

CHAPTER 171
HOUSE BILL No. 2331

AN ACT concerning certain students; relating to the powers and duties of certain state agencies and school districts; relating to the provision of special education and related services; amending K.S.A. 72-962, 72-963, 72-963a, 72-964, 72-965, 72-966, 72-971, 72-973, 72-974, 72-984, 72-985, 72-986, 72-987, 72-988, 72-990, 72-993, 72-994 and 72-996 and repealing the existing sections; also repealing K.S.A. 72-991 and 72-992.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 72-962 is hereby amended to read as follows: 72-962. As used in this act:

(a) "School district" means any public school district.
(b) "Board" means the board of education of any school district.
(c) "State board" means the state board of education.
(d) "Department" means the state department of education.
(e) "State institution" means any institution under the jurisdiction of a state agency.

(f) "State agency" means the ~~secretary~~ *department* of social and rehabilitation services, the ~~secretary~~ *department* of corrections, and the ~~commissioner~~ *of juvenile justice authority*.

(g) "Exceptional children" means persons who are children with disabilities or gifted children and are school age, to be determined in accordance with rules and regulations adopted by the state board, which age may differ from the ages of children required to attend school under the provisions of K.S.A. 72-1111, and amendments thereto.

(h) "Gifted children" means exceptional children who are determined to be within the gifted category of exceptionality as such category is defined by the state board.

(i) "Special education" means specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child, including:

(1) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(2) instruction in physical education.

(j) "Special teacher" means a person, employed by or under contract with a school district or a state institution to provide special education or related services, who is: (1) Qualified to provide special education or related services to exceptional children as determined pursuant to standards established by the state board; or (2) qualified to assist in the provision of special education or related services to exceptional children as determined pursuant to standards established by the state board.

(k) "State plan" means the state plan for special education and related services authorized by this act.

(l) "Agency" means boards and the state agencies.

(m) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as parent; (4) a legal guardian; ~~or~~; (5) an education advocate; or (6) a foster parent, if the foster parent has been appointed the education advocate of an exceptional child.

(n) "Person acting as parent" means a person such as a grandparent ~~or a~~ stepparent or other relative with whom a child lives or a person other than a parent who is legally responsible for the welfare of a child.

(o) "Education advocate" means a person appointed by the state board in accordance with the provisions of K.S.A. 38-1513a, and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child.

(p) "Free appropriate public education" means special education and related services that: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program.

(q) "Federal law" means the individuals with disabilities education act, as amended.

(r) “Individualized education program” or “IEP” means a written statement for each exceptional child that is developed, reviewed, and revised in accordance with the provisions of K.S.A. 72-987, and amendments thereto.

(s) (1) “Related services” means transportation, and such developmental, corrective, and other supportive services, including speech-language pathology and audiology services, *interpreting services*, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, *school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the child’s IEP*, 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 an exceptional child to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(2) “*Related services*” shall not mean any medical device that is surgically implanted or the replacement of any such device.

(t) “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.

(u) “Individualized education program team” or “IEP team” means a group of individuals composed of: (1) The parents of a child; (2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment; (3) at least one special education teacher or, where appropriate, at least one special education provider of the child; (4) a representative of the agency directly involved in providing educational services for the child who: (A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children; (B) is knowledgeable about the general curriculum; and (C) is knowledgeable about the availability of resources of the agency; (5) an individual who can interpret the instructional implications of evaluation results; (6) 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 (7) whenever appropriate, the child.

(v) “Evaluation” means a multisourced and multidisciplinary examination, conducted in accordance with the provisions of K.S.A. 72-986, and amendments thereto, to determine whether a child is an exceptional child.

(w) “Independent educational evaluation” means an examination which is obtained by the parent of an exceptional child and performed by an individual or group of individuals who meet state and local standards to conduct such an examination.

(x) “Elementary school” means any nonprofit institutional day or residential school that offers instruction in any or all of the grades kindergarten through nine.

(y) “Secondary school” means any nonprofit institutional day or residential school that offers instruction in any or all of the grades nine through 12.

(z) “Children with disabilities” means: (1) Children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and who, by reason thereof, need special education and related services; and (2) *children experiencing one or more developmental delays and, by reason thereof, need special education and related services if such children are ages three through nine.*

(aa) “Substantial change in placement” means the movement of an exceptional child, for more than 25% of the child’s school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

(bb) “Material change in services” means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service or a supplementary aid or a service specified on the IEP of an exceptional child.

(cc) “*Developmental delay*” means such a deviation from average de-

velopment in one or more of the following developmental areas, as determined by appropriate diagnostic instruments and procedures, as indicates that special education and related services are required: (1) Physical; (2) cognitive; (3) adaptive behavior; (4) communication; or (5) social or emotional development.

(dd) "Homeless children" means "homeless children and youths" as defined in the federal McKinney-Vento homeless assistance act, 42 U.S.C. 11434a.

(ee) "Limited English proficient" means an individual who meets the qualifications specified in section 9101 of the federal elementary and secondary education act of 1965, as amended.

Sec. 2. K.S.A. 72-963 is hereby amended to read as follows: 72-963.

(a) The state board shall adopt and administer the state plan. The state board may amend the state plan as necessary. The state plan, and any amendments thereto, shall be prepared in consultation with the state advisory council for special education provided for in this act.

(b) The state board may adopt rules and regulations for administration of this act and shall adopt rules and regulations necessary to comply with the federal law and to implement the provisions of this act. Any rules and regulations in effect on July 1, 2005, that conflict with federal law or this act are suspended until amended or revoked by the state board.

(c) The state board may apply to participate in any pilot program authorized by the federal law and, if approved, may participate in any such program.

Sec. 3. K.S.A. 72-963a is hereby amended to read as follows: 72-963a. The state board shall:

(a) Establish procedures, which shall be utilized by each agency, to allow parties to disputes involving any matter described in subsection (b)(4) of K.S.A. 72-988, and amendments thereto, or in ~~K.S.A. 72-992 section 18~~, and amendments thereto, to resolve such disputes through a mediation process or through due process hearings which meet the requirements of the federal law and this act.

(b) Establish, ~~in consultation with the state advisory council for special education, standards and requirements for~~ the qualification of persons as hearing officers and mediators *in accordance with federal law*. ~~Such standards and requirements shall include, but not be limited to, standards and requirements relating to the education and training necessary to assure the competent performance of functions and procedures which hearing officers and mediators are authorized to perform.~~

~~(c) Establish standards and criteria for conducting and approving training programs for hearing officers and mediators.~~

~~(d)~~ (c) Compile and maintain a list of qualified hearing officers and mediators.

