

SENATE BILL No. 602

By Committee on Federal and State Affairs

2-14

AN ACT concerning schools; relating to the special education for exceptional children act; amending K.S.A. 2001 Supp. 72-961, 72-962, 72-963, 72-966, 72-973, 72-983, 72-986, 72-987, 72-988, 72-990, 72-991 and 72-993 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 72-961 is hereby amended to read as follows: 72-961. ~~This act~~ *K.S.A. 72-961 through 72-981 and K.S.A. 2001 Supp. 72-983 through 72-996 and sections 13, 14 and 15, and amendments thereto*, shall be known and may be cited as the special education for exceptional children act.

Sec. 2. K.S.A. 2001 Supp. 72-962 is hereby amended to read as follows: 72-962. As used in ~~this~~ *the special education for exceptional children* 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 of social and rehabilitation services, the secretary of corrections, and the commissioner of juvenile justice.
- (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

1 and institutions, and in other settings; and

2 (2) instruction in physical education.

3 (j) “Special teacher” means a person, employed by or under contract
4 with a school district or a state institution to provide special education or
5 related services, who is: (1) Qualified to provide special education or
6 related services to exceptional children as determined pursuant to stan-
7 dards established by the state board; or (2) qualified to assist in the pro-
8 vision of special education or related services to exceptional children as
9 determined pursuant to standards established by the state board.

10 (k) “State plan” means the state plan for special education and related
11 services authorized by this act.

12 (l) “Agency” means boards and the state agencies.

13 (m) “Parent” means a natural parent, an adoptive parent, a person
14 acting as parent, a legal guardian, or an education advocate.

15 (n) “Person acting as parent” means a person such as a grandparent
16 or a stepparent with whom a child lives or a person other than a parent
17 who is legally responsible for the welfare of a child.

18 (o) “Education advocate” means a person appointed by the state
19 board in accordance with the provisions of K.S.A. 38-1513a, and amend-
20 ments thereto. A person appointed as an education advocate for a child
21 shall not be: (1) An employee of the agency which is required by law to
22 provide special education or related services for the child; (2) an employee
23 of the state board, the department, or any agency which is directly in-
24 volved in providing educational services for the child; or (3) any person
25 having a professional or personal interest which would conflict with the
26 interests of the child.

27 (p) “Free appropriate public education” means special education and
28 related services that: (1) Are provided at public expense, under public
29 supervision and direction, and without charge; (2) meet the standards of
30 the state board; (3) include an appropriate preschool, elementary, or sec-
31 ondary school education; and (4) are provided in conformity with an in-
32 dividualized education program.

33 (q) “Federal law” means the individuals with disabilities education
34 act, as amended.

35 (r) (1) “Individualized education program” or “IEP” means a written
36 statement for each exceptional child, *other than a gifted child*, that is
37 developed, reviewed, and revised in accordance with the provisions of
38 K.S.A. 2001 Supp. 72-987, and amendments thereto.

39 (2) “*Individualized education program*” or “*IEP*” shall not mean a
40 *gifted education program*.

41 (s) “Related services” means transportation, and such developmental,
42 corrective, and other supportive services, including speech-language pa-
43 thology and audiology services, psychological services, physical and oc-

1 cupational therapy, recreation, including therapeutic recreation, social
2 work services, counseling services, including rehabilitation counseling,
3 orientation and mobility services, and medical services, except that such
4 medical services shall be for diagnostic and evaluation purposes only, as
5 may be required to assist an exceptional child to benefit from special
6 education, and includes the early identification and assessment of disa-
7 bling conditions in children.

8 (t) “Supplementary aids and services” means aids, services, and other
9 supports that are provided in regular education classes or other education-
10 related settings to enable children with disabilities to be educated with
11 nondisabled children to the maximum extent appropriate.

12 (u) (1) “Individualized education program team” or “IEP team”
13 means a group of individuals composed of: (1) The parents of a child; (2)
14 at least one regular education teacher of the child, if the child is, or may
15 be, participating in the regular education environment; (3) at least one
16 special education teacher or, where appropriate, at least one special ed-
17 ucation provider of the child; (4) a representative of the agency directly
18 involved in providing educational services for the child who: (A) Is qual-
19 ified to provide, or supervise the provision of, specially designed instruc-
20 tion to meet the unique needs of exceptional children; (B) is knowledge-
21 able about the general curriculum; and (C) is knowledgeable about the
22 availability of resources of the agency; (5) an individual who can interpret
23 the instructional implications of evaluation results; (6) at the discretion of
24 the parent or the agency, other individuals who have knowledge or special
25 expertise regarding the child, including related services personnel as ap-
26 propriate; and (7) whenever appropriate, the child.

27 (2) “*Individualized education program team*” shall not mean a *gifted*
28 *education team*.

