not gotten through the whole list.
School staff tell me the symptoms of Charlie's bi-polar disorder are a more prevalent factor than his vision and learning disabilities. I feel that the school is discriminating against my child because he is bi-polar. If he did not have this disorder, then they would take more seriously his vision and learning disabilities, and consider corrective therapy for his eyes, or assistive technology that enlarges print or that he could speak into and it could type for him his answers.

Since I felt there was discrimination against my child because of his disability, I filed a complaint with the U.S. Dept. of Education, Office of Civil Rights. OCR,s average case is investigated in approximately 6 months. Under the current law, if OCR does not find that there is discrimination and order the school to provide services for all of Charlie's identified disabilities. I still have the right to due process. As Charlie's parent, I disagree with the adequacy of the services being provided to my child. If this bill is passed, I would no longer have that opportunity. If I waited for OCR's findings, I will exceed my 60 days, and my child would lose the opportunity to a free appropriate public education. Charlie will lose the opportunity to learn to read.

I oppose SB 516. If I make the wrong decision because I am not properly informed, or because I believe the school district staff know best, I lose my opportunity to advocate for my child's best interest. If I take the wrong turn or ask the wrong agency for help, I could be compromising my child's education. Passing Bill 516 will give my school district one more way to let me assume blame. If I do not have the right information, if I do not act fast enough or wait too long to speak up, the district no longer bears any responsibility.

Instead of Bill 516, I ask you to pass a law that ensures that children get the special services that they need, I would suggest one that orders schools to develop and maintain a working relationship with parents.

Senate Education
2-20-02
Attachment 2

KANSAS STATE DEPARTMENT OF EDUCATION
PARENT RIGHTS IN SPECIAL EDUCATION
(Procedural Safeguards)

Both you and the school share in your child's education. If you or the school have issues or concerns about your child's education, you and your child's teacher should openly discuss the issues. We urge you to be actively involved in your child's education.

As parents of children who are, or may be, exceptional, you have certain rights or procedural safeguards under federal and state laws. These rights are listed in this statement of *Parent Rights in Special Education.* This list of your rights must be given to you in your native language or in a communication method you can understand. If you would like a more detailed explanation of these rights, please contact the principal at your child's school, a school administrator, the special education director, or the Kansas State Department of Education (KSDE), 120 SE 10th Avenue, Topeka, KS 66612; phone (800) 203-9462. Copies of these rights in Braille, audiotape, and other languages are available from your school upon request. For more information about your rights, you may ask for a copy of the Guide to Special Education from Families Together, Inc. (785) 233-4777 or (800) 264-6343, or the Kansas State Department of Education (800) 203-9462.

OPPORTUNITY TO EXAMINE RECORDS

As the parent of a child with an exceptionality, you must be afforded an opportunity to--

- Inspect and review all education records with respect to:
  - **Identification** (process to determine eligibility);
  - **Evaluation** (nature and scope of assessment procedures);
  - **Placement** (educational placement of your child); and
  - **FAPE** (the provision of a free appropriate public education to your child).

INDEPENDENT EDUCATIONAL EVALUATION

You have the right to get an independent educational evaluation of your child if you disagree with the school's evaluation. The school must provide you, upon request for an independent evaluation, information about where an independent educational evaluation may be obtained, and the criteria applicable for independent educational evaluations.

What is an independent evaluation?
An "independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for your child's education.

What does "public expense" mean?
"Public expense" means that the school either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

Evaluation at Public Expense

If you request an independent educational evaluation at public expense, the school must, without unnecessary delay, either,

- ask for a due process hearing to show that its evaluation was appropriate; or
- ensure that an independent educational evaluation is provided at public expense, unless the school demonstrates in a due process hearing that the evaluation which you obtained did not meet the criteria applicable for independent educational evaluations.

If the final decision of the due process hearing is that the school's evaluation is appropriate, you still have the right to an independent educational evaluation, but it will not be paid for by the school.

If you request an independent educational evaluation, the school may ask for the reason(s) why you object to the school's evaluation. However, your explanation is not required and the school may not unreasonably delay either providing the independent educational evaluation at public expense or asking for a due process hearing to defend its evaluation.

Evaluation at Private Expense

If you get an independent educational evaluation at your own expense, the results of the evaluation--

- must be considered by the school, if it meets the applicable criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and
- may be presented as evidence at a due process hearing regarding your child.

Requests for Evaluation by Hearing Officers
If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the school uses when it conducts an evaluation, to the extent the criteria are consistent with your right to an independent educational evaluation. Except for the criteria, a school may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

PRIOR NOTICE BY THE SCHOOL

How will I be informed of proposed actions regarding my child's special education needs?
Your school will inform you of actions being proposed about your child by giving you written notice.

Written notice must be given before the school--
Proposes or *Refuses* to initiate or change the:

- **Identification** (process to determine eligibility);
- **Evaluation** (nature and scope of assessment procedures);
- **Educational Placement** (educational placement of your child including graduation); or
- **FAPE** (the provision of a free appropriate public education to your child).

Content of Notice

What must be included in a written notice?
Written notice must include:

- A description of the action proposed or refused by the school;
- An explanation of why the school proposed or refused to take the action;
- A description of any other options the school considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record, or report the school used as a basis for the action proposed or refused;
- A description of any other factors that are relevant to the school's proposal or refusal;
- A statement that you have protection under these Parent Rights (procedural safeguards), and how you may get a copy of them; and
- Sources for you to contact to obtain assistance in understanding your rights.

If the school is proposing an action concerning your child, you must be given written notice about the proposed action a reasonable time before the action is taken. If the school refuses to take some action requested by you, you must be given written notice of the refusal within a reasonable time after the decision is made to deny your request. The school must take steps to be sure that you understand the information in any notice given to you.

