

SENATE BILL No. 516

By Committee on Education

2-5

AN ACT concerning schools; relating to the special education for exceptional children act; amending K.S.A. 2001 Supp. 72-988, 72-990 and 72-992 and repealing the existing sections.

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

New Section 1. (a) Whenever parental consent to any agency action is required by the special education for exceptional children act or is otherwise required by law, the parent shall consent to the agency action or request a due process hearing. Such consent or request for a hearing shall be in writing and shall be submitted to the agency within 60 days of the date of the agency action for which consent is required. If the parent fails to consent to the agency action or request a hearing within the time required by this subsection, such failure shall be construed to mean that the parent has consented to such agency action and has waived the right to request a due process hearing under such act or other law.

(b) This section shall be part of and supplemental to the special education for exceptional children act.

Sec. 2. K.S.A. 2001 Supp. 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. 2001 Supp. 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 pro-

1 vision of a free appropriate public education to the child, subject to the
2 requirements that the parent, or the attorney representing the parent or
3 child, provides notice to the agency that includes: (A) The name of the
4 child, the address of the residence of the child, and the name of the school
5 the child is attending; (B) a description of the nature of the problem of
6 the child relating to such proposed initiation or change, including facts
7 relating to such problem; and (C) a proposed resolution of the problem
8 to the extent known and available to the parents at the time;

9 (5) request mediation in accordance with this act;

10 (6) consent, or refuse to consent, to the evaluation, reevaluation or
11 the initial placement of their child and to any substantial change in place-
12 ment of, or a material change in services for, their child, unless a change
13 in placement of their child is ordered pursuant to the provisions of K.S.A.
14 2001 Supp. 72-991, and amendments thereto, or the agency can dem-
15 onstrate that it has taken reasonable measures to obtain parental consent
16 to a change in placement or services, and the child's parent has failed to
17 respond. If the parent fails to respond to the request for parental consent
18 to a substantial change in placement or a material change in services, the
19 agency must maintain detailed records of written and verbal contacts with
20 the parent and the response, if any, received from the parent;

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

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

26 (9) request a due process hearing in regard to any complaint filed in
27 accordance with provision (4) of this subsection, or as authorized in K.S.A.
28 2001 Supp. 72-992, and amendments thereto. *Any request for a due pro-
29 cess hearing shall be submitted in the manner provided by section 1, and
30 amendments thereto;*

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

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

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

39 (c) The state board shall develop a model form to assist parents in
40 filing a complaint in accordance with subsection (b)(4).

41 (d) The state board shall develop, and thereafter amend as necessary,
42 and distribute for use by agencies, a list of the rights available to the
43 parents of exceptional children under the federal law and this act. The

1 list shall be made available in various languages and be written so as to
2 be easily understandable by parents.

3 (e) A list of the rights available to the parents of exceptional children
4 shall be given to the parents, at a minimum: (A) Upon initial referral for
5 evaluation and upon reevaluation of the child; (B) upon each notification
6 of an individualized education program meeting; and (C) upon registra-
7 tion of a complaint under subsection (b)(4).

8 Sec. 3. K.S.A. 2001 Supp. 72-990 is hereby amended to read as fol-
9 lows: 72-990. The notice required by subsection (b)(2) of K.S.A. 2001
10 Supp. 72-988, and amendments thereto, shall include:

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

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

14 (c) a description of any other options that the agency considered and
15 the reasons those options were rejected;

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

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

20 (f) a statement that the parents have protection under the procedural
21 safeguards of this act and, if the notice is not an initial referral for eval-
22 uation, the means by which a copy of the procedural safeguards can be
23 obtained; ~~and~~

24 (g) sources for parents to contact to obtain assistance in understand-
25 ing the provisions of the federal law and this act; *and*

26 (h) *a statement that consent to action proposed by the agency and*
27 *any request for a due process hearing shall be in writing and shall be*
28 *given to the agency within 60 days of the date of the agency action as*
29 *provided by section 1, and amendments thereto.*

30 Sec. 4. K.S.A. 2001 Supp. 72-992 is hereby amended to read as fol-
31 lows: 72-992. (a) (1) If a child's parent disagrees with a determination
32 under K.S.A. 2001 Supp. 72-991, and amendments thereto, that the
33 child's behavior was not a manifestation of the child's disability or with
34 any decision regarding placement under that section, the parent may re-
35 quest a due process hearing. *Any request for a due process hearing shall*
36 *be submitted in the manner provided by section 1, and amendments*
37 *thereto.*

38 (2) The agency shall arrange for an expedited hearing in any case
39 described in this section when requested by a parent.

40 (b) (1) In reviewing a decision with respect to the manifestation de-
41 termination, the hearing officer shall determine whether the agency has
42 demonstrated that the child's behavior was not a manifestation of such
43 child's disability consistent with the requirements of subsection (g) of

1 K.S.A. 2001 Supp. 72-991, and amendments thereto.

2 (2) In reviewing a decision under subsection (a)(2) of K.S.A. 2001
3 Supp. 72-991, and amendments thereto, to place the child in an interim
4 alternative educational setting, the hearing officer shall apply the stan-
5 dards set out in subsection (d) of K.S.A. 2001 Supp. 72-991, and amend-
6 ments thereto.

7 (c) Any hearing provided for in K.S.A. 2001 Supp. 72-991 or in this
8 section shall be conducted:

9 (1) By a due process hearing officer appointed by the state board;
10 and

11 (2) in accordance with rules and regulations adopted by the state
12 board.

13 Sec. 5. K.S.A. 2001 Supp. 72-988, 72-990 and 72-992 are hereby
14 repealed.

15 Sec. 6. This act shall take effect and be in force from and after its
16 publication in the statute book.

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