29 (v) “Evaluation” means a multisourced and multidisciplinary exami-
30 nation, conducted in accordance with the provisions of K.S.A. 2001 Supp.
31 72-986, and amendments thereto, to determine whether a child is an
32 exceptional child, *other than a gifted child*.

33 (w) “Independent educational evaluation” means an examination
34 which is obtained by the parent of an exceptional child, *other than a gifted*
35 *child*, and performed by an individual or group of individuals who meet
36 state and local standards to conduct such an examination.

37 (x) “Elementary school” means any nonprofit institutional day or res-
38 idential school that offers instruction in any or all of the grades kinder-
39 garten through nine.

40 (y) “Secondary school” means any nonprofit institutional day or res-
41 idential school that offers instruction in any or all of the grades nine
42 through 12.

43 (z) “Children with disabilities” means children with mental retarda-

1 tion, hearing impairments including deafness, speech or language im-
2 pairments, visual impairments including blindness, emotional distur-
3 bance, orthopedic impairments, autism, traumatic brain injury, other
4 health impairments, or specific learning disabilities and who, by reason
5 thereof, need special education and related services.

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

11 (bb) “Material change in services” means an increase or decrease of
12 25% or more of the duration or frequency of a special education service,
13 a related service or a supplementary aid or a service specified on the IEP
14 of an exceptional child, *other than a gifted child*.

15 (cc) “Gifted education program” or “GEP” means a written statement
16 for each gifted child that contains such information and is developed,
17 reviewed and revised in accordance with rules and regulations adopted
18 by the state board.

19 (dd) “Gifted education team” or “GET” means a group of individuals
20 composed of: (1) The parents of a child; (2) at least one regular education
21 teacher of the child; (3) at least one special education teacher or provider
22 of the child; (4) a representative of the board; (5) the child, if appropriate;
23 and (6) any other person deemed appropriate by the individuals specified
24 by subdivisions (1), (2), (3) and (4) of this subsection.

25 (ee) “Gifted education” means specially designed educational instruc-
26 tion to meet the needs of a gifted child that is: (1) Provided in an instruc-
27 tional area; (2) provided at no cost to the parents; (3) provided by a school
28 district, directly, by referral or by contract; (4) individualized to meet the
29 educational needs of the child; (5) reasonably calculated to yield mean-
30 ingful educational benefit; and (6) provided in conformity with a GEP.

31 (ff) “Gifted evaluation” means a multisourced assessment, conducted
32 in accordance with rules and regulations adopted by the state board pur-
33 suant to K.S.A. 72-963, and amendments thereto, to determine whether a
34 child is a gifted child and needs gifted education.

35 (gg) “Screening and evaluation process” means the systematic process
36 used in determining whether or not a child is gifted and needs gifted
37 education.

38 (hh) “Specially designed educational instruction” means any adap-
39 tations or modifications to the general curriculum, instruction, instruc-
40 tional environments, methods or materials or specialized curriculum for
41 children who are gifted.

42 Sec. 3. K.S.A. 2001 Supp. 72-963 is hereby amended to read as fol-
43 lows: 72-963. (a) The state board shall adopt and administer the state

1 plan. The state board may amend the state plan as necessary. The state
2 plan, and any amendments thereto, shall be prepared in consultation with
3 the state advisory council for special education provided for in this act.

4 The state board may adopt rules and regulations for administration of
5 this act and shall adopt rules and regulations necessary to comply with
6 the federal law and to implement the provisions of ~~this~~ *the special edu-*
7 *cation for exceptional children act.*

8 (b) *Nothing in subsection (a) shall be construed as prohibiting the*
9 *state board from adopting and administering provisions in the state plan*
10 *or in rules and regulations adopted by the board which provide gifted*
11 *education to gifted children in a manner and subject to procedures which*
12 *are different than those provided to children with disabilities.*

13 Sec. 4. K.S.A. 2001 Supp. 72-966 is hereby amended to read as fol-
14 lows: 72-966. (a) (1) Each board shall adopt and implement procedures
15 to assure that all ~~exceptional~~ *children with disabilities* residing in the
16 school district, including children enrolled in private schools, who are in
17 need of special education and related services, are identified, located and
18 evaluated.

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

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

30 (b) If an exceptional child, upon referral by a person licensed to prac-
31 tice medicine and surgery, is admitted to a hospital, treatment center, or
32 other health care institution, or to a group boarding home or other care
33 facility, and the institution or facility is located outside the school district
34 in which the child resides, the district in which the institution or facility
35 is located may contract with the district in which a parent of the child
36 resides to provide special education or related services, if such services
37 are necessary for the child. Special education and related services re-
38 quired by this subsection may be provided pursuant to a contract entered
39 into between the board of the school district of which the child is a res-
40 ident and the board of the school district in which the child is housed.
41 Any such contract shall be subject to the provisions of subsections (a)(3)
42 and (c) of K.S.A. 72-967, and amendments thereto. If a contract is not
43 entered into between the school districts, the child shall be deemed to

1 be a pupil of the school district which is providing special education and
2 related services to the child. Nothing in this subsection shall be construed
3 to limit or supersede or in any manner affect or diminish the requirements
4 of compliance by each school district with the provisions of subsection
5 (a), but shall operate as a comity of school districts in assuring the pro-
6 vision of special education services for each exceptional child in the state.