Written Notice in Understandable Language

Written notice must be in language understandable to the general public and in your native language or other principal mode of communication. If this is not a written language, the school must take steps to ensure that the notice is translated orally or by other means into your native language or other mode of communication. If your language is not a written language, the school district must assure that you understand the notice, and it must document that you understand the notice.

When will the school take the action described in the notice?
After you have received the written notice, you have the opportunity to consider the actions proposed or refused by the school. You may agree or disagree with the school's proposal or refusal. You can allow the school to start the proposed action by giving consent in writing.

COPY OF PARENT RIGHTS (PROCEDURAL SAFEGUARDS)

A copy of the **Parent Rights** (procedural safeguards) must be given to you, at a minimum--

- Upon initial referral for evaluation;
- Upon each notification of an IEP meeting;
- Upon reevaluation of your child; and
- Upon receipt of your request for a due process hearing.

PARENT CONSENT

What does consent mean?
Consent means that--

- You have been fully informed of all information relevant to the activity for which your consent is sought, in your native language or other mode of communication;
- You understand and agree in writing to the carrying out of this activity for which your consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- You understand that the granting of consent is voluntary on your part and may be revoked at any time. If you revoke consent, that revocation is not retroactive (i.e., it does not reverse an action that has occurred after the consent was given but before consent was revoked).

Consent is immediate. This means, after you have given your written consent, the school district must start the activity as soon as possible.

When must the school obtain my consent?
Your consent is required--

- **Before your child is evaluated for the first time** to determine whether your child is eligible for special education; [Consent for initial evaluation may not be construed as consent for initial placement.]
- **Before your child's special education and related services start for the first time;**
- **Before your child is tested as part of a reevaluation.** Informed parental consent need not be obtained for reevaluation if the school can demonstrate that it has taken reasonable measures to obtain your consent, and you have failed to respond. Reasonable measures include records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and records of visits made to the parents' home and the results of those visits.
- According to state law, you must also give written consent when the school proposes to **change the amount of a service by 25% or more**, or to **change your child's placement for more than 25% of the school day.**

Your consent is not required before--

- **School officials review existing data** as part of an evaluation or a reevaluation; or
- **School officials administer a test or other assessment that is administered to all children** unless, before administration of that test or assessment, consent is required of parents of all children.

Parent Refusal or Withdrawal of Consent

Can I refuse consent?
Yes. If you refuse consent, the school can ask you to go to mediation on the issue or, when authorized by law, it can start a due process hearing to decide the issue.

Can I withdraw my consent after it has been given?
Yes. You have the right to change your mind. Giving consent is voluntary. You can revoke (withdraw) your consent at any time by writing the school or the special education director. Revoking consent does not negate an action that has occurred after the consent was given and before the consent was revoked. Again, if you revoke consent, the school can ask you to go to mediation on the issue or it can start a due process hearing to decide the issue.

What are the limitations on my consent?
The school must ensure that--

- Your refusal to consent to one service or activity does not deny you or your child from receiving other services, benefits, or activities provided by the school.

VOLUNTARY MEDIATION

What is mediation?
Mediation is a way to discuss and resolve disagreements between you and the school with the help of a trained, impartial third person.

When must mediation be available?
Each school must ensure that it has established procedures to allow parties to disputes to resolve the disputes through a mediation process that, at a minimum, must be available whenever a due process hearing is requested regarding a *proposal* or *refusal* to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child.

How does mediation occur?
The school must ensure that the mediation process--

- Is voluntary on the part of the parties;
- Is not used to deny or delay your right to a due process hearing or to deny any other rights that you have under the Individuals with Disabilities Education Act (IDEA); and
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

What are the qualifications of an impartial mediator?
An individual who serves as a mediator may not be an employee of --

- Any school or state agency that receives a subgrant under the IDEA; or
- A state education agency that is providing direct services to a child who is the subject of the mediation process.

In addition, an impartial mediator--

- Must not have a personal or professional conflict of interest; and
- Is not an employee of a school or state agency solely because he or she is paid by the agency to serve as a mediator.

How are mediators appointed?
The Kansas State Department of Education (KSDE) maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. Mediators are selected on a random basis from a list of qualified mediators. The Kansas State Department of Education bears the cost of the mediation process, including the cost of meetings. The mediation sessions are scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.

What happens if agreement is reached?
An agreement reached by the parties to the dispute is set forth in a written mediation agreement.

Are discussions confidential?
Yes. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process are required to sign a confidentiality pledge prior to the commencement of the process.

How can I request mediation?
The school has procedures that require you to provide written notice that you are requesting mediation.

MEDIATION	
Contact Persons	*What Information Is Needed?*
Mark Ward, Mediation Consultant, or Carol LeDuc, Mediation Technical Assistant Kansas State Department of Education Student Support Services Team 120 SE 10th Avenue Topeka, KS 66612-1182 Phone (800) 203-9462 FAX (785) 296-6715	The name and address of the child's parents; The name and birthdate of the child; The address of the residence of the child; The name of the school the child is attending; If a due process hearing has been requested also; A joint request with the school for mediation; and Signatures from both parties to the Confidentiality Pledge.

IMPARTIAL DUE PROCESS HEARING

What is a due process hearing?
A due process hearing is a formal legal process through which any disagreement between you and the school is resolved by an impartial hearing officer.

What happens when a due process hearing is requested?
A parent or a school may initiate a hearing on any of the matters relating to the identification, evaluation or educational placement of a child or relating to the provision of services to the child. When you request a due process hearing--

- The school must inform you of the availability of mediation.
- The school must also inform you of any free or low-cost legal and other relevant services in the area, if you request the information.

