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KANSAS SPECIAL EDUCATION OVERVIEW

Special Education State Aid

Current law provides for Special Education State Aid in the form of reimbursement for the excess costs associated with providing special education services. Excess costs include, but are not limited to, Medicaid replacement state aid, catastrophic aid, transportation aid, and special education teacher aid.

KSA 72-3422 sets the reimbursement rate for Special Education State Aid (also known as categorical aid) at 92.0 percent of total state excess costs, but provides for prorating state aid if the appropriation for Special Education State Aid does not equal 92.0 percent of excess costs. In any year when the appropriation for Special Education State Aid is not sufficient to cover 92.0 percent of statewide excess costs, state aid is distributed at a prorated amount for special education teacher aid.

Federal aid for special education remains relatively static and is provided both directly to school districts and through the Kansas State Department of Education (KSDE). Receipt of this federal aid requires a maintenance of effort by the State, meaning that expenditures for special education in the current fiscal year must be at least as much as expenditures for special education in the prior year. Fiscal years for the maintenance of effort can be either federal fiscal years or state fiscal years at the discretion of the State.

Special Education and Related Services Weighting (KSA 72-5157)

As enacted, the Kansas School Equity and Enhancement Act (KSEEA) includes a special education weighting. The weighting is calculated by dividing the amount of Special Education State Aid a district receives by the Base Aid for Student Excellence (BASE) for the current school year.

The resulting quotient is the special education weighting and is added to a school district's weighted full-time equivalent (FTE) enrollment. However, this weighting does not increase the amount of State Foundation Aid a school district is entitled to. As the amount of Special Education State Aid a district receives is defined as Local Foundation Aid, the value of the weighting is deducted when computing a district's State Foundation Aid entitlement.

The purpose of this weighting is to increase the amount of school districts' Total Foundation Aid for the purposes of calculating their Local Option Budget. No amendments have been made to the weighting since enactment of KSEEA.

Individuals with Disabilities Education Act (IDEA) Funding

The federal Individuals with Disabilities Act (IDEA) requires states to provide special education services to children with disabilities between the ages of 3 and 21. This includes children with developmental delays, hearing or visual impairments, emotional disturbance, or autism. IDEA requires each special education student to receive an individualized education plan (IEP) that identifies the services to be provided to the student. In Kansas, the Special Education for Exceptional Children Act (SEECA) was enacted in 1974 (KSA 72-3403 through 72-3441), and is generally the same as the federal law, but imposes additional special education requirements on school districts. These include:

- Identifying and providing services to gifted students;
- Using interventions in the regular education classroom before referring a student to special education; and
- Providing special education services to children who reside in the district but attend a private school.

KSDE provides training and technical assistance to school districts for the provision of special education services.

Eligibility

Before a child is determined to be eligible for special education services, a two-prong test of eligibility must be met, outlined by IDEA and SEECA. Initial evaluation of a child must include a variety of assessment tools and strategies to gather functional, developmental, and academic information. This includes information provided by the parent, educational needs of the child, and the content of a child's IEP, including information related to the involvement of the child in the evaluation, if appropriate¹.

The Kansas Special Education Process Handbook outlines two methods for evaluation: (1) "the child's response to scientific research-based intervention" and (2) "a pattern of strengths and weaknesses," outlined in federal regulations in identifying children with specific learning disabilities. In Kansas, both methods are allowable and appropriate to be used in determining eligibility for any of the areas of exceptionality. Evaluations use existing and new data from a variety of sources. A primary source of information comes from data collected in the provision of educational interventions. Interventions typically occur as part of the General Education Intervention (GEI) process, but data may also be collected from interventions conducted during the initial evaluation process.