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

9 (2) The state board shall be responsible for assuring that the require-
10 ments of the federal law and this act are met and that all educational
11 programs for exceptional children, including programs administered by
12 any other state agency: (A) Are under the general supervision of individ-
13 uals who are responsible for educational programs for exceptional chil-
14 dren; and (B) meet the educational standards prescribed by the state
15 board.

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

19 (d) Consistent with state and federal law, state agencies shall enter
20 into such interagency agreements as are necessary or advisable in making
21 a free appropriate public education available to all ~~exceptional~~ children
22 *with disabilities* residing in the state. The state board shall establish pro-
23 cedures for resolving interagency disputes, including procedures under
24 which local educational agencies may initiate proceedings to secure re-
25 imbursement or otherwise implement or seek enforcement of the pro-
26 visions of the interagency agreement.

27 (e) *Nothing in this section shall be construed as prohibiting a board*
28 *from adopting and implementing procedures and services and programs*
29 *which provide gifted education to gifted children in a manner and subject*
30 *to procedures which are different than those provided to children with*
31 *disabilities. Procedures and services and programs adopted and imple-*
32 *mented by a board to provide gifted education for gifted children shall be*
33 *subject to requirements of rules and regulations adopted by the state*
34 *board pursuant to K.S.A. 72-963, and amendments thereto.*

35 Sec. 5. K.S.A. 2001 Supp. 72-973 is hereby amended to read as fol-
36 lows: 72-973. (a) Any due process hearing provided for under this act,
37 shall be held at a time and place reasonably convenient to the parent of
38 the involved child, shall be a closed hearing unless the parent requests
39 an open hearing, and shall be conducted in accordance with rules and
40 regulations relating thereto adopted by the agency. Such rules and reg-
41 ulations shall afford procedural due process, including the following:

42 (1) The right of the parties to have counsel or an advisor of their own
43 choice present and to receive the advice of such counsel or other advisor

1 whom they select;

2 (2) the right of the child and the parent of the child to be present at
3 the hearing;

4 (3) the right of the child, the parent of the child and their counsel or
5 advisor to hear or read a full report of the testimony of witnesses respon-
6 sible for recommending the proposed action and of any other material
7 witnesses;

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

11 (5) the right of the parties to present witnesses in person or their
12 testimony by affidavit, including expert medical, psychological or educa-
13 tional testimony;

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

16 (7) the right of the parties to prohibit the presentation of any evi-
17 dence at the hearing which has not been disclosed to the opposite party
18 at least five days prior to the hearing, including any evaluations completed
19 by that date and any recommendations based on such evaluations;

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

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

23 (10) the right of the parties to have a written or, at the option of the
24 parent, an electronic, verbatim record of the hearing.

25 (b) Each due process hearing, other than an expedited hearing under
26 K.S.A. 2001 Supp. 72-992 or 72-993, and amendments thereto, shall be
27 held not later than 30 days from the date on which the request therefor
28 is received. The child and the parent of the child shall be notified in
29 writing of the time and place of the hearing at least five days prior thereto.
30 At any reasonable time prior to the hearing, the parent and the counsel
31 or advisor of the involved child shall be given access to all records, tests,
32 reports or clinical evaluations relating to the proposed action.

33 (c) (1) Except as otherwise provided in K.S.A. 2001 Supp. 72-993,
34 and amendments thereto, during the pendency of any proceedings con-
35 ducted under this act, unless the agency and parent otherwise agree, the
36 child shall remain in the then-current educational placement of such
37 child.

38 (2) If proceedings arise in connection with the initial admission of
39 the child to school, the child shall be placed in the appropriate regular
40 education classroom or program in compliance with K.S.A. 72-1111, and
41 amendments thereto, unless otherwise directed pursuant to K.S.A. 2001
42 Supp. 72-991, and amendments thereto.