Does the school conduct the due process hearing?
No. The due process hearing is arranged and paid for by the school district responsible for the education of your child but it is conducted by an impartial hearing officer.

How can I request a due process hearing?
The law requires that you or your attorney provide written notice to the school (which must remain confidential) that you are requesting a due process hearing.

DUE PROCESS HEARING	
Contact Person/Agency	*What Information Is Needed?*
The Special Education Director if your child is in a public school or The Secretary of Social and Rehabilitation Services (SRS) if your child is in a state institution or The Commissioner of the Juvenile Justice Authority if your child is in a state juvenile correctional facility or The Secretary of the Department of Corrections if your child is in a state correctional facility	The name and address of the child's parents; The name and age of the child; The address of the residence of the child; The name of the school the child is attending; A description of the problem and a statement of the facts relating to the problem; A proposal for resolution of the problem; and An indication that a copy of the request was sent to the school.

The school may not deny or delay your right to a due process hearing for failure to provide the notice specified above.

What are the qualifications of an impartial due process hearing officer?
A hearing may not be conducted--

- By a person who is an employee of the state agency or the school that is involved in the education or care of the child; or
- By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

However, an impartial due process hearing officer--

- Is not an employee of the agency or school solely because he or she is paid by the agency to serve as a hearing officer.

The school must--

- Keep a list of 3 to 5 persons who serve as hearing officers.
- The list must include a statement of the qualifications of each hearing officer.

Due Process Hearing Rights

You have the right to:

- Be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of children with exceptionalities;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to you at least 5 business days before the hearing;
- Obtain a written, or, at your option, electronic, verbatim record of the hearing; and
- Obtain a written, or, at your option, electronic findings of fact and decision.

Additional Disclosure of Information--

- At least 5 business days prior to a hearing, each party must disclose to the other party all evaluations completed by the date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
- A hearing officer may bar any party that fails to comply from introducing the evaluation or recommendation at the hearing without the consent of the other party.

Parent Rights at Hearings
Parents involved in hearings must be given the right to--

- Have the child who is the subject of the hearing present;
- Open the hearing to the public; and
- Receive a record of the hearing and the findings of fact and decision, at no cost to them, no later than 45 calendar days after the request for the hearing, unless an extension of time is allowed by the hearing officer.

Finality of Local Level Hearing Decision

A decision made in a local due process hearing is final, unless either party involved in the hearing decides to appeal the decision.

Appeal of Decision

Any party aggrieved by the findings and decision in the local due process hearing may appeal to the Kansas State Department of Education. The Department shall conduct an impartial review of the hearing. The official conducting the review shall–

- Examine the entire hearing record;
- Ensure that the procedures at the hearing were consistent with the requirements of due process;
- Seek additional evidence if necessary (If a hearing is held to receive additional evidence, the rights mentioned above apply);
- Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- Make an independent decision on completion of the review; and
- Give a copy of the written, or, at the option of the parents, electronic, findings of fact and decision to the parties.

Finality of State Level Hearing Decision

The decision made by the state reviewing official is final, unless a party files a court action to have the decision changed.

Timelines and Convenience of Hearings

Local Level Hearings

At the local level, not later than **45 calendar days** after the receipt of a request for a hearing--

- A final decision must be reached in the hearing; and
- A copy of the decision must be mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-day period if requested by either party. Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

State Level Reviews

The Kansas State Department of Education must ensure that not later than **30 calendar days** after the receipt of a request for a review–

- A final decision is reached in the review; and
- A copy of the decision is mailed to each of the parties.

A reviewing officer may grant specific extensions of time beyond the 30-day period at the request of either party. Each review involving a hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Court Action

Any party who does not agree with the decision of the state review officer has the right to file a court action. The action may be filed in state or federal court. Any action must be filed within 30 days of the date of the decision. You will have to hire an attorney if you decide to go to court.

In any civil action, the court--

- Shall receive the records of the administrative proceedings;
- Shall hear additional evidence at the request of a party; and
- Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Jurisdiction of District Courts

The district courts of the United States have jurisdiction of actions brought under section 1415 of the IDEA without regard to the amount in controversy.

Rule of Construction

Nothing in IDEA restricts or limits 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 exceptionalities, except that before the filing of a court action under these laws seeking relief that is also available under IDEA, the local level and state level due process hearing procedures must be exhausted to the same extent as they would have been required had the action been brought under IDEA.

Attorneys' Fees

How can I recover attorneys' fees?

In any action or proceeding under the IDEA, **the court** may award reasonable attorneys' fees to you if you win.

May a court award attorneys' fees?
Yes. A court may award reasonable attorneys' fees consistent with the following--

- Fees awarded must be based on rates prevailing in the community in which the due process hearing was conducted for the kind and quality of services furnished.
- No bonus or multiplier may be used in calculating the attorneys' fees.

May a court choose not to award attorneys' fees?
Yes. Attorneys' fees may not be awarded and related costs may not be reimbursed for services performed subsequent to the time of a written offer of settlement to you if--

- The offer is within the time allowed by the Federal Rules of Civil Procedure or, in the case of an administrative hearing, any time more than 10 calendar days before the hearing;
- The offer is not accepted within 10 calendar days; and
- The court finds that the decision you finally receive is not more favorable to you than the offer of settlement. However, an award of attorneys' fees may be made to you if you win and you are justified in rejecting a settlement offer.

May a court reduce the amount of attorneys' fees awarded?
Yes. A court may reduce the amount of attorneys' fees awarded when the court finds:

- During the action or proceeding, you unreasonably lengthened the final resolution of the case;
- The amount of the attorneys' fees is unreasonable compared to the going rate in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation;
- The time and legal services were excessive considering the nature of the case; or
- Your attorney did not give the school the appropriate notice about the due process hearing.