Sec. 4. K.S.A. 72-964 is hereby amended to read as follows: 72-964.

(a) There is established a state advisory council for special education which shall consist of not more than 21 members. Members of the advisory council shall be appointed by the state board of education, and shall serve for a term of three years. No member may serve more than two consecutive terms. Whenever a vacancy occurs in the membership of the advisory council for any reason other than the expiration of the term of a member, the state board shall appoint a successor for the remainder of the unexpired term.

(b) (1) The advisory council established under this section shall be representative of the state population and be comprised of persons involved in, or concerned with, the education of exceptional children, including: (A) Parents of exceptional children, *ages birth through 26 years*. At least one of ~~whom~~ *whom such parents* shall be the parent of a gifted child; (B) individuals with disabilities; (C) teachers; (D) representatives of institutions of higher education that prepare special education and related services personnel; (E) state and local education officials, *including officials who carry out activities under the federal McKinney-Vento homeless education act, 42 U.S.C. 11431 et seq.*; (F) administrators of programs for exceptional children; (G) representatives of other state agencies involved in the financing or delivery of related services to exceptional children; (H) representatives of private schools and public charter schools; (I) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; ~~and~~ (J) representatives from the state juvenile and adult corrections agencies; *and* (K) a representative from the state agency respon-

sible for foster care of children.

(2) A majority of the members of the advisory council shall be individuals with disabilities or parents of children with disabilities *ages birth through 26*.

(c) The state advisory council for special education shall:

(1) Advise the state board of unmet needs within the state in the education of exceptional children;

(2) comment publicly on any rules and regulations proposed by the state board regarding the education of exceptional children;

(3) advise the state board in developing evaluations and reporting on data to the federal government;

(4) advise the state board in developing corrective action plans to address findings identified in federal monitoring reports; and

(5) advise the state board in developing and implementing policies relating to the coordination of services for exceptional children.

(d) Members of the state advisory council for special education attending meetings of such council, or attending a subcommittee meeting thereof authorized by the state board, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(e) The state board shall call the members of the advisory council to meet at least once each year, at which meeting the council shall organize by electing a chairperson and a vice-chairperson. The person in the department specified to be the principal administrator of special education and related services shall be the secretary of the advisory council. The council shall meet upon the call of the chairperson or upon the call of the state board as often as may be necessary at times and places designated by the chairperson or by the state board in order to fulfill the duties prescribed under the provisions of this act.

Sec. 5. K.S.A. 72-965 is hereby amended to read as follows: 72-965.

(a) The state board shall be responsible for the distribution and allocation of state and federal funds for special education. Such moneys shall be expended only in accordance with and for the purposes specified in federal or state law. Payments under this act may be made in installments and in advance or by way of reimbursement, with necessary adjustments for overpayments or underpayments. Federal funds for special education shall be deposited in the state treasury.

(b) The state board is hereby authorized to accept from an individual or individuals, the United States government or any of its agencies or any other public or private body, grants or contributions of money, funds or property which the state board may authorize to be used in accordance with appropriation acts, for or in aid of special education or related services or any of the purposes authorized by the federal law or this act.

(c) (1) *Each board may use up to 15% of the amount it receives each year under the federal law to develop and implement coordinated, early intervening services for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade 3, who have not been identified as needing special education or related services but who appear to need additional academic and behavioral support to succeed in a general education environment.*

(2) *In implementing coordinated, early intervening services under this subsection, a board may carry out activities that include:*

(A) *Providing professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and*

(B) *providing educational and behavioral evaluations, services and supports, including scientifically based literacy instruction.*

(3) *Each board that develops and maintains coordinated, early intervening services under this subsection shall annually report to the department:*

(A) *The number of students served under this subsection; and*

(B) *the number of students served under this subsection who subsequently receive special education and related services under this title during the 2-year period preceding each report.*

Sec. 6. K.S.A. 72-966 is hereby amended to read as follows: 72-966.

(a) (1) Each board shall adopt and implement procedures to assure that all exceptional children residing in the school district, including *homeless*

children, foster care children and children enrolled in private schools, who are in need of special education and related services, are identified, located and evaluated.

(2) Each board shall provide a free appropriate public education for exceptional children enrolled in the school district and for children with disabilities who are placed in a private school or facility by the school district as the means of carrying out the board's obligation to provide a free appropriate public education under this act and for children with disabilities who have been suspended for an extended term or expelled from school.

(3) Each board shall provide exceptional children who are enrolled by their parents in private schools with special education and related services in accordance with state law and federal law.

(b) If an exceptional child, upon referral by a person licensed to practice medicine and surgery, is admitted to a hospital, treatment center, or other health care institution, or to a group boarding home or other care facility, and the institution or facility is located outside the school district in which the child resides, the district in which the institution or facility is located may contract with the district in which a parent of the child resides to provide special education or related services, if such services are necessary for the child. Special education and related services required by this subsection may be provided pursuant to a contract entered into between the board of the school district of which the child is a resident and the board of the school district in which the child is housed. Any such contract shall be subject to the provisions of subsections (a)(3) and (c) of K.S.A. 72-967, and amendments thereto. If a contract is not entered into between the school districts, the child shall be deemed to be a pupil of the school district which is providing special education and related services to the child. Nothing in this subsection shall be construed to limit or supersede or in any manner affect or diminish the requirements of compliance by each school district with the provisions of subsection (a), but shall operate as a comity of school districts in assuring the provision of special education services for each exceptional child in the state.

(c) (1) Special education and related services required by this section shall meet standards and criteria set by the state board.

(2) The state board shall be responsible for assuring that the requirements of the federal law and this act are met and that all educational programs for exceptional children, including programs administered by any other state agency: (A) Are under the general supervision of individuals who are responsible for educational programs for exceptional children; and (B) meet the educational standards prescribed by the state board.

(3) Provision (2) of this subsection shall not limit the responsibility of any other state agency to provide, or pay for some or all of the costs of, a free appropriate public education for an exceptional child.

(d) Consistent with state and federal law, state agencies shall enter into such interagency agreements as are necessary or advisable in making a free appropriate public education available to all exceptional children residing in the state. The state board shall establish procedures for resolving interagency disputes, including procedures under which local educational agencies may initiate proceedings to secure reimbursement or otherwise implement or seek enforcement of the provisions of the interagency agreement.

(e) *Each school board and state agency is prohibited from requiring any child to obtain a prescription for a substance covered by the federal controlled substances act, 21 U.S.C. 801 et seq., as a condition for the child to attend school or be evaluated or receive special education services under this act.*

Sec. 7. K.S.A. 72-971 is hereby amended to read as follows: 72-971.