43 (d) Subject to the provisions of K.S.A. 72-973a, and amendments

1 thereto, the agency shall appoint a hearing officer for the purpose of
2 conducting the hearing. Members of the state board, the secretary of
3 social and rehabilitation services, the secretary of corrections, the com-
4 missioner of the juvenile justice authority, and members of any board or
5 agency involved in the education of the child shall not serve as hearing
6 officers. No hearing officer shall be any person responsible for recom-
7 mending the proposed action upon which the hearing is based, any person
8 having a personal or professional interest which would conflict with ob-
9 jectivity in the hearing, or any person who is an employee of the state
10 board or any agency involved in the education of the child. A person shall
11 not be considered an employee of the agency solely because the person
12 is paid by the agency to serve as a hearing officer. Each agency shall
13 maintain a list of hearing officers. Such list shall include a statement of
14 the qualifications of each hearing officer. Each hearing officer and each
15 state review officer shall be qualified in accordance with standards and
16 requirements established by the state board and shall have satisfactorily
17 completed a training program conducted or approved by the state board.
18 Whenever a hearing officer conducts any hearing, such hearing officer
19 shall render a decision on the matter, including findings of fact and con-
20 clusions, not later than 10 days after the close of the hearing. The decision
21 shall be written or, at the option of the parent, shall be an electronic
22 decision. Any action of the hearing officer in accordance with this sub-
23 section shall be final, subject to appeal and review in accordance with this
24 act.

25 *(e) The provisions of this section shall not apply to gifted children or*
26 *parents of gifted children.*

27 Sec. 6. K.S.A. 2001 Supp. 72-983 is hereby amended to read as fol-
28 lows: 72-983. (a) In each school year, to the extent that appropriations
29 are available, each school district which has provided special education
30 or related services for an exceptional child whose IEP *or GEP* provides
31 for services which cost in excess of \$25,000 for the school year is eligible
32 to receive a grant of state moneys in an amount equal to 75% of that
33 portion of the costs, incurred by the district in the provision of special
34 education or related services for the child, that is in excess of \$25,000.

35 (b) In order to be eligible for a grant of state moneys provided for by
36 subsection (a), a school district shall submit to the state board of education
37 an application for a grant, a description of the special education or related
38 services provided, and the name or names of the child or children for
39 whom provided. The application and description shall be prepared in such
40 form and manner as the state board shall require and shall be submitted
41 at a time to be determined and specified by the state board. Approval by
42 the state board of applications for grants of state moneys is prerequisite
43 to the award of grants.

1 (c) Each school district which is awarded a grant under this section
2 shall make such periodic and special reports of statistical and financial
3 information to the state board as it may request.

4 (d) All moneys received by a school district under authority of this
5 section shall be deposited in the general fund of the school district and
6 transferred to its special education fund.

7 (e) The state board of education shall:

8 (1) Prescribe and adopt criteria for identification and determination
9 of excessive costs attributable to the provision of special education and
10 related services for which an application for a grant of state moneys may
11 be made under this section;

12 (2) approve applications of school districts for grants;

13 (3) determine the amount of grants and be responsible for payment
14 of such grants to school districts; and

15 (4) prescribe all forms necessary for reporting under this section.

16 (f) If the amount of appropriations for the payment of grants under
17 this section is insufficient to pay in full the amount each school district is
18 determined to be eligible to receive for the school year, the state board
19 shall prorate the amount appropriated among all school districts which
20 are eligible to receive grants of state moneys in proportion to the amount
21 each school district is determined to be eligible to receive.

22 Sec. 7. K.S.A. 2001 Supp. 72-986 is hereby amended to read as fol-
23 lows: 72-986. (a) (1) An agency shall conduct a full and individual initial
24 evaluation in accordance with this section before the initial provision of
25 special education and related services to an exceptional child. Such initial
26 evaluation shall consist of procedures to determine whether a child is an
27 exceptional child and the educational needs of such child.

28 (2) An agency proposing to conduct an initial evaluation of a child
29 shall obtain informed consent from the parent of such child before the
30 evaluation is conducted. Parental consent for evaluation shall not be con-
31 strued as consent for placement for receipt of special education and re-
32 lated services.

33 (3) If the parents of a child refuse consent for evaluation of the child,
34 the agency may, but shall not be required to, continue to pursue an eval-
35 uation by utilizing the mediation or due process procedures prescribed
36 in this act.

37 (b) Each agency shall ensure that a reevaluation of each exceptional
38 child is conducted:

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

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

42 (c) An agency shall provide notice to the parents of a child that de-
43 scribes any evaluation procedures such agency proposes to conduct. In

1 conducting the evaluation, the agency shall:

2 (1) Use a variety of assessment tools and strategies to gather relevant
3 functional and developmental information, including information pro-
4 vided by the parent, that may assist in determining whether the child is
5 an exceptional child and the content of the child's individualized educa-
6 tion program, including information related to enabling the child to be
7 involved, and progress, in the general curriculum or, for preschool chil-
8 dren, to participate in appropriate activities;

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

12 (3) use technically sound instruments that may assess the relative con-
13 tribution of cognitive and behavioral factors, in addition to physical or
14 developmental factors.