A court may not reduce the allowance for attorneys' fees if the court finds that the state education agency or school unreasonably delayed the final resolution of the case.

Placement During Due Process or Court Proceedings

What happens to my child during due process or court proceedings?
Except when your child has violated a school rule or has done something that could have hurt someone, during any due process or court proceedings--

- Unless you and the school agree otherwise, your child stays in the current educational placement;
- If the complaint involves an application for initial admission to school, your child must be placed in public school until the proceedings are finished.
- If a hearing or review officer agrees with you that a change in placement is appropriate, the hearing or review officer may order a different placement for your child.

CHANGE OF PLACEMENT FOR DISCIPLINARY REMOVALS FOR CHILDREN WITH DISABILITIES

State and federal laws have special provisions that control what happens if your child violates a school rule or does something that caused, or could easily have caused, an injury to him/herself or someone else. These special provisions say what action the school can take and what your rights are as the child's parent. The possible actions by the school and your rights in these matters are explained below.

What is change of placement for disciplinary removals?
For purposes of removals of your child from his or her current educational placement, a change of placement occurs if--

- The removal is for more than 10 consecutive school days; or
- Your child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time your child is removed, and the proximity of the removals to one another.
- Your child is to be placed in an interim alternative educational setting.

When can school officials take action for a child's misbehavior?
Children with exceptionalities are subject to the same rules of conduct that apply to other children. School officials can take action if a child with an exceptionality does anything listed below:

- Violates any school rule;
- Brings, or gets possession of, a weapon at school or at a school activity;
- Brings, or gets possession of, an illegal drug at school or at a school activity; or
- Does something that caused, or could easily have caused, an injury to the child or to someone else.

What action can school officials take for children with disabilities?
School officials can take the following actions--

- **If your child violates a school rule**, but the misbehavior does not involve a weapon, illegal drugs or dangerous behavior, school officials may move your child to a different educational setting or they can suspend your child from school for up to 10 school days. They can do this each time your child violates a rule. If the total number of suspensions mount up, and they are close together, and show a pattern of removing your child from school, no further suspensions from school can be made without your involvement.
- **If your child brings, or possesses, a weapon or illegal drugs to school or to a school activity**, school officials can suspend your child from school for up to 10 school days. Also, they can start action to either have your child removed from school for up to a whole school year, or to have your child's IEP team determine a different place for your child to go to school for up to 45 calendar days.
- **If your child violates school rules over and over, or does something that is serious**, like damaging the school building, school officials can suspend your child from school for up to 10 school days and start action to have your child removed from school for up to a whole school year.
- **If your child does something that is dangerous (that is, something that caused, or could easily have caused, injury to him/herself or to someone else)**, school officials can suspend your child from school for up to 10 school days. They, also, can start action to either have your child removed from school for up to a whole school year, or to have a due process hearing officer determine a different place for your child to go to school for up to 45 calendar days.

What steps must be followed to change my child's placement for removals of 10 school days or less?
If your child has violated the school's discipline code, the school may change your child's placement to an interim alternative setting, another setting or suspension for a period of time not to exceed 10 school days in a school year, to the same extent as a child without a disability.

Must educational services be provided if my child has been removed from his or her current placement for 10 school days or less?
No. The school would not be required to provide services to your child during removal from his or her current placement for not more than 10 consecutive school days in the same school year for separate incidents of misconduct.

What steps must be followed to change my child's placement for removals of more than 10 school days?
If school officials want to suspend your child from school for more than 10 school days in a row, or to have your child's educational setting changed for up to 45 calendar days for weapon or drug possession or for dangerous behavior, or to suspend your child, again, after having suspended him or her on several prior occasions, school officials must notify you of what they intend to do. The law states--

- Either before or not later than 10 business days after either first removing your child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement:
    - If the school did not conduct a functional behavioral assessment and implement a behavioral intervention plan for your child before the behavior that resulted in the removal, the school must convene an IEP meeting to develop an assessment plan and conduct a behavioral assessment.
    - If your child already has a behavioral intervention plan, the IEP team must meet to review the plan and its implementation, and, modify the plan and its implementation, as necessary, to address the behavior.
- As soon as practicable after developing the assessment plan, and completing the assessments required by the plan, the school must convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and implement those interventions.
- If your child has a behavioral intervention plan and has been removed from his or her current educational placement for more than a total of 10 school days in a school year, and then is subjected to another removal that does not constitute a change in placement, the IEP team members must review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the IEP team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

Must educational services be provided if my child has been removed from his or her current placement for 10 days or more?
Yes. After your child has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal, the school must provide services to the extent necessary to enable your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP.

What is a "controlled substance"?
A "controlled substance" means a drug or other substance identified under schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act (21U.S.C. §12(c)). This is a federal law.

What is an "illegal drug"?
An "illegal drug" means a controlled substance; but--

- Does not include 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 the Controlled Substances Act or under any other provisions of federal law.

What is a "weapon"?
A "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of Title 18, United States Code. This federal law defines a weapon as "any weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that this term does not include a pocket knife with a blade of less than 2 ½ inches in length."

What action can hearing officers take in regard to dangerous behavior?
Hearing officers can take the following actions--

- An IDEA hearing officer may order a change in placement of your child to an appropriate interim alternative educational setting for not more than 45 calendar days, if the hearing officer, in an expedited hearing--
    - Determines the school has demonstrated by substantial evidence that maintaining the current placement of your child is substantially likely to result in injury to your child or to others (As used here, the term "substantial evidence" means beyond a preponderance of the evidence.);
    - Considers the appropriateness of your child's current placement;
    - Considers whether the school has made reasonable efforts to minimize the risk of harm in your child's current placement, including the use of supplementary aids and services; and
    - Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with your child's special education teacher meets the requirements below.