(a) The state board shall prepare and file such reports as are required by the federal law or this act.

(b) School districts and state agencies having data on exceptional children needed by the state board to complete required reports shall furnish such data, as requested, to the state board.

New Sec. 8. (a) (1) Subject to the requirements in this section, the parent of an exceptional child or the agency responsible for providing services to the child may initiate a due process hearing regarding any problem arising in regard to any matter governed by this act, if:

(A) The problem about which complaint is made occurred not more

than two years before the filing of the complaint and the party filing the complaint knew or should have known about the alleged action that forms the basis of the complaint;

(B) the party filing the complaint or the attorney for that party provides to the other party and to the department, a written due process complaint notice that shall remain confidential and include the following information:

(i) the name of the child, the address of the residence of the child (or in the case of a homeless child or youth, available contact information for the child), and the name of the school the child is attending;

(ii) a description of the nature of the problem and the facts that form the basis of the complaint; and

(iii) a proposed resolution of the problem.

(2) A parent or an agency shall not be entitled to a due process hearing until the parent or agency, or their attorney, files a notice that meets the requirements of this subsection.

(b) (1) Any due process complaint notice filed by a parent shall be deemed to be timely even if presented more than two years after the occurrence of the facts giving rise to the complaint, if:

(A) The agency made specific misrepresentations that it had resolved the problem forming the basis of the complaint; or

(B) the agency withheld information from the parent that is required to be given to the parent under this act.

(2) The due process complaint notice required by subsection (a) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party, in writing, within 15 days of receiving the complaint, that the receiving party believes the notice does not meet the requirements.

(3) Within five days of receipt of the notification provided under subsection (a), the hearing officer shall make a determination of whether the notification meets the requirements of subsection (b)(2) and shall immediately notify the parties, in writing, of such determination.

(c) (1) If the complaint is filed by a parent and the agency has not sent a prior written notice to the parent regarding the problem described in the parent's due process complaint notice, the agency, within 10 days of receiving the complaint, shall send to the parent a response that includes:

(A) An explanation of why the agency proposed or refused to take the action raised in the complaint, or an appropriate reply if the problem does not address proposed or refused action by the agency;

(B) a description of other options that the IEP team considered and the reasons why those options were rejected;

(C) a description of each evaluation procedure, assessment, record or report the agency used as the basis for any action it has proposed or refused; and

(D) a description of the factors that are relevant to the agency's proposal or refusal, or in reply to the complaint.

(2) The fact an agency gives notice to a parent pursuant to paragraph (1) shall not preclude such agency from asserting that the parent's due process complaint notice is insufficient.

(d) The non-complaining party, within 10 days of receiving the complaint, shall send to the complaining party a response that specifically addresses the issues raised in the complaint.

(e) (1) A party may amend its due process complaint notice only if:

(A) The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to K.S.A. 72-973, and amendments thereto; or

(B) the hearing officer grants permission, except that such permission shall be granted not less than five days before a due process hearing occurs.

(2) The applicable timeline for a due process hearing shall recommence at the time the party files an amended notice, including the timeline for resolution of the complaint.

(f) (1) Nothing in this section shall be construed to preclude a parent or an agency from filing a separate due process complaint on an issue different from issues presented in a due process complaint already filed.

(2) Upon motion of either party and if deemed appropriate by the due process hearing officer presiding in the initial hearing, the issues raised in the separate complaints may be considered and resolved in the

same due process hearing.

Sec. 9. K.S.A. 72-973 is hereby amended to read as follows: 72-973.

(a) (1) *Except as hereinafter provided, within 15 days of receipt of a due process complaint notice from a parent, the agency shall convene a meeting with the parent and the member or members of the IEP team who have specific knowledge of the facts identified in the complaint, and a representative of the agency who has the authority to make binding decisions on behalf of the agency. This meeting shall not include the agency's attorney unless the parent is accompanied by an attorney.*

(2) *At this meeting, the parent of the child shall discuss and explain the complaint, including the facts that form the basis of the complaint and the agency shall be provided the opportunity to resolve the complaint.*

(3) *If the meeting of the parties results in a resolution of the complaint, the parties shall execute a written agreement that both the parent and the representative of the agency shall sign and that, at a minimum, includes the following statements:*

(A) *The agreed upon resolution of each issue presented in the complaint;*

(B) *that each party understands that the agreement is legally binding upon them, unless the party provides written notice to the other party, within three days of signing the agreement, that the party giving notice is voiding the agreement; and*

(C) *if not voided, each party understands that the agreement may be enforced in state or federal court.*

(4) *If a resolution of the complaint is not reached at the meeting held under this subsection and the agency has not resolved the complaint to the satisfaction of the parent within 30 days of the agency's receipt of the complaint, the due process hearing procedures shall be implemented and all of the applicable timelines for a due process hearing shall commence. All discussions that occurred during the meeting shall be confidential and may not be used as evidence in any subsequent hearing or civil proceeding.*

(5) *A meeting shall not be required under this subsection if the parent and the agency agree, in writing, to waive such a meeting, or they agree to use mediation to attempt to resolve the complaint.*

(b) Any due process hearing provided for under this act, shall be held at a time and place reasonably convenient to the parent of the involved child, ~~shall~~ be a closed hearing unless the parent requests an open hearing; and ~~shall~~ be conducted in accordance with ~~rules and regulations relating thereto adopted by the agency. Such rules and regulations shall afford~~ procedural due process rights, including the following:

(1) ~~The right of the parties to have counsel or an advisor of their own choice present and to receive the advice of such counsel or other advisor whom they select 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 of the child and the parent of the child parties to be present at the hearing;~~

(3) ~~the right of the child, the parent of the child and their counsel or advisor to hear or read a full report of the testimony of witnesses responsible for recommending the proposed action and of any other material witnesses;~~

~~(4) the right of the parties to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of the issuance of a subpoena;~~

~~(5) (4) the right of the parties to present witnesses in person or their testimony by affidavit, including expert medical, psychological or educational testimony;~~

~~(6) the right of the child and the parent, on behalf of the child, to testify and give reasons in opposition to the proposed action;~~

~~(7) (5) the right of the parties to prohibit the presentation of any evidence at the hearing which has not been disclosed to the opposite party at least five days prior to the hearing, including any evaluations completed by that date and any recommendations based on such evaluations;~~

~~(8) the right of the parties to have an orderly hearing;~~

~~(9) the right of the child to a fair and impartial decision based on substantial evidence; and~~

(6) *the right to prohibit the other party from raising, at the due process hearing, any issue that was not raised in the due process complaint*

notice or in a prehearing conference held prior to the hearing;