15 (d) An agency shall ensure that:

16 (1) Tests and other evaluation materials used to assess a child under
17 this section: (A) Are selected and administered so as not to be discrimi-
18 natory on a racial or cultural basis; and (B) are provided and administered
19 in the child's native language or other mode of communication, unless it
20 is clearly not feasible to do so; and

21 (2) any standardized tests that are given to the child: (A) Have been
22 validated for the specific purpose for which they are used; (B) are ad-
23 ministered by trained and knowledgeable personnel; and (C) are admin-
24 istered in accordance with any instructions provided by the producer of
25 such tests;

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

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

30 (e) Upon completion of administration of tests and other evaluation
31 materials:

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

35 (2) a copy of the evaluation report and the documentation of deter-
36 mination of eligibility shall be given to the parent.

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

41 (g) As part of an initial evaluation, if appropriate, and as part of any
42 reevaluation under this section, the IEP team and other qualified pro-
43 fessionals, as appropriate, shall:

1 (1) Review existing evaluation data on the child, including evaluations
2 and information provided by the parents of the child, current classroom-
3 based assessments and observations, and teacher and related services pro-
4 viders' observations; and

5 (2) on the basis of that review, and input from the child's parents,
6 identify what additional data, if any, are needed to determine: (A)
7 Whether the child has a particular exceptionality, or in the case of a
8 reevaluation of a child, whether the child continues to have such excep-
9 tionality; (B) the present levels of performance and educational needs of
10 the child; (C) whether the child needs special education and related serv-
11 ices; or in the case of a reevaluation of a child, whether the child continues
12 to need special education and related services; and (D) whether any ad-
13 ditions or modifications to the special education and related services are
14 needed to enable the child to meet the measurable annual goals set out
15 in the IEP of the child and to participate, as appropriate, in the general
16 curriculum.

17 (h) Each agency shall obtain informed parental consent prior to con-
18 ducting any reevaluation of an exceptional child, except that such in-
19 formed consent need not be obtained if the agency can demonstrate that
20 it took reasonable measures to obtain such consent and the child's parent
21 failed to respond.

22 (i) If the IEP team and other qualified professionals, as appropriate,
23 determine that no additional data are needed to determine whether the
24 child continues to be an exceptional child, the agency:

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

28 (2) shall not be required to conduct such an assessment unless re-
29 quested by the child's parents.

30 (j) An agency shall evaluate a child in accordance with this section
31 before determining that the child is no longer an exceptional child.

32 (k) *The provisions of this section shall not apply to gifted children or*
33 *parents of gifted children.*

34 Sec. 8. K.S.A. 2001 Supp. 72-987 is hereby amended to read as fol-
35 lows: 72-987. (a) (1) Except as specified in provision (2), at the beginning
36 of each school year, each agency shall have an individualized education
37 program in effect for each exceptional child.

38 (2) In the case of a child with a disability aged three through five and
39 for two year-old children with a disability who will turn age three during
40 the school year, an individualized family service plan that contains the
41 material described in 20 U.S.C. 1436, and that is developed in accordance
42 with this section, may serve as the IEP of the child if using that plan as
43 the IEP is agreed to by the agency and the child's parents.

1 (b) The IEP for each exceptional child shall include:

2 (1) A statement of the child's present levels of educational perform-
3 ance, including: (A) How the child's disability or giftedness affects the
4 child's involvement and progress in the general curriculum; or (B) for
5 preschool children, as appropriate, how the disability affects the child's
6 participation in appropriate activities;

7 (2) a statement of measurable annual goals, including benchmarks or
8 short-term objectives, related to: (A) Meeting the child's needs that result
9 from the child's disability or giftedness, to enable the child to be involved
10 in and progress in the general or advanced curriculum; and (B) meeting
11 each of the child's other educational needs that result from the child's
12 disability or giftedness;

13 (3) a statement of the special education and related services and sup-
14 plementary aids and services to be provided to the child, or on behalf of
15 the child, and a statement of the program modifications or supports for
16 school personnel that will be provided for the child: (A) To advance ap-
17 propriately toward attaining the annual goals; (B) to be involved and pro-
18 gress in the general curriculum in accordance with provision (1) and to
19 participate in extracurricular and other nonacademic activities; and (C)
20 to be educated and participate with other exceptional and nonexceptional
21 children in the activities described in this paragraph;

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

25 (5) (A) a statement of any individual modifications in the adminis-
26 tration of state or district-wide assessments of student achievement that
27 are needed in order for the child to participate in such assessment; and
28 (B) if the IEP team determines that the child will not participate in a
29 particular state or district-wide assessment of student achievement or part
30 of such an assessment, a statement of why that assessment is not appro-
31 priate for the child and how the child will be assessed;