When interpreting evaluation data from either, or both, methods of evaluation to make an eligibility determination, the evaluation team must ensure (1) the child meets the definition of one of the categories of exceptionality, and (2) as a result of that exceptionality, requires special education and related services.²

1 KSA 72-3428

2 KAR 91-40-1(k)(w) and 34 CFR 300.8

Prong 1: Determining Exceptionality

When considering the first prong of the two-prong test of eligibility, the evaluation team reviews initial evaluation data to determine whether a child has an exceptionality. “Exceptional children” means children with disabilities and children identified as gifted. “Child with a disability” means the following:

A child evaluated as having 1 of the 13 categories of disability outlined below and who, by reason thereof, requires special education and related services³:

Autism. Defined as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s academic performance;

Deaf-blindness. Co-occurring hearing and visual impairments that result in challenges that cannot be accommodated in special education programs solely for children with deafness and children with blindness;

Deafness. A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance;

Emotional disturbance. A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A pervasive mood of unhappiness or depression;
- A tendency to develop physical symptoms or fears associated with personal or school problems;

Hearing impairment. Impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s education performance, but is not included under the definition of deafness;

Intellectual disability. Significantly below-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance;

Multiple disabilities. Concomitant impairments, the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one of the impairments. Examples of multiple disabilities may be intellectual disability-blindness or intellectual disability-orthopedic impairment;

3 34 CFR 300.8

Orthopedic health impairment. A severe orthopedic impairment that adversely affects a child’s educational performance. This category includes impairments caused by a congenital anomaly, impairments caused by disease, and impairments from other causes (such as cerebral palsy, fractures, or burns that cause contractures);

Traumatic brain injury. An acquired injury to the brain cause by an external force, resulting in total or partial functional disability or psychosocial impairment, or both;

Visual Impairment, Including Blindness. An impairment in vision that, even with correction, adversely affects a child’s educational performance. This category includes both partial sight and blindness;

Speech or language impairment. Difficulty with speech or language. An example is stuttering. Other examples could include difficulty pronouncing words or making sounds with the voice. The category also includes language problems that make it difficult for children to understand words or express themselves;

Specific learning disability (SLD). The SLD category covers a specific group of learning challenges and conditions. These conditions may affect a child’s ability to read, write, listen, speak, reason, or do math. Examples include dyslexia or written expression disorder (also referred to as dysgraphia); or

Other health impairment. The Other Health Impairment category covers conditions that limit a child’s strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment. These conditions could include attention deficit disorder, attention deficit hyperactivity disorder, Tourette syndrome, epilepsy, or diabetes, if the condition adversely affects the child’s academic performance.

Additionally, IDEA adds the option to include “development delay” as a fourteenth disability category for children three through nine, at the discretion of the State. This category includes children with developmental delays ages three through nine, who experience developmental delays in at least one of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and who, by reason thereof, need special education and related services. Kansas does include “development delay” as a category of exceptionality.

The most common category of disability in Kansas is Specific Learning Disability (SLD), and according to the Congressional Research Service⁴, this is the most common category nationwide. The second most common category in Kansas, as well as nationwide, is speech and language impairment.

Prong 2: Determining Need for Special Education and Related Services

The second prong of the eligibility test is determining whether the child needs special education and related services as a result of the exceptionality. By definition, special education means “specially designed instruction.”⁵ Specially designed instruction means adapting the

4 [The Individuals with Disability Education Act: A Comparison of State Eligibility Criteria, Congressional Research Service](#), October 2020

5 KAR 91-40-1(kkk); 34 CFR 300.39(a)(1)

content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's exceptionality to ensure access of the child to the general education curriculum in order to meet the educational standards that apply to all children. Prior to referral for an initial evaluation, the school must have data-based documentation of:

- Providing appropriate instruction to the child in the regular classroom environment that was delivered by qualified personnel;
- Repeatedly assessing the child's academic achievement at reasonable intervals, which reflect formal assessment of the child's progress during instruction;
- Providing assessment results to the child's parents or guardians; and
- Assessment results indicating an evaluation is appropriate.⁶

If the evaluation team determines the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided in the regular classroom environment without the support of special education, the team may determine that the child needs special education and related services. If the data suggests the child's needs for instruction can be provided within the regular classroom environment without the support of special education and related services, the team must determine the child is not in need of special education and related services.

Once a child is identified as a child with a disability, the determination of services to be provided are based on the child's needs, not the child's category of disability. Children do not need to be identified with a label for a particular service they receive.