~~(10)~~ (7) the right of the parties to have a written or, at the option of the parent, an electronic, verbatim record of the hearing; and

(8) *the right to a written or, at the option of the parent, an electronic decision, including findings of facts and conclusions.*

~~(b)~~ (c) *Except as provided by subsection (a), each due process hearing, other than an expedited hearing under K.S.A. ~~72-992~~ or 72-993, and amendments thereto, shall be held not later than ~~30~~ 35 days from the date on which the request therefor is received. The ~~child and the parent of the child~~ parties shall be notified in writing of the time and place of the hearing at least five days prior thereto. At any reasonable time prior to the hearing, the parent and the counsel or advisor of the involved child shall be given access to all records, tests, reports or clinical evaluations relating to the proposed action.*

~~(e)~~ (d) (1) Except as otherwise provided in K.S.A. 72-993, and amendments thereto, during the pendency of any proceedings conducted under this act, unless the agency and parent otherwise agree, the child shall remain in the then-current educational placement of such child.

(2) If proceedings arise in connection with the initial admission of the child to school, the child shall be placed in the appropriate regular education classroom or program in compliance with K.S.A. 72-1111, and amendments thereto, unless otherwise directed pursuant to ~~K.S.A. 72-991~~ section 18, and amendments thereto.

~~(d)~~ (e) Subject to the provisions of K.S.A. 72-973a, and amendments thereto, the agency shall appoint a hearing officer for the purpose of conducting the hearing. Members of the state board, the secretary of social and rehabilitation services, the secretary of corrections, the commissioner of the juvenile justice authority, and members of any board or agency involved in the education of the child shall not serve as hearing officers. No hearing officer shall be any person responsible for recommending the proposed action upon which the hearing is based, any person having a personal or professional interest which would conflict with objectivity in the hearing, or any person who is an employee of the state board or any agency involved in the education of the child. A person shall not be considered an employee of the agency solely because the person is paid by the agency to serve as a hearing officer. Each agency shall maintain a list of hearing officers. Such list shall include a statement of the qualifications of each hearing officer. Each hearing officer and each state review officer shall be qualified in accordance with standards and requirements established by the state board and shall have satisfactorily completed a training program conducted or approved by the state board.

(f) (1) *Any party to a due process hearing who has grounds to believe that the hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice or a conflict of interest may file a written request for the hearing officer to disqualify such officer and have another hearing officer appointed by the state board. Any such written request shall state the grounds for the request and the facts upon which the request is based.*

(2) *If a request for disqualification is filed, the hearing officer shall review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then shall prepare a written order concerning the request and serve the order on the parties to the hearing. If the grounds are found to be insufficient, the hearing officer shall continue to serve as the hearing officer. If the grounds are found to be sufficient, the hearing officer immediately shall notify the state board and request the state board to appoint another hearing officer.*

(g) (1) *Except as provided in paragraph (2), the decision of the hearing officer in each due process hearing shall be based on substantive grounds and a determination of whether the child received a free appropriate public education.*

(2) *In due process hearings in which procedural violations are alleged, the hearing officer may find that the child did not receive a free appropriate public education only if the hearing officer concludes the procedural violations did occur and those violations:*

(A) *Impeded the child's right to a free appropriate public education;*

(B) *significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or*

(C) *caused a deprivation of educational benefits.*

(3) *Nothing in this subsection shall be construed to preclude a hearing*

officer from ordering a local educational agency to comply with procedural requirements under this act.

(h) Whenever a hearing officer conducts any hearing, such hearing officer shall render a decision on the matter, including findings of fact and conclusions, not later than 10 days after the close of the hearing. The decision shall be written or, at the option of the parent, shall be an electronic decision. Any action of the hearing officer in accordance with this subsection shall be final, subject to appeal and review in accordance with this act.

Sec. 10. K.S.A. 72-974 is hereby amended to read as follows: 72-974. (a) Written notice of the result of any hearing provided for under this act shall be given to the agency providing for the hearing and shall be sent by certified mail to the affected child or the parent, ~~counsel or advisor~~ or attorney of the child within 24 hours after the result is determined. Such decision, after deletion of any personally identifiable information contained therein, shall be transmitted to the state board which shall make the decision available to the state advisory council for special education and to the public upon request.

(b) (1) Any party to a due process hearing provided for under this act may appeal the decision to the state board by filing a written notice of appeal with the commissioner of education not later than 30 calendar days after the date of the postmark on the written notice specified in subsection (a). A review officer appointed by the state board shall conduct an impartial review of the decision. The review officer shall render a decision not later than 20 calendar days after the notice of appeal is filed. The review officer shall: (A) Examine the record of the hearing; (B) determine whether the procedures at the hearing were in accordance with the requirements of due process; (C) afford the parties an opportunity for oral or written argument, or both, at the discretion of the review officer; (D) seek additional evidence if necessary; (E) render an independent decision on any such appeal not later than five days after completion of the review; and (F) send the decision on any such appeal to the parties and to the state board.

(2) For the purpose of reviewing any hearing and decision under provision (1), the state board may appoint one or more review officers. Any such appointment may apply to a review of a particular hearing or to reviewing a set or class of hearings as specified by the state board in making the appointment.

(c) *Subject to the provisions of subsection (e)*, any action of a review officer pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions or to an action in federal court as allowed by the federal law.

(d) *Consistent with state court actions*, any action in federal court shall be filed within 30 days after service of the review officer's decision.

(e) *In any action brought under subsection (c), the court:*

(1) *Shall receive the records of the administrative proceedings;*

(2) *if it deems necessary, shall hear additional evidence at the request of a party;*

(3) *basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate; and*

(4) *in accordance with the federal law, may award attorneys' fees to the prevailing party in any due process hearing or judicial action brought in accordance with this act.*

Sec. 11. K.S.A. 72-984 is hereby amended to read as follows: 72-984. The state board shall:

(1) Establish goals for the performance of children with disabilities in the state that: (A) Will promote the purposes of this act; ~~and~~ (B) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the state board; (C) *are the same as the goals included in the state's definition of adequate yearly progress under the federal no child left behind act of 2004, including the state's objectives for progress by children with disabilities; and* (D) *address graduation rates, dropout rates, and other factors as determined by the state board;*

(2) establish 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, dropout rates, and graduation rates; ~~the goals designated in paragraph (1), including the measurable annual objectives for progress by children with disabilities; and~~

(3) ~~every two years, annually~~ report to the secretary of the U.S. department of education, and to the public, the progress of the state, and of children with disabilities in the state, toward meeting the goals established under this section, ~~and~~