32 (6) the projected date for the beginning of the services and modifi-
33 cations described in provision (3), and the anticipated frequency, location,
34 and duration of those services and modifications;

35 (7) (A) Beginning at age 14, and updated annually, a statement of
36 the transition service needs of the child under the applicable components
37 of the child's IEP that focuses on the child's course of study, such as
38 participation in advanced-placement courses or a vocational education
39 program; (B) beginning at age 16 or younger, if determined appropriate
40 by the IEP team, a statement of needed transition services for the child,
41 including, when appropriate, a statement of the interagency responsibil-
42 ities or any needed linkages; and (C) beginning at least one year before
43 the child reaches the age of majority under state law, a statement that

1 the child has been informed of the child's rights, if any, that will transfer
2 to the child on reaching the age of majority as provided in K.S.A. 2001
3 Supp. 72-989;

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

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

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

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

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

19 (4) in the case of a child with limited English proficiency, the lan-
20 guage needs of the child as such needs relate to the child's IEP;

21 (5) in the case of a child who is blind or visually impaired, provide
22 for instruction in Braille and the use of Braille unless the IEP team de-
23 termines, after an evaluation of the child's reading and writing skills,
24 needs, and appropriate reading and writing media, including an evalua-
25 tion of the child's future needs for instruction in Braille or the use of
26 Braille, that instruction in Braille or the use of Braille is not appropriate
27 for the child;

28 (6) the communication needs of the child, and in the case of a child
29 who is deaf or hard of hearing, consider the child's language and com-
30 munication needs, opportunities for direct communications with peers
31 and professional personnel in the child's language and communication
32 mode, academic level, and full range of needs, including opportunities
33 for direct instruction in the child's language and communication mode;
34 and

35 (7) whether the child requires assistive technology devices and
36 services.

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

39 (1) The development of the IEP of the child, including the deter-
40 mination of appropriate positive behavioral interventions and strategies
41 and the determination of supplementary aids and services, program mod-
42 ifications, and support for school personnel consistent with this section;
43 and

1 (2) the review and revision of the child's IEP under subsection (e).

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

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

5 (2) revises the IEP as appropriate to address: (A) Any lack of expected
6 progress toward the annual goals and in the general curriculum, where
7 appropriate; (B) the results of any reevaluation conducted under this sec-
8 tion; (C) information about the child provided to, or by, the parents, as
9 described in subsection (g) of K.S.A. 2001 Supp. 72-986, and amend-
10 ments thereto; (D) the child's anticipated needs; or (E) other matters.

11 (f) *The provisions of this section shall not apply to gifted children or*
12 *parents of gifted children.*

13 Sec. 9. K.S.A. 2001 Supp. 72-988 is hereby amended to read as fol-
14 lows: 72-988. (a) The rights of parents of exceptional children shall in-
15 clude, but not be limited to, the rights specified in this section.

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

17 (1) Examine all records relating to such child and to participate in
18 meetings with respect to the identification, evaluation, and educational
19 placement of the child, and the provision of a free appropriate public
20 education to such child, and to obtain an independent educational eval-
21 uation of the child;

22 (2) written prior notice in accordance with K.S.A. 2001 Supp. 72-990,
23 and amendments thereto, whenever an agency: (A) Proposes to initiate
24 or change; or (B) refuses to initiate or change, the identification, evalu-
25 ation, or educational placement of the child or the provision of a free
26 appropriate public education to the child;

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

29 (4) present complaints with respect to any matter relating to the iden-
30 tification, evaluation, or educational placement of the child, or the pro-
31 vision of a free appropriate public education to the child, subject to the
32 requirements that the parent, or the attorney representing the parent or
33 child, provides notice to the agency that includes: (A) The name of the
34 child, the address of the residence of the child, and the name of the school
35 the child is attending; (B) a description of the nature of the problem of
36 the child relating to such proposed initiation or change, including facts
37 relating to such problem; and (C) a proposed resolution of the problem
38 to the extent known and available to the parents at the time;

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

40 (6) consent, or refuse to consent, to the evaluation, reevaluation or
41 the initial placement of their child and to any substantial change in place-
42 ment of, or a material change in services for, their child, unless a change
43 in placement of their child is ordered pursuant to the provisions of K.S.A.