What does "substantial evidence" mean?
"Substantial evidence" means beyond a preponderance of the evidence.

Who determines the interim alternative educational setting?
The interim alternative educational setting is determined by the IEP team, if a weapon or drugs are involved. It is proposed by school officials, if dangerous behavior is present. Any interim alternative educational setting in which your child is placed must--

- Be selected so as to enable your child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in your child's current IEP, that will enable your child to meet the goals set out in that IEP; and
- Include services and modifications to address the behavior that resulted in removal of your child from his or her current placement, that are designed to prevent the behavior from recurring.

What is a "manifestation determination review"?
A "manifestation determination review" means a review of the relationship between your child's disability and his or her behavior subject to the disciplinary action.

When is a manifestation determination review conducted?
If an action is contemplated involving a removal that constitutes a change of placement for your child--

- Not later than the date on which the decision to take that action is made, you must be notified of that decision and provided with the Parent Rights (procedural safeguards) notice; and
- 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 must be conducted of the relationship between your child's disability and his or her behavior subject to the disciplinary action -- the manifestation determination review.

Who carries out the manifestation determination review?
The manifestation determination review must be conducted in a meeting of the IEP team and other qualified personnel. In carrying out the manifestation determination review, the IEP team and other qualified personnel may determine that the behavior of your child was <u>not</u> a manifestation of his or her disability <u>only if</u> the IEP team and other qualified personnel--

- First consider, in terms of his or her behavior subject to disciplinary action, all relevant information, including:
    - Evaluation and diagnostic results, including the results or other relevant information supplied by you;
    - Observations of your child;
    - Your child's IEP and placement; and
- Then determine that--
    - In relationship to his or her behavior subject to disciplinary action, your child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with your child's IEP and placement;

- Your child's disability did not impair his or her ability to understand the impact and consequences of the behavior subject to disciplinary action; and
- Your child's disability did not impair his or her ability to control the behavior subject to disciplinary action.

If the IEP team and other qualified personnel determine that any of these standards were not met, the behavior must be considered a manifestation of your child's disability. The manifestation determination review may be conducted at the same IEP meeting that is convened for review of your child's behavioral intervention plan or development of a functional assessment plan. If the school identifies deficiencies in your child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

What happens if the IEP team determines that the behavior was not a manifestation of my child's disability?
If the result of the manifestation determination review is a determination that your child's behavior was not a manifestation of his or her disability--

- The relevant disciplinary procedures applicable to children without disabilities may be applied to your child with a disability in the same manner in which they are applied to children without disabilities.
- If the school initiates disciplinary procedures applicable to all children, the school must ensure that the special education and disciplinary records of your child are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

What is my child's placement if I request due process proceedings?
If you request a hearing or an appeal to challenge the manifestation determination decision or the interim alternative educational setting--

- **For a removal of more than 10 school days**, your child will remain in his or her current educational placement until a final decision has been reached, you and the school agree upon another placement or the school gets a court order to change your child's placement.
- **For placement in an interim alternative educational setting for drugs, weapons, or due to dangerous behavior**, school officials may have your child remain in the interim alternative educational setting for a period not to exceed 45 calendar days. Thereafter, your child will return to the previously agreed upon educational placement, unless a hearing officer orders another placement or you and the school agree to another placement.

What if I disagree with the outcome of my child's manifestation determination review or temporary placement?
If you disagree with the IEP team's determination that your child's behavior was not a manifestation of his or her disability or any decision regarding your child's temporary placement for up to 45 calendar days, you may request a due process hearing. You must file your request with your local board of education. The school then arranges for an **expedited due process hearing** by immediately contacting the person below--

EXPEDITED DUE PROCESS HEARING	
Contact Person	*What Information Is Needed?*
Rod Bieker, General Counsel Kansas State Department of Education 120 SE 10th Avenue Topeka, KS 66612-1182 (785) 296-3204 or (800) 203-9462	Your name and address; Your attorney's name and address, if you have one; The name of the child; The address of the residence of the child; The name of the school the child is attending; A description of the nature of the problem relating to the manifestation determination and/or proposed placement; and A proposed resolution of the problem to the extent known and available to you at the time.

How is an expedited hearing conducted?
Expedited due process hearings must be conducted as follows--

- Each of the parties to an expedited due process hearing has the rights afforded to them under the IDEA except that the parties have the right to prohibit the presentation of any evidence at the expedited hearing that has not been disclosed to the opposite party at least two business days before the hearing.
- Each hearing officer must conduct the expedited due process hearing and mail the decision in the matter to the parties within 45 calendar days of the agency's receipt of the parent's request for the expedited due process hearing or the agency's initiation of the hearing;
- A hearing officer in an expedited due process hearing cannot grant any extensions; and
- Either party to an expedited due process hearing may appeal the decision.

What standards will the hearing officer use to review the manifestation determination and placement?
The hearing officer will use the following standards--

- In reviewing manifestation determination decisions, the hearing officer must determine whether the school has demonstrated that your child's behavior was not a manifestation of his or her disability by examining the information collected by the IEP team.

- In reviewing a decision to place your child in an interim alternative educational setting, the hearing officer must examine the placement information collected by the IEP team.

Can a hearing officer change my child's placement if he/she is a danger to self or others?
Yes. If there is a danger that your child or other students are likely to be injured if your child stays in his or her current placement, the school may request an expedited hearing to obtain an order from a hearing officer to change your child's educational placement to an interim alternative educational placement for up to 45 calendar days. School officials propose the alternative setting, but the hearing officer finally decides the interim alternative educational setting. If, at the end of 45 calendar days, the school determines there continues to be a danger that your child or other students may be injured if your child is returned to his or her previous placement, the process may be repeated.