~~(4) based on its assessment of that progress, revise its state improvement plan in accordance with the provisions of subpart 1 of part D of the federal law as may be needed to improve performance, if the state receives assistance under that subpart.~~

Sec. 12. K.S.A. 72-985 is hereby amended to read as follows: 72-985. (a) (1) The state board and each board shall include, ~~to the extent required by the federal law and this act,~~ exceptional children in general state and district-wide assessment programs, *including assessments described in the federal no child left behind act of 2004 with appropriate accommodations and alternate assessments where necessary and as indicated in the children's respective IEPs. As appropriate*

(2) *In accordance with the federal law, the state board and each board shall:* ~~(1) develop guidelines for:~~ (A) *The provision of appropriate accommodations; and (B) for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular state and district-wide assessment programs; and assessments as indicated in their respective IEPs.*

~~(2) develop and, beginning not later than July 1, 2000, conduct those alternate assessments.~~

(3) *The guidelines for alternative assessments shall meet the requirements of the federal law.*

(b) The state board, *and each local board with respect to district assessments,* shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments *and the number of those children who were provided accommodations in order to participate in those assessments;*

(2) the number of children with disabilities participating in alternate assessments *that are:* (A) *Aligned with the state's challenging academic and achievement standards; or (B) based upon the achievement of children with disabilities; and*

(3) the performance of children with disabilities on regular assessments ~~beginning not later than July of 1999,~~ 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 personally identifiable ~~of information about an individual children student compared with the achievement of all children, including children with disabilities, on those assessments.~~

~~(c) Data relating to the performance of children with disabilities shall be disaggregated for assessments conducted after the effective date of this act.~~

Sec. 13. K.S.A. 72-986 is hereby amended to read as follows: 72-986. (a) (1) An agency shall conduct a full and individual initial evaluation in accordance with this section before the initial provision of special education and related services to an exceptional child. ~~Such~~

(2) *An initial evaluation may be initiated either by the parent of a child or by an agency.*

(3) *An initial evaluation shall consist of procedures to determine whether a child is an exceptional child and the educational needs of such child.*

(4) *The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation under this act.*

~~(2)~~ (5) An agency proposing to conduct an initial evaluation of a child shall obtain 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.

~~(3)~~ (6) If the ~~parents~~ parent of a child ~~refuse~~ refuses consent for an initial evaluation of the child, *or fails to respond to a written request to provide consent,* the agency may, but shall not be required to, continue to pursue an initial evaluation by utilizing the mediation or due process procedures prescribed in this act.

~~(b) Each agency shall ensure that a reevaluation of each exceptional~~

child is conducted:

~~—(1) If conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and~~

~~—(2) in accordance with subsections (c), (d) and (e).~~

~~—(c) (b)~~ An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:

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

(2) not use any single ~~procedure measure or assessment~~ as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child; ~~and~~

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

(4) *in determining whether a child has a specific learning disability, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.*

~~(d) (c)~~ An agency shall ensure that:

(1) ~~Tests~~ Assessments and other evaluation materials used to assess a child under this section: (A) Are selected and administered so as not to be discriminatory on a racial or cultural basis; ~~and~~ (B) 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~~

~~—(2) any standardized tests that are given to the child: (A) Have been validated language and form most likely to yield accurate information on what the child knows and is able to do academically, developmentally and functionally, unless it is not feasible to so provide or administer; (C) are valid and reliable for the specific purpose for which they are used; (D) are administered by trained and knowledgeable personnel; and (E) are administered in accordance with any instructions provided by the producer of such tests;~~

~~(3) (2)~~ the child is assessed in all areas of suspected ~~disability, and~~ *exceptionality*;

~~(4) (3)~~ assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; *and*

(4) *the assessments of any child who transfers from another agency during the school year are coordinated with the child's prior school, as necessary and as expeditiously as possible, to ensure prompt completion of an evaluation begun by the prior school.*

(e) Upon completion of the administration of ~~tests~~ assessments and other evaluation materials:

(1) The determination of whether the child is an exceptional child shall be made by a team of qualified professionals and the parent of the child in accordance with this section; and

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

(f) In making a determination of eligibility under this section, a child shall not be determined to be an exceptional child if the determinant factor for such determination is lack of instruction in reading ~~or, including instruction using the essential components of reading instruction,~~ math or limited English proficiency.

(g) (1) *If it is determined that a child is an exceptional child, the agency shall seek consent from the parent of the child to provide special education and related services to the child. No such services shall be provided until consent is given by the parent.*

(2) *If the parent of a child refuses to consent to the provision of services, or fails to respond to a request for consent to services, the agency:*
(A) *Shall not initiate any procedure or proceeding under this act to gain authority to provide services to the child;*

(B) *shall not be considered to be in violation of the requirement to*

provide a free appropriate public education to the child; and

(C) shall not be required to convene an IEP meeting or develop an IEP for the child.

(h) (1) Each agency shall ensure that a reevaluation of each exceptional child is conducted:

(A) If the agency determines that the educational or related services needs of the child, including academic achievement or functional performance, warrant a reevaluation; or

(B) if the child's parent or teacher requests a reevaluation.

(2) An agency shall conduct a reevaluation of a child:

(A) Not more frequently than once a year, unless the parent and the agency agree otherwise; and

(B) at least once every three years, unless the parent and the agency agree that a reevaluation is unnecessary.

(i) As part of an initial evaluation, if appropriate, and as part of any reevaluation under this section, the IEP team and other qualified professionals, as appropriate, shall:

(1) 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' observations; and

(2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine: (A) Whether the child ~~has a particular exceptionality~~ *is an exceptional child and the educational needs of the child*, or in the case of a reevaluation of a child, whether the child continues to ~~have such exceptionality~~ *be an exceptional child and the current educational needs of the child*; (B) the present levels of ~~performance and educational~~ *academic and related* needs of the child; (C) 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 (D) 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 IEP of the child and to participate, as appropriate, in the general *education* curriculum.

~~(H)~~ (j) Each agency shall obtain informed parental consent prior to conducting any reevaluation of an exceptional child, except that such informed consent need not be obtained if the agency can demonstrate that it took reasonable measures to obtain such consent and the child's parent failed to respond.

~~(I)~~ (k) 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 an exceptional child *and the child's educational needs*, the agency:

(1) Shall notify the child's parents of: (A) That determination and the reasons for it; and (B) the rights of such parents to request an assessment to determine whether the child continues to be an exceptional child *and the child's educational needs*; and

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

~~(J)~~ (l) (1) ~~Except as provided in paragraph (2), an agency shall evaluate~~ *Except as provided in paragraph (2), an agency shall evaluate* a child in accordance with this section before determining that the child is no longer an exceptional child.