1 2001 Supp. 72-991, and amendments thereto, or the agency can dem-
2 onstrate that it has taken reasonable measures to obtain parental consent
3 to a change in placement or services, and the child's parent has failed to
4 respond. If the parent fails to respond to the request for parental consent
5 to a substantial change in placement or a material change in services, the
6 agency must maintain detailed records of written and verbal contacts with
7 the parent and the response, if any, received from the parent;

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

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

13 (9) request a due process hearing in regard to any complaint filed in
14 accordance with provision (4) of this subsection, or as authorized in K.S.A.
15 2001 Supp. 72-992, and amendments thereto;

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

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

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

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

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

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

36 (f) *The provisions of this section shall not apply to gifted children or*
37 *parents of gifted children.*

38 Sec. 10. K.S.A. 2001 Supp. 72-990 is hereby amended to read as
39 follows: 72-990. The notice required by subsection (b)(2) of K.S.A. 2001
40 Supp. 72-988, and amendments thereto, shall include:

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

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

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

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

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

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

11 (g) sources for parents to contact to obtain assistance in understand-
12 ing the provisions of the federal law and this act.

13 (h) *The provisions of this section shall not apply to gifted children or*
14 *parents of gifted children.*

15 Sec. 11. K.S.A. 2001 Supp. 72-991 is hereby amended to read as
16 follows: 72-991. (a) School personnel may order a change in the place-
17 ment of a child with a disability:

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

20 (2) to an appropriate interim alternative educational setting for not
21 more than 45 calendar days if: (A) The child carries a weapon to school
22 or to a school function under the jurisdiction of the agency; or (B) the
23 child knowingly possesses or uses illegal drugs or sells or solicits the sale
24 of a controlled substance while at school or a school function under the
25 jurisdiction of the agency.

26 (b) The alternative educational setting described in subsection (a)(2)
27 shall be determined by the IEP team.

28 (c) Either before, or not later than 10 days after, taking a disciplinary
29 action as described in subsection (a):

30 (1) If the agency did not conduct a functional behavioral assessment
31 and implement a behavioral intervention plan for such child before the
32 behavior that resulted in the disciplinary action, the agency shall convene
33 an IEP meeting to develop an intervention plan to address that behavior;
34 or

35 (2) if the child already has a behavioral intervention plan, the IEP
36 team shall review the plan and modify it, as necessary, to address the
37 behavior.

38 (d) A hearing officer who meets the qualifications specified in this
39 act may order a change in the placement of a child with a disability to an
40 appropriate interim alternative educational setting for not more than 45
41 calendar days if the hearing officer:

42 (1) Determines that the agency has demonstrated, by substantial ev-
43 idence, that maintaining the current placement of such child is substan-

- 1 tially likely to result in injury to the child or to others;
- 2 (2) considers the appropriateness of the child's current placement;
- 3 (3) considers whether the agency has made reasonable efforts to min-
4 imize the risk of harm in the child's current placement, including the use
5 of supplementary aids and services; and
- 6 (4) determines that the interim alternative educational setting meets
7 the requirements of subsection (e).
- 8 (e) Any interim alternative educational setting in which a child is
9 placed under this section shall:
- 10 (1) Be selected so as to enable the child to continue to participate in
11 the general curriculum, although in another setting, and to continue to
12 receive those services and modifications, including those described in the
13 child's current IEP, that will enable the child to meet the goals set out
14 in the IEP; and
- 15 (2) include services and modifications designed to address the be-
16 havior so that it does not recur.
- 17 (f) If a disciplinary action is contemplated as described in subsection
18 (a) for a behavior of a child with a disability, or if a disciplinary action
19 involving a change of placement for more than 10 school days is contem-
20 plated for a child with a disability who has engaged in other behavior that
21 violated any rule or code of conduct of the agency that applies to all
22 children:
- 23 (1) Not later than the date on which the decision to take that action
24 is made, the parents shall be notified of that decision and of all procedural
25 safeguards afforded under K.S.A. 2001 Supp. 72-992; and
- 26 (2) immediately, if possible, but in no case later than 10 school days
27 after the date on which the decision to take that action is made, a review,
28 as specified in subsection (g), shall be conducted of the relationship be-
29 tween the child's disability and the behavior subject to the disciplinary
30 action.
- 31 (g) Any review described in subsection (f)(2) shall be conducted by
32 the child's IEP team and other qualified personnel. In carrying out such
33 a review, the IEP team may determine that the behavior of the child was
34 not a manifestation of such child's disability only if the IEP team:
- 35 (1) First considers, in terms of the behavior subject to disciplinary
36 action, all relevant information, including: (A) evaluation and diagnostic
37 results, including such results or other relevant information supplied by
38 the parents of the child; (B) observations of the child; and (C) the child's
39 IEP and placement; and
- 40 (2) then determines that: (A) In relationship to the behavior subject
41 to disciplinary action, the child's IEP and placement were appropriate
42 and the special education services, supplementary aids and services, and
43 behavior intervention strategies were provided consistent with the child's

1 IEP and placement; (B) the child's disability did not impair the ability of
2 the child to understand the impact and consequences of the behavior
3 subject to disciplinary action; and (C) the child's disability did not impair
4 the ability of the child to control the behavior subject to disciplinary
5 action.