Are there any protections for children not yet identified as eligible for special education?
Yes. If your child engages in behavior that violates any rule or code of conduct of the school, you may assert the protections provided for under the IDEA, if the school had knowledge that your child had a disability before your child engaged in the misbehavior. The school will be deemed to have had knowledge that your child was a child with a disability if--

- You have expressed concern in writing (or orally if you do not know how to write or have a disability that prevents a written statement) to school personnel that your child is in need of special education and related services;
- The behavior or performance of your child demonstrates the need for these services;
- You have requested an evaluation of your child; or
- Your child's teacher or other school personnel have expressed concern about the behavior or performance of your child to the Director of Special Education or to other personnel in accordance with the school's child find or special education referral system.

However--

- Your school will not be deemed to have had knowledge, if the school either:
    - Conducted an evaluation and determined that your child was not a child with a disability; or
    - Determined that an evaluation was not necessary; and
    - Provided notice to you of its determination.

What conditions apply if there is no basis of knowledge?
If a school does not have knowledge that your child is a child with a disability prior to taking disciplinary measures, your child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engage in comparable behaviors consistent with the following limitations--

- If you made a request for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
- Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school and information provided by you, the school must provide special education and related services in accordance with the IDEA.

PLACEMENT OF CHILDREN BY PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

If I place my child in a private school, who is responsible to pay for the costs?
Except as may be otherwise provided by state law, the school is not required to pay for the cost of education, including special education and related services for your child at a private school, if the school made a free appropriate public education available to your child, but you elected to place your child in a private school. However, the school must include your child if he or she is included in the group of private school students to whom services will be provided under services plans. Disagreements between you and the school regarding the availability of an appropriate program for your child, and the question of financial responsibility, are subject to due process procedures.

What must I do if I plan to ask the school district to reimburse me for the costs of a private school?
The cost of reimbursement for your child's private school placement may be reduced or denied if--

- At the most recent IEP meeting that you attended before removing your child from the public school, you did not inform the IEP team that you were refusing the placement proposed by the school to provide a free appropriate public education to your child. This would include stating your concerns and your intent to enroll your child in a private school at public expense; or
- At least 10 business days (including holidays) before removing your child from the public school, you did not give written notice to the school about your concerns and your intent to enroll your child in a private school at public expense; or
- Before you removed your child from public school, the school informed you, by written notice, of its intent to evaluate your child, but you did not make your child available for the evaluation; or
- A court finds that your actions were unreasonable.

Exceptions--
The cost of reimbursement to you may not be reduced or denied for failure to give notice to the school if:

- You cannot read or write in English;
- Continued placement in public school would likely result in physical or serious emotional harm to your child;
- The school prevented you from giving notice; or
- You had not received written notice of your responsibility to give notice to the school before removing your child from public school and enrolling your child in private school. [This question constitutes the required notice to you.]

STATE COMPLAINT PROCEDURES

What is a formal complaint investigation?
A formal complaint investigation is a procedure to determine whether the school is complying with federal or state laws and/or regulations regarding the provision of special education and related services to children with exceptionalities.

Who investigates formal complaints?
The Kansas State Department of Education has adopted procedures for resolving formal complaints, including complaints filed by you, by an organization or by an individual from another state, that meet the following requirement--

- Complaints must be in writing and be filed with the Formal Complaint Investigator for Special Education at the Kansas State Department of Education.

The state complaint procedures are widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

What remedies are available for denial of appropriate services to my child?
In resolving a complaint in which it is found that appropriate services are not provided, the Kansas State Department of Education must address--

- How to remediate the denial of those services, including, as appropriate, such corrective action as is appropriate to the needs of your child; and
- Appropriate future provision of services for all children with exceptionalities.

How is a formal complaint investigation conducted?
The Kansas State Department of Education must conduct complaint investigations in the following manner--

- Adhere to a time limit of 30 calendar days for investigation of your complaint, unless an extension is granted for extenuating circumstances;
- Carry out an independent on-site investigation, if it is determined that an investigation is necessary;
- Give you the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Review all relevant information and make an independent determination as to whether the school is violating a requirement of state or federal laws or regulations; and
- Issue a written decision that addresses each allegation in the complaint and contains:
    - Findings of fact and conclusions; and
    - The reasons for the Department's final decision.

The Department may--

- Extend the time limit if exceptional circumstances exist; and
- Include procedures for effective implementation of the Department's final decision, if needed, including:
    - Technical assistance activities;
    - Negotiations; and
    - Corrective actions to achieve compliance.

May I request a formal complaint investigation and a due process hearing at the same time?
Yes. In this situation, your complaint would be investigated as follows--

- If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the Kansas State Department of Education must set aside any part of your complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in your complaint that is not a part of the due process action must be resolved using the time limit and procedures described above.
- If an issue is raised in your complaint that has been previously decided in a due process hearing:
    - The due process hearing decision is binding; and
    - The Department must inform you to that effect.
- The Department must resolve a complaint alleging the school failed to implement a due process decision.

What must I consider when I file a formal complaint?
The Kansas State Department of Education has procedures for you to file a formal complaint. It must be in writing, and you must sign it and mail or personally deliver it to KSDE. The complaint must include--

- A statement that the school has violated a requirement of state or federal law or regulations; and
- The facts on which the statement is based.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing or you are requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

How can I request a formal complaint investigation?
You can request a complaint investigation by filing a signed complaint with the contact person shown below.

FORMAL COMPLAINT INVESTIGATION	
Contact Person	*What Information Is Needed?*
Formal Complaint Investigator for Special Education Kansas State Department of Education Student Support Services Team 120 SE 10th Avenue Topeka, KS 66612-1182	Your name and address; The name and age of the child; The address of the residence of the child; The name of the school the child is attending; The specific violation(s) of law or regulation that you believe have occurred; What efforts have been made to resolve the concern(s) with the school; and Your proposed solution to the problem(s).