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

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

Sec. 14. K.S.A. 72-987 is hereby amended to read as follows: 72-987.

(a) (1) Except as specified in provision (2), at the beginning of each school year, each agency shall have an individualized education program in effect for each exceptional child.

(2) (A) In the case of a child with a disability aged three through five and for two year-old children with a disability who will turn age three during the school year, an individualized family service plan that contains

the material described in 20 U.S.C. 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 agreed to by the agency and the child's parents.

(B) *In conducting the initial IEP meeting for a child who was previously served under part C of the federal law, an agency, at the request of the parent, shall send an invitation to attend the IEP meeting to the part C services coordinator or other representatives of the part C system to assist with the smooth transition of services.*

(b) (1) *Except as otherwise provided in this section, each IEP of an exceptional child and any amendment or modification of an IEP shall be made by the child's IEP team. Upon agreement of the parent and the agency, an IEP team can meet in person or by alternative means, including telephone conference calls and video conferences.*

(2) *A member of a child's IEP team shall not be required to attend an IEP meeting, if the parent of the child and the agency agree that the attendance of such IEP member is not necessary because the IEP member's area of curriculum or related service is not to be discussed or modified at the meeting. The parent's agreement shall be in writing.*

(3) *A member of a child's IEP team may be excused from attending an IEP meeting when the meeting is to involve a discussion of, and possibly a modification to, the IEP member's area of the curriculum or related service, if:*

(A) *The parent and the agency consent to the excusal;*

(B) *the IEP member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting; and*

(C) *the parent's consent to the excusal is in writing.*

(4) (A) *After the annual IEP meeting for a school year, the parent of an exceptional child and an appropriate representative of the agency providing services to the child may agree to develop a written document amending or modifying the child's current IEP, without convening an IEP meeting.*

(B) *If the parent and agency representative develop a written document amending or modifying a child's current IEP, the document shall be dated and signed by the parent and the agency representative. The parent and the agency shall be provided a copy of the document.*

~~(B)~~ (c) *The IEP for each exceptional child shall include:*

(1) *A statement of the child's present levels of educational academic achievement and functional performance, including: (A) How the child's disability or giftedness affects the child's involvement and progress in the general education curriculum; ~~or~~ (B) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and (C) for those children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;*

(2) *a statement of measurable annual goals, including ~~benchmarks or short-term objectives, related to:~~ (A) Meeting academic and functional goals designed to: (A) Meet the child's needs that result from the child's disability or giftedness, to enable the child to be involved in and make progress in the general education or advanced curriculum; and (B) ~~meeting~~ meet each of the child's other educational needs that result from the child's disability or giftedness;*

(3) *a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided, such as through the use of quarterly or other periodic reports issued concurrently with general education report cards;*

~~(3)~~ (4) *a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, 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: (A) To advance appropriately toward attaining the annual goals; (B) to be involved ~~and~~ in and make progress in the general education curriculum in accordance with provision (1) and to participate in extracurricular and other nonacademic activities; and (C) to be educated and participate with other exceptional and non-exceptional children in the activities described in this paragraph;*

~~(4)~~ (5) *an explanation of the extent, if any, to which the child will not participate with nonexceptional children in the regular class and in the activities described in provision ~~(3)~~ (4);*

~~(5)~~ (6) (A) a statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in such assessment appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and (B) if the IEP team determines that the child will not participate in shall take an alternate assessment on a particular state or district-wide assessment of student achievement or part of such an assessment, a statement of why that assessment is not appropriate for the child and how the child will be assessed the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;

~~(6)~~ (7) the projected date for the beginning of the services and modifications described in provision ~~(3)~~ (4), and the anticipated frequency, location, and duration of those services and modifications;

~~(7)~~ (8) (A) 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 course of study, such as participation in advanced-placement courses or a vocational education program, ~~(B) thereafter: (A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and where appropriate, independent living skills; and (B) the transition services, including appropriate courses of study, needed to assist the child in reaching the stated postsecondary goals; and (C) 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 (C)~~

(9) 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 the child's rights, if any, that will transfer to the child on reaching the age of majority as provided in K.S.A. 72-989, and amendments thereto.

~~(8) a statement of: (A) How the child's progress toward the annual goals will be measured; and (B) how the child's parents will be regularly informed, by such means as periodic report cards, at least as often as parents of nonexceptional children are informed of their children's progress, of their child's progress toward the annual goals; and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.~~

Nothing in this section shall be construed to require: (1) That additional information be included in a child's IEP beyond that which is specifically required by this section; and (2) that an IEP team include information under one component of a child's IEP that is already contained under another component of the IEP.

~~(c)~~ (d) In developing each child's IEP, the IEP team shall consider:

(1) The strengths of the child and the concerns of the parents for enhancing the education of their child;

(2) the results of the initial evaluation or most recent evaluation of the child;

(3) the academic, developmental and functional needs of the child;

~~(3)~~ (4) in the case of a child whose behavior impedes the child's learning or that of others, strategies, including the use of positive behavioral interventions and supports and other strategies to address that behavior;

~~(4)~~ (5) in the case of a child with limited English proficiency, the language needs of the child as such needs relate to the child's IEP;

~~(5)~~ (6) 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;

~~(6)~~ (7) 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

~~(7)~~ (8) whether the child requires assistive technology devices and services.

~~(d)~~ (e) The regular education teacher of the child, as a member of the IEP team, to the extent appropriate, shall participate in:

(1) The development of the IEP of the child, including the determination of appropriate positive behavioral interventions *supports*, and *other* strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with this section; and

(2) *except as provided in this section*, the review and revision of the child's IEP ~~under subsection (e)~~.

~~(e)~~ (f) Each agency shall ensure that the IEP team:

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

(2) revises the IEP, as appropriate, to address: (A) Any lack of expected progress toward the annual goals and in the general *education* curriculum, where appropriate; (B) the results of any reevaluation conducted under this section; (C) information about the child provided ~~to~~ or by, the parents, as described in subsection (g) of K.S.A. 72-986, and ~~amendments thereto~~ by the parents; (D) the child's anticipated needs; or (E) other matters.

(g) (1) *If an exceptional child with a current IEP transfers from one Kansas school district to another during the academic year, the new school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the new school district either adopts the transferred IEP, or develops and implements a new IEP for the child.*

(2) *If during the academic year, an exceptional child who has a current IEP transfers from a school district in another state to a Kansas school district, the Kansas school district, in consultation with the child's parent, shall provide the child a FAPE, including services comparable to those described in the transferred IEP, until the Kansas school district either adopts the transferred IEP, or conducts an evaluation of the child, if deemed necessary, and develops and implements a new IEP for the child.*

Sec. 15. K.S.A. 72-988 is hereby amended to read as follows: 72-988.