Individualized Education Plan (IEP)

An IEP is defined as a written statement for each student with an exceptionality, which describes the child's educational program and is developed, reviewed, and revised in accordance with federal and state special education laws and regulations. The IEP team includes parents, school professionals, the student (when appropriate), and personnel from other agencies as appropriate (when addressing transition). The IEP should assist the child in meeting the goals and standards of the educational system, as well as identified postsecondary goals. The IEP details services for each individual child and defines measurable annual goals for each eligible child. IEPs are reviewed at least once a year to determine whether the annual goals for the child are being achieved, and to revise the IEP as appropriate.

Developing the IEP

There are several factors the IEP team should consider when developing the IEP⁷:

Strengths of the child and concerns of the parents for enhancing the education of the child. The IEP team should identify the strengths of the child, and utilize those strengths

6 KAR 91-40-7(c)(1-2)

7 KSA 72-3429, KSA 75-53,101, and KAR 91-40-18 IEP Development and Content.

during the development of the IEP to assist in addressing the child's needs where possible. The strengths should be included in the present levels of academic achievement and functional performance of the child. Parents should also have the opportunity to express their concerns for enhancing the education of their child during the IEP meeting. The concerns of the parents must be considered by the IEP team, but the IEP team is not obligated to take specific action based on them.

Results of the initial evaluation or most recent evaluation. In developing each child's IEP, the IEP team must consider the results of the initial or most recent reevaluation of the child. This must include a review of valid evaluation data and the observed needs of the child resulting from the evaluation process, and, as appropriate, any existing data, including data from current classroom-based, local, and state assessments.

The academic, developmental, and functional needs of the child. The IEP team must consider the academic, developmental, and functional needs of the child. This includes a child's performance on state or district assessments and data from current classroom-based, local, and state assessments.

Behavioral concerns. In the case of a child whose behavior impedes the child's learning, or the learning of others, the IEP must consider behavioral interventions and supports, and other strategies, to address the behavior. Behavioral interventions and supports in the IEP are intended to prevent the behavior, not just provision consequences as a result of the behavior. The IEP team attempts to identify the cause of the behavior, usually through a functional behavioral assessment, to develop strategies to prevent the behavior from occurring again in the future.

Limited English proficiency. The IEP team must consider the language needs of a child with limited English proficiency, and how those needs relate to the development of the IEP. This may impact how service providers communicate with the student, and how progress is measured.

Communication needs. Consideration of a student's communication needs must be considered for each student; however, whether the student is deaf/hard of hearing, or has other exceptionalities impacts which considerations must be made. For children who are deaf/hard of hearing, the IEP team must consider the child's language and communication needs, including the opportunity for direct communication with peers and professional personnel in the child's language and communication mode, as well as opportunities for direct instruction in the child's language and communication mode.

For children with disabilities, the following factors must also be considered:

Braille. For a child who is blind or visually impaired, the IEP team must consider instruction in Braille. The use of Braille should be provided unless the IEP determines, after an evaluation of a child's reading and writing skills and needs, that instruction in Braille or the use of Braille is not appropriate for the child.

Assistive technology. The IEP team must determine whether the individual child needs an assistive technology device or service, and if so, the nature and extent to be provided.

Extended school year (ESY) services. The IEP team must consider the need for ESY services during time periods when other children, both disabled and non-disabled, would not

receive services. If the IEP team determines ESY services are necessary for the child to benefit from their education, the team must detail the type and amount of services required, including frequency, location, and duration of services, in the IEP. Schools cannot limit the availability of ESY services to particular categories of disability, or limit the type, amount, or duration of those necessary services. However, Kansas law does not permit the use of ESY services for children identified as gifted.

Notification to Kansas Department for Children and Families (DCF) Rehabilitation Services. When a student turns 16 years old, the IEP team must determine whether the needs of the student warrant notifying the district office of DCF's Rehabilitation Services.⁸ If the student may require vocational rehabilitation services, regardless of whether the student intends to move directly into the workforce or into education or training, notification to DCF may be appropriate. This notification is not a referral for services.