CONFIDENTIALITY AND ACCESS TO EDUCATIONAL RECORDS

May I see my child's educational records?
Schools must maintain the confidentiality of information in your child's educational records. The school can assume that both parents of a child have authority to inspect/review the child's records unless the school has been notified in writing that a parent's rights to see the records have been terminated by a court order.

You have the right to:

- Read and review all education records about your child kept by the school.
- Review those records. The school shall respond to your request:
  - without unnecessary delay (not later than 45 calendar days after your request);
  - before any meeting to develop or review your child's individualized education program; and/or
  - before any due process hearing.
- Ask the school to give you an explanation of your child's records.
- Ask the school to give you copies of the records, if not getting copies would keep you from reviewing the records. The school may charge a fee for the copies if it does not keep you from reviewing the records. The school may not charge a fee to search for or gather the records. (Material with a copyright on it such as test protocols may not be copied as a part of the child's education record.)
- Have a representative of your choice, with your written permission, read and review the records.

Record of Access
The school must keep a record of those persons obtaining access to your child's record, including names, dates, and purposes for the access. If you ask, you have a right to be told who has been given information from your child's records, the date it was given and how it was used.

Information on More Than One Child
If any education record includes information on more than one child, you have the right to read and review only the information relating to your child or to be informed of that specific information.

The school--

- Must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.
- May charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
- May <u>not</u> charge a fee to search for or to retrieve information.

How do I get my child's records changed?
You may ask the school to change information in your child's education record if you believe the information is not correct, is misleading, or violates your child's privacy or other rights. If the school agrees, the record must be changed within a reasonable period of time. You may ask for a hearing if the school refuses to change the record as you request. If you request a hearing to challenge information in your child's record, the school must provide the hearing. If, as a result of the hearing, the school decides that the information:

- Is not correct, is misleading, or a violation of your child's privacy, the school must change the record and inform you in writing of the change; or
- Is correct, not misleading, or not a violation of your child's privacy, the school must inform you of your right to place in the records a statement giving your reasons for disagreeing with the school's decision. This statement must be kept with the education record for as long as the record is kept by the school and must be included with the record if it is shared with anyone.

What minimum requirements exist for the conduct of a hearing?
The hearing to change information in your child's education record must meet, at a minimum, the following requirements:

- The school shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.
- The school shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.
- The hearing may be conducted by any individual, including a school official, who does not have a direct interest in the outcome of the hearing.
- The school shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
- The school shall make its decision in writing within a reasonable period of time after the hearing.
- The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Must I give consent for disclosure of personally identifiable information in my child's education records?
The school must obtain your written consent, before any personally identifiable information about your child may be released to any person not otherwise entitled by law to have access to it.

What safeguards are in place for protection of confidential information in my child's education records?
The school must protect the confidentiality of personally identifiable information in your child's record in the following ways:

- At collection, storage, disclosure, and destruction stages;
- One official at each school shall assume responsibility for ensuring the confidentiality of any personally identifiable information;
- All persons collecting or using personally identifiable information must receive training or instruction regarding the state's confidentiality procedures; and
- Each school shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

May the school destroy my child's education records?
Yes. The school must inform you when the personally identifiable information in your child's education records is no longer needed to provide educational services to your child. The education records may be destroyed at your request.

What is directory information?
Part of the education record, known as *directory information*, includes personal information about your child that can be made public according to your school's student records policy. Directory information may include your child's name, address, and telephone number, and other information typically found in school yearbooks or athletic programs. Other examples are names and pictures or participants in various extracurricular activities or recipients of awards, pictures of students, and height and weight of athletes.

Do I have a right to review my child's record when he/she becomes an adult student?
Until your child reaches age 18, you have access to all educational records maintained by the school. When students reach the age of 18, or when they become students at post-secondary education institutions, they become "eligible students" and rights under the Family Educational Rights and Privacy Act (FERPA) transfer to them. However, parents retain access to student records of children who are their dependents for tax purposes. Also, the school must provide any notice required under IDEA to both the student and the parents when the child turns 18.

STATE ENFORCEMENT OF CONFIDENTIALITY POLICIES AND PROCEDURES

K.S.A. 72-6214 stipulates that every local board of education must adopt policies and procedures in accordance with applicable federal laws and regulations to protect the right of privacy of any student and his or her family regarding personally identifiable records, files and data directly related to the student.

REIMBURSEMENT FOR SERVICES

Who pays for special education services provided by non-educational public agencies?
If a public agency other than an educational agency fails to provide or pay for the special education and related services in your child's IEP, the school district (or other State agency responsible for developing the child's IEP) shall provide or pay for these services to your child in a timely manner. The school district or State agency may then claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency shall reimburse the school district or State agency in accordance with the terms of the interagency agreement or other mechanism recognized for payment.

Must I enroll my child in public insurance programs in order for my child to receive FAPE?
No. With regard to services required to provide FAPE, the school district may not require you to sign up for or enroll in public insurance programs in order for your child to receive FAPE.

If I allow the school district to bill my private insurance for special education services contained in my child's IEP, must I incur the cost of the deductible or co-payment amount?
No. The school district may not require you to pay any out-of-pocket expenses such as the payment of a deductible or co-pay amount incurred in filing a claim for services contained in your child's IEP. However, the school district may pay the cost that you would otherwise be required to pay.