(a) The rights of parents of exceptional children shall include, but not be limited to, the rights specified in this section.

(b) The parents of exceptional children shall have the right to:

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

(2) written prior notice in accordance with K.S.A. 72-990, and amendments thereto, whenever an agency: (A) Proposes to initiate or change; or (B) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(3) receive the notice required by provision (2) in their native language, unless it clearly is not feasible to do so;

(4) 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 the child, subject to the requirements ~~that the parent, or the attorney representing the parent or child, provides notice to the agency that includes:~~ (A) ~~The name of the child, the address of the residence of the child, and the name of the school the child is attending;~~ (B) ~~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 (C) ~~a proposed resolution of the problem to the extent known and available to the parents at the time in section 8, and amendments thereto;~~

(5) request mediation in accordance with this act;

(6) consent, or refuse to consent, to the evaluation, reevaluation or the initial placement of their child and to any substantial change in placement of, or a material change in services for, their child, unless a change in placement of their child is ordered pursuant to the provisions of ~~K.S.A. 72-991~~ *section 17*, and amendments thereto, or the agency can demonstrate that it has taken reasonable measures to obtain parental consent to a change in placement or services, and the child's parent has failed to

respond. If the parent fails to respond to the request for parental consent to a substantial change in placement or a material change in services, the agency must maintain detailed records of written and verbal contacts with the parent and the response, if any, received from the parent;

(7) be members of any group that makes decisions on the educational placement of their child;

(8) demand that their child remain in the child's current educational placement pending the outcome of a due process hearing, except as otherwise provided by federal law and this act;

(9) *subject to the requirements of this act*, request a due process hearing in regard to any complaint filed in accordance with provision (4) of this subsection, or as authorized in ~~K.S.A. 72-992~~ *section 18*, and amendments thereto;

(10) appeal to the state board any adverse decision rendered by a hearing officer in a local due process hearing;

(11) appeal to state or federal court any adverse decision rendered by a review officer in a state-level due process appeal; and

(12) recover attorney fees, as provided in the federal law, if they are the prevailing parties in a due process hearing or court action; however, only a court shall have the authority to award attorney fees, and such fees may be reduced or denied in accordance with federal law.

(c) The state board shall develop a model form to assist parents in filing a complaint ~~in accordance with subsection (b)(4) and due process complaint notice.~~

(d) The state board shall develop, and thereafter amend as necessary, and distribute for use by agencies, a ~~list~~ *notice* of the rights available to the parents of exceptional children under the federal law and this act. The ~~list~~ *notice* shall *include a full explanation of the rights and* be made available in various languages and be written so as to be easily understandable by parents.

(e) A list of the rights available to the parents of exceptional children shall be given to the parents, ~~at a minimum only one time each school year, except a copy also shall be given to the parents:~~ (A) Upon initial referral or parental request for evaluation ~~and upon reevaluation of the child,~~ (B) upon each notification of an individualized education program ~~meeting;~~ (B) upon request of a parent; and (C) upon registration ~~the initial filing of a complaint under subsection (b)(4).~~

Sec. 16. K.S.A. 72-990 is hereby amended to read as follows: 72-990. The notice required by subsection (b)(2) of K.S.A. 72-988, and amendments thereto, shall include:

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

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

(c) a description of ~~any~~ other options that the agency or IEP team considered and the reasons those options were rejected;

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

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

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

(g) sources for parents to contact to obtain assistance in understanding the provisions of the federal law and this act.

New Sec. 17. (a) School personnel may order a change in the placement of a child with a disability:

(1) To an appropriate interim alternative educational setting or other setting, or the short-term suspension of the child;

(2) to an appropriate interim alternative educational setting for not more than 45 school days if: (A) The child carries or possesses a weapon to, or at, school, on school premises, or to, or at, a school function under the jurisdiction of an agency; (B) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an agency; or (C) the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an agency; or

(3) To an appropriate interim alternative educational placement for not more than 186 school days, if it is determined that the conduct of the child violated the code of student conduct and was not a manifestation of the child's disability, if the relevant disciplinary procedures applicable to children without disabilities are applied in the same manner and the discipline is for the same duration as would be applied to a child without disabilities, except that services must continue to be provided to the child during the period of disciplinary action.

(b) Any child with a disability whose placement is changed under subsection (a)(2) or (a)(3) shall:

(1) Continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the child's IEP; and

(2) receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the inappropriate behavior so that it does not recur.

(c) The alternative educational setting described in subsections (a)(2) and (a)(3) shall be determined by the IEP team.

(d) If a disciplinary action is contemplated as described in subsection (a)(2) or (a)(3):

(1) Not later than the date on which the decision to take that action is made, the agency shall notify the parents of that decision and of all procedural safeguards afforded under section 18, and amendments thereto; and

(2) within 10 school days of the date on which the decision to take disciplinary action is made, a review shall be conducted to determine the relationship between the child's disability and the conduct that is subject to disciplinary action.

(e) (1) The review described in subsection (d)(2) shall be conducted by the agency, the parent, and relevant members of the child's IEP team as determined by the parent and the agency. In carrying out the review, that group shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent.

(2) Based upon its review of all the relevant information, the group shall determine if the conduct in question:

(A) Was caused by, or had a direct and substantial relationship to, the child's disability; or

(B) was the direct result of the agency's failure to implement the child's IEP.

(3) If it is determined that the conduct of the student is described in either paragraph (2)(A) or (2)(B) of this subsection, then the conduct shall be determined to be a manifestation of the child's disability.

(f) If it is determined that the conduct of a child was a manifestation of the child's disability, the IEP team shall:

(1) Conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the agency has not conducted such an assessment prior to the behavior that resulted in a change in placement;

(2) if the child already had a behavioral intervention plan, review and modify it, as necessary, to address the behavior; and

(3) except as provided in paragraph (a)(2), return the child to the placement from which the child was removed, unless the parent and the agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) For the purposes of this section, the following definitions apply:

(1) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in 21 U.S.C. 812(c);

(2) "illegal drug" means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under any federal or state law;

(3) "weapon" means a 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 such term does not include a pocket knife with a blade of less than 2½ inches in length; and

(4) "serious bodily injury" means an injury as described in subsection (h)(3) of section 1365 of title 18 of the United States Code.

New Sec. 18. (a) The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under section 17, and amendments thereto, or an agency that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or to others, may request a hearing.