Physical education needs. The IEP team must consider the physical education needs of the child, which may require adapted physical education services. If adapted physical education is required, it should be addressed in the IEP.⁹

Potential harmful effects. When determining the placement of a student with a disability, the IEP team must consider the potential harmful effects of such placement to the child and the quality of services the child receives, regardless of where the child is and how the child has been evaluated.¹⁰

Content of the IEP

Evaluation data for a child with an exceptionality must identify each of the child's education needs that result from the exceptionality, provide baseline information, and describe how the exceptionality impacts the child's participation and progress in the general education curriculum. The IEP team must use applicable baseline data to develop measurable goals, including academic and functional goals that meet the child's needs and enable the child to be involved in and make progress in the general education curriculum.

The IEP for each exceptional child must include a statement of the child's present levels of academic achievement, and functional performance, including how the child's disability or giftedness affects the child's involvement and progress in the general education curriculum and, for children that take alternative assessments aligned with alternative achievement standards, a description of benchmarks or short-term objectives¹¹.

The IEP must also include the following:

Measurable annual goals. Measurable annual goals are descriptions of what a child can reasonably be expected to accomplish within a 12-month period with the provision of special education and related services.

8 KSA 75-53,101

9 KAR 91-40-3(c)

10 KAR 91-40-21(g)

11 KSA 72-3429(c), 34 CFR 300.320(a)(2)(ii)

Benchmarks or short-term objectives (only for students with disabilities).

Benchmarks or short-term objectives are required on the IEP only if the child with a disability takes an alternative assessment aligned to alternate achievement standards. This requirement, however, would not prohibit the use of benchmarks or short-term objectives to be used to measure progress toward meeting the measurable annual goals for any child with an exceptionality.

Measuring and reporting progress on annual goals. Once the IEP team has developed measurable annual goals for a child, the team must include a description of how the child's progress toward meeting the annual goals will be measured. These measures enable parents, children, and educators to monitor progress during the year, and if appropriate, to revise the IEP to be consistent with the child's instructional needs.

Participation in state assessment and district-wide assessment (only for students with disabilities). The IEP team must determine how the child with a disability will participate in state assessments and district-wide assessments. There are two options for each content area available to children with disabilities for the state assessments, (1) State assessments, and (2) Kansas Alternative Assessment (Dynamic Learning Maps). The IEP team must determine which assessment is appropriate for the child for each curricular area being assessed in that child's grade level during the upcoming IEP year.

Secondary transition (only for students with disabilities). Beginning at age 14, and updated annually, the IEP must contain (1) appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training and education, employment, and where appropriate, independent living skills; (2) the transition services, including appropriate courses of study needed to assist the child in reaching the stated postsecondary goals; and (3) 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 inter-agency responsibilities and needed linkages.

Age of majority. Beginning at age 17, the IEP team must inform the student and parents that at the age of majority (age 18 in Kansas), the rights under IDEA will transfer to the student. The school must document in the IEP, at least one year before the student turns 18, that the student has been informed that rights provided in federal and state law will transfer to the student. If the parents do not believe the child will be able to make educational decisions independently, they may consider obtaining a limited guardianship or other legal means to support the student when the student reaches the age of majority.

Statement of special education and related services. Each IEP must include a statement of the special education services; related services; supplemental aid and services (including accommodations) based on peer review research, to the extent possible, to be provided to the child; a statement of program modifications; and supports for school personnel that will be provided for the child to advance appropriately toward attaining annual goals, be involved in and make progress in the general education curriculum, participate in extracurricular activities, and be educated and participate with other children with exceptionalities and nonexceptional children in these activities. Each of these areas must be addressed in the IEP, even if the IEP indicates the child does not need a particular service.

Least restrictive environment. The least restrictive environment is the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who do not have

disabilities.¹² The IEP must contain an explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education class, and in extracurricular and nonacademic activities.¹³ Children with disabilities should only be removed from the general education environment if the nature and severity of the disability is such that education in general education classes with the use of supplementary aids and services or modifications cannot be achieved satisfactorily.¹⁴

12 KAR 91-40-1(II)

13 KSA 72-3429(c)(5)

14 KSA 72-3420(a)