Must I allow the school district to file a claim for health insurance benefits for services provided to my child?
No. School districts may not use a child's benefits under a public insurance program if that use would --

- Decrease available lifetime coverage or any other insured benefit;
- Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
- Increase premiums or lead to the discontinuation of insurance; or
- Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

When is parental consent to the filing of a health insurance claim considered voluntary?
With regard to services required to provide FAPE to your child under Part B of IDEA, the school district may access your private insurance proceeds only if you --

- Have been fully informed of all information relevant to the activity to which consent has been sought, in your native language or other mode of communication;
- Understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- Understand the granting of consent is voluntary on your part and may be revoked at any time.

Each time the school district proposes to access your private insurance proceeds, it must --

- Obtain your consent in accordance with the paragraph above; and
- Inform you that your refusal to permit the school district to access your private insurance does not relieve the district of its responsibility to ensure that all required services are provided to your child at no cost to you.

SCHOOL POLICIES AND PROCEDURES FOR SPECIAL EDUCATION

Where can I find the school's policies and procedures for special education?
A copy of the school's special education policies and procedures are available for your review and inspection at:

_____ Name of Building

_____ Address

You may also contact the school, at any time, if you wish to receive information about free or low-cost legal or other services that may be available to you.

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How can I get an explanation of the Parent Rights in Special Education?
If you need help in understanding the *Parent Rights in Special Education* or you have any questions about them, you may contact the following--

Local Level Resources and Information

- Local Director of Special Education by calling (785) 364-3463
- Local Parent Resource Center by calling_____

State Level IDEA Funded Resources and Information

- Kansas State Department of Education
  - Student Support Services Team at (800) 203-9462;
- Parent training and information centers--
  - Families Together, Inc. at:
    - Garden City – 888 820-6364
    - Kansas City – 913 962-9657
    - Topeka – 800 264-6343
    - Wichita – 888 815-6364
- Protection and advocacy agency--
  - Kansas Advocacy and Protective Services at (800) 432-8276.

To: Members of the Education Committee
From : Deborah Howard, 741 Maine, Lawrence, Kansas 66044

I am Debra Howard. I have a child who is seriously disabled with lifetime mental health disabilities. Currently, she is placed in an educational setting which is marginal at best.

Her diagnosis is schizo-affective with bipolar. She has been placed in the state hospital seven times since 1995. I have to hack away daily at services she receives. I have spent two years getting even a behavior plan that works.

Delivery of services for my granddaughter is a constant reconfiguring of services and accommodations. Her current teacher does not have a teaching certificate. She serves on waiver. At IEP meetings, I request services, which the school staff often do not have the expertise to determine strategies.

As Brooke's grandmother, I work between community mental health center staff, state hospital staff, and the Lawrence school district to communicate recommended strategies. This is a trial and error kind of thing. We do not know together or separately what will work. I know that Brooke must have a responsive, willing to adapt school team. Brooke has no mother to advocate on her behalf and no father either. I must know that my voice counts. Sometimes meetings for Brooke include over 20 people.

SB 516 will hurt me the most. I try to meet Brooke's needs and assure that services accommodate them as well as teach her the coping skills she will need as an adult. I work. I have to do research on every issue, on every recommended treatment.

This bill assumes that parents have this vast knowledge. I don't. I also don't have the money to hire an attorney. It takes me weeks and months to figure out this process. I have to find organizations to help me even to evaluate my options. This takes time. This process itself is overwhelming personally and emotionally. I need time to study strategy – and time to assess the effectiveness of the strategies and I need the school to know that I am a presence in my granddaughter's education. My voice counts.

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Attachment 3

KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.
3745 S.W. Wanamaker Rd.
Topeka, Kansas 66610
(785) 273-9661
(785) 273-9414 Fax
E-Mail Jim@ksadv.org

3218 Kimball Ave.
Manhattan, Kansas 66503
(785) 776-1541
(785) 776-5783 Fax
(877) 776-1541 TDD/Voice

Robert D. Ochs, Board President
James L. Germer, Executive Director

Senate Committee on Education
February 19th-20th, 2002

Mr. Chairman and members of the Committee, Kansas Advocacy and Protective Services, Inc., thank you for the opportunity to appear before you in opposition to Senate Bill 516.

Kansas Advocacy & Protective Services, Inc., (KAPS) is a private, nonprofit corporation that provides legal, administrative and other advocacy services to protect the rights of Kansans with disabilities. KAPS is the protection and advocacy system in Kansas for five federal programs for individuals with disabilities.

SB 516 would force parents to a due process hearing before affording them the opportunities to resolve the issues through other means, such as advocacy, mediation, formal complaint or other alternative mechanisms with the school. SB 516 would destroy any chance for cooperative efforts between the parents and the school to resolve the differences amicably and in a non-adversarial environment. The effects of SB 516 would force parents to immediately file for due process without exhausting all other options for resolution. Due Process hearings should be a last resort after all other avenues to resolve the difference in the best interest of the child has been exhausted, a 60 days statute of limitations would not permit this. The legislature should not participate in promoting antagonisms between families and schools in what is already a stressful situation by passing this proposed legislation, which would have the direct affect of forcing them into an immediate adversarial due process hearing.

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Attachment 4

Schools for Quality Education

Bluemont Hall Manhattan, KS 66506 (913) 532-5886

February 20, 2002

TO: Senate Education Committee

FROM: Schools for Quality Education – Jacque Oakes

SUBJECT: SB 551 – School finance; consolidation and reorganization of districts

Mr. Chair and Members of the Committee:

Schools For Quality Education, an organization of 110 small school districts, is submitting written testimony in favor of SB 551. This bill would allow five-year funding of the state financial aid for districts who have disorganized and unified.

We have appreciated very much the two-year funding given to unifying districts, but five years would be even more helpful. Incentives as assistance to districts make a hard task less difficult than if sanctions are used against a district. Penalties could further harm what is already in a delicate balance.

Thank you for the introduction of this bill, and we ask for your serious attention in favor of SB 551.

Senate Education
2-20-02
Attachment 5