(b) A hearing officer appointed under this act shall hear, and make the determination regarding, an appeal requested under subsection (a).

(c) In making the determination under subsection (b), the hearing officer may order a change in placement of the child. In such situations, the hearing officer may:

- (1) Uphold the manifestation determination;
- (2) uphold the interim alternative educational placement of the child;
- (3) return the child to the placement from which the child was removed; or
- (4) order a change in placement of the child to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

Sec. 19. K.S.A. 72-993 is hereby amended to read as follows: 72-993.

(a) If a parent *or agency* requests a hearing under ~~K.S.A. 72-992 section 18~~, and amendments thereto, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer ~~in regard to the manifestation determination or the interim placement decision~~; or until the expiration of the ~~45-day time~~ *forty-five-school-day* period described in subsection (a)(2) of ~~K.S.A. 72-991 section 17~~, and amendments thereto, whichever occurs first, unless the parent and the agency agree otherwise.

~~(b) Except as provided in subsection (c), if a child is placed in an interim alternative educational setting pursuant to K.S.A. 72-991, and amendments thereto, 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 agency shall return the child to the child's placement prior to the interim alternative educational setting.~~

~~(c) (1) If the agency maintains that it is dangerous for the child to be returned to the child's placement prior to removal to the interim alternative education setting during the pendency of due process proceedings, the agency may request an expedited hearing in regard to the proposed change in placement.~~

~~(2) In determining whether the child may be placed in the alternative education setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in subsection (d) of K.S.A. 72-991, and amendments thereto.~~

(b) The agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing. To expedite the hearing, the agency, within three school days of receiving the request for a hearing, shall request the state board to appoint a hearing officer to conduct the hearing.

Sec. 20. K.S.A. 72-994 is hereby amended to read as follows: 72-994.

(a) A child who has not been determined to be eligible for special education and related services under this act and who has engaged in behavior that violated any rule or code of conduct of the school district, ~~including any behavior described in K.S.A. 72-991 and amendments thereto~~, may assert any of the protections provided for in this act if the school district had knowledge, as determined in accordance with this section, that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) A school district shall be deemed to have knowledge that a child is a child with a disability *if before the behavior that precipitated the disciplinary action occurred*:

(1) 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 subsection~~, to *supervisory or administrative* personnel of the appropriate educational agency *or to a teacher of the child*, that the child is in need of special education and related services;

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

—(3) the parent of the child previously has requested an evaluation of the child; or

~~(4)~~ (3) the teacher of the child, or other personnel of the school district, previously has expressed ~~concern about the behavior or performance of the child~~ *specific concerns about a pattern of behavior demonstrated by the child directly* to the director of special education of such school district or to other *supervisory* personnel of the district.

(c) *A school district shall not be deemed to have knowledge that a child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services under this law, or the child has been evaluated but it was determined that the child was not a child with a disability.*

~~(e)~~ (d) (1) Subject to provision (2) of this subsection, if a school district does not have knowledge that a child is a child with a disability prior to taking disciplinary action against the child, the child may be subjected to the same disciplinary action as is applied to children without disabilities who engage in comparable behaviors.

(2) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary action described by this act, an 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 school district and information provided by the parents, the school district shall provide special education and related services in accordance with the provisions of this act, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities, which may be long-term suspension or expulsion from school.

Sec. 21. K.S.A. 72-996 is hereby amended to read as follows: 72-996.

(a) The state board shall establish and implement procedures to allow agencies and parents to resolve disputes *involving any matter, including matters arising prior to the filing of a complaint*, through a mediation process ~~which, at a minimum, shall be available whenever a due process hearing is requested under this act.~~

(b) The procedures adopted shall ensure that the mediation process is:

- (1) Voluntary on the part of the parties;
- (2) not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under this act; and
- (3) conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The state board 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 and shall establish procedures for the appointment of a mediator to help resolve disputes between the parties.

(d) The state board shall bear the cost of the mediation process described in this section.

(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. If the mediation process results in a resolution of the complaint, the parties shall execute a written agreement that both the parent and an authorized representative of the agency shall sign and that, at a minimum, includes the following statements:~~

- ~~(1) The resolution of each issue presented in the complaint;~~
- ~~(2) all discussions that occurred during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and~~
- ~~(3) each party understands that the agreement is legally binding upon them; and~~
- ~~(4) the agreement may be enforced in state or federal court.~~

(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.~~

New Sec. 22. All records of an exceptional child who transfers, or

who is transferred, from one school district to another shall be transferred at the same time that such child transfers, or is transferred, or as soon thereafter as possible. If the transfer is a result of the change in placement by the secretary of the department of social and rehabilitation services, it shall be the duty of the secretary to transfer, or make provision for the transfer, of such records to the district or school to which the child is transferred. If the transfer is a result of the change in placement by the commissioner of juvenile justice, it shall be the duty of the commissioner to transfer, or make provision for the transfer, of such records to the district or school to which the child is transferred. If the transfer is a result of the change in placement by the secretary of the department of corrections, it shall be the duty of the secretary to transfer, or make provision for the transfer, of such records to the district or school to which the child is transferred.

New Sec. 23. (a) As used in this section:

(1) "Pupil" means a child living in a school district as a result of placement therein by the secretary pursuant to the Kansas code for care of children.

(2) "Secretary" means the secretary of social and rehabilitation services.

(b) If the secretary changes the placement of a pupil from one school district to another or to another school within the same district, it shall be the duty of the secretary to transfer, or make provision for the transfer, of all school records of such pupil to the district or school to which the pupil is transferred. Such school records shall be transferred at the same time that the pupil is transferred or as soon as possible thereafter.

(c) On or before December 31, 2005, and on or before December 31, 2006, the secretary shall submit to the legislature a report of the number of pupils who have been transferred from one school district to another school district or from one school to another school within the same district during the preceding school year. Each time a pupil is transferred shall be accounted for separately in such report. The report also shall indicate the number of days which elapsed between the day on which the request for the transfer of school records was submitted under K.S.A. 72-5386, and amendments thereto, and day on which the records were received by the receiving district.

The provisions of this subsection shall expire January 1, 2007.

(d) School districts shall assist the secretary in compiling information for the report required by subsection (c) by providing information requested by the secretary.

Sec. 24. K.S.A. 72-962, 72-963, 72-963a, 72-964, 72-965, 72-966, 72-971, 72-973, 72-974, 72-984, 72-985, 72-986, 72-987, 72-988, 72-990, 72-991, 72-992, 72-993, 72-994 and 72-996 are hereby repealed.

Sec. 25. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 18, 2005.