6 (h) (1) If the result of the review under subsection (g) is a determi-
7 nation that the behavior of the child was not a manifestation of the child's
8 disability, the relevant disciplinary procedures applicable to children with-
9 out disabilities may be applied to the child in the same manner in which
10 they would be applied to children without disabilities, except that an ap-
11 propriate public education must continue to be provided to the child
12 during the period of disciplinary action.

13 (2) If the agency initiates disciplinary procedure applicable to all chil-
14 dren, the agency shall ensure that the special education and disciplinary
15 records of the child are transmitted for consideration by the person or
16 persons making the final determination regarding the disciplinary action.

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

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

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

24 (3) "substantial evidence" means beyond a preponderance of the
25 evidence;

26 (4) "weapon" means a weapon, device, instrument, material, or sub-
27 stance, animate or inanimate, that is used for, or is readily capable of,
28 causing death or serious bodily injury, except that such term does not
29 include a pocket knife with a blade of less than 2½ inches in length.

30 (j) *The provisions of this section shall not apply to gifted children or*
31 *parents of gifted children.*

32 Sec. 12. K.S.A. 2001 Supp. 72-993 is hereby amended to read as
33 follows: 72-993. (a) If a parent requests a hearing under K.S.A. 2001 Supp.
34 72-992, and amendments thereto, the child shall remain in the interim
35 alternative educational setting pending the decision of the hearing officer
36 in regard to the manifestation determination or the interim placement
37 decision, or until the expiration of the 45-day time period described in
38 subsection (a)(2) of K.S.A. 2001 Supp. 72-991, and amendments thereto,
39 whichever occurs first, unless the parent and the agency agree otherwise.

40 (b) Except as provided in subsection (c), if a child is placed in an
41 interim alternative educational setting pursuant to K.S.A. 2001 Supp. 72-
42 991, and amendments thereto, and school personnel propose to change
43 the child's placement after expiration of the interim alternative place-

1 ment, during the pendency of any proceeding to challenge the proposed
2 change in placement, the agency shall return the child to the child's place-
3 ment prior to the interim alternative educational setting.

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

9 (2) In determining whether the child may be placed in the alternative
10 education setting or in another appropriate placement ordered by the
11 hearing officer, the hearing officer shall apply the standards set out in
12 subsection (d) of K.S.A. 2001 Supp. 72-991, and amendments thereto.

13 (d) *The provisions of this section shall not apply to gifted children or*
14 *parents of gifted children.*

15 New Sec. 13. (a) The state board shall have general supervision of
16 the services and programs provided to gifted children.

17 (b) The state board shall disseminate information concerning, and
18 promote the use of, promising practices and innovative programs to meet
19 the needs of gifted children.

20 (c) The state board shall adopt any rules and regulations which are
21 necessary to assure that appropriate gifted education is provided to gifted
22 children. Such rules and regulations may include, but shall not be limited
23 to:

24 (1) Minimum standards for the screening and evaluation process of
25 children who may be gifted;

26 (2) minimum standards for a gifted evaluation of children who may
27 be gifted;

28 (3) minimum standards for gifted education;

29 (4) the content of a gifted education program;

30 (5) minimum standards for the reevaluation of the placement of a
31 gifted child; and

32 (6) minimum standards for procedural safeguards for gifted children
33 and parents of gifted children.

34 New Sec. 14. Subject to any rules and regulations adopted by the
35 state board pursuant to the special education for exceptional children act,
36 each board shall provide:

37 (1) A screening and evaluation process for the identification and eval-
38 uation of gifted children;

39 (2) gifted education for each identified gifted child; and

40 (3) gifted education for gifted children which enables them to partic-
41 ipate in accelerated or enrichment programs, or both, as appropriate, and
42 to receive services according to their intellectual and academic abilities
43 and needs.

1 New Sec. 15. (a) Nothing in this act is intended to reduce or elimi-
2 nate the protections afforded to a child who is eligible for special edu-
3 cation as a child with a disability.

4 (b) For a child who is gifted and eligible for special education as a
5 child with a disability, it shall not be necessary to conduct separate screen-
6 ing and evaluations, develop separate IEP and GEP, or use separate pro-
7 cedural safeguard processes to provide for such child's needs as both a
8 gifted child and a child with a disability.

9 (c) Except as specifically provided by this act, any child receiving
10 gifted education under an IEP developed prior to July 1, 2002, shall
11 continue to receive the gifted education under such IEP until a GEP is
12 developed for the child under the provisions of this act.

13 Sec. 16. K.S.A. 2001 Supp. 72-961, 72-962, 72-963, 72-966, 72-973,
14 72-983, 72-986, 72-987, 72-988, 72-990, 72-991 and 72-993 are hereby
15 repealed.

16 Sec. 17. This act shall take effect and be in force from and after its
17 publication in the statute book.

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43