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MEMORANDUM

To: 2022 Special Committee on Education
From: Office of Revisor of Statutes
Date: November 10, 2022
Subject: Special Education Law: IDEA and SEECA

**SPECIAL EDUCATION LAW:
INDIVIDUALS WITH DISABILITIES EDUCATION ACT & THE KANSAS
SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN ACT**

All children, including those with disabilities, have a right to a free appropriate public education. School districts are required to provide such education, including any special education and related services necessary to meet the academic needs of children with disabilities. This is achieved in Kansas primarily through the implementation of the federal individuals with disabilities education act (IDEA) and the Kansas special education for exceptional children act (SEECA). This memorandum will provide general information on both IDEA and SEECA.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

IDEA mandates special education services be provided to eligible children with disabilities from birth through age 21 and prescribes requirements for the provision of special education services by state and local education agencies.¹

IDEA is the primary federal law governing special education, but it is important to note that section 504 of the rehabilitation act and the Americans with disabilities act (ADA) play a role in special education because such acts prohibit disability discrimination.

¹ 20 U.S.C. § 1400 et seq. The full text of IDEA is available at <https://sites.edu.gov/idea>.

History and Framework

In 1972, legislation was introduced following two landmark court cases² that established the right to education for disabled children. The education for all handicapped children act was signed into law in 1975 by President Gerald Ford. The name of the act was changed in 1990 to IDEA when congress made amendments to the act. IDEA was amended again in 1997 and most recently in 2004.

The stated purpose of IDEA is to: (1) Ensure that children with disabilities have a free appropriate public education that emphasizes special education and related services designed to meet their needs and prepare them for further education, employment and independent living; ensure that the rights of children with disabilities and parents of such children are protected; and assist states, localities, educational service agencies and federal agencies in the education of children with disabilities; (2) assist states in the implementation of a statewide, comprehensive, coordinated, multidisciplinary system of early intervention services for infants and toddlers with disabilities and their families; (3) ensure that educators and parents have the necessary tools to improve educational results for children with disabilities; and (4) assess, and ensure the effectiveness of, efforts to educate children with disabilities.³

IDEA has four main parts: Part A provides the general provisions of the law (§§ 1400-1409). Part B provides how children ages 3 through 21 receive special education and related services (§§ 1411-1419). Part C provides early intervention services for infants and toddlers with disabilities (§§ 1431-1444). Part D provides for a national program to support and improve special education for children with disabilities (§§ 1450-1482). This memorandum will primarily focus on Part B: Services for school-aged children.

Implementation and Administration

IDEA places responsibility for ensuring a free and appropriate public education available to each child with a disability with state and local educational agencies. The state educational agency is responsible for ensuring that the requirements of IDEA are met and all educational programs for children with disabilities in the state meet the educational standards of the state

² *Pennsylvania Assn. for Retarded Children v. Commonwealth of Pennsylvania (PARC)*, 334 F. Supp 1257 (E.D. Pa. 1971) and *Mills v. Board of Education of District of Columbia*, 348 F. Supp 866 (D.D.C., 1972).

³ 20 U.S.C. § 1400.

educational agency. States may provide additional protections beyond those required by IDEA, but at a minimum, states must provide all the protections of IDEA.

IDEA requires local educational agencies to have in effect policies, procedures and programs that are consistent with the state policies and procedures required by IDEA.⁴

Special Education and Related Services Requirements

IDEA generally requires school districts to provide a free appropriate public education (FAPE) to children with disabilities in the least restrictive environment (LRE); requires schools to identify and evaluate students who may have disabilities at no cost to families (child find); requires schools to offer special education and related services to meet a child’s needs through an individualized education program (IEP) if such child has a qualifying disability and needs special education to make progress in school; and defines the rights of children and parents regarding special education.

IDEA defines “special education” as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings and instruction in physical education. IDEA defines “related services” as 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 individualized education program of the child, 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 a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.⁵

Specifically, IDEA requires states to address the following: (1) Full educational opportunity goal; (2) child find; (3) evaluation/eligibility; (4) a free appropriate public education;

⁴ 20 U.S.C. §§ 1412 and 1413.

⁵ 20 U.S.C. § 1401.

(5) least restrictive environment; (6) individualized education program; (7) transition; (8) procedural safeguards; (9) confidentiality; and (10) private schools.⁶

Full Educational Opportunity Goal

States must establish a goal of providing full educational opportunity to all children with disabilities and a detailed timeline for accomplishing that goal.

Child Find

School districts are required to identify, locate and evaluate all children with disabilities, even if the child is not attending a school of such school district.⁷ This requirement applies to children from birth through age 21, including children with disabilities who are homeless, wards of the state, attending private school, without regard to the severity of their disabilities and who are in need of special education and related services.

Once a child is identified by child find as possibly having a disability and in need of special education, the school district will seek permission from parents to conduct an initial evaluation of such child. Parents may also request their child be evaluated for a disability under child find.

School districts are required to conduct ongoing public notice, screening, general education interventions and evaluations to ensure that children with disabilities are identified appropriately.

Evaluation/Eligibility

School districts are required to conduct a full and individual initial evaluation of a child before such child can receive special education and related services under IDEA. Either a parent, a school district or state agency may initiate a request for an initial evaluation. The initial evaluation shall determine whether the child is a child with a disability and what educational needs the child has. To qualify as a child with a disability, the child must meet two requirements: (1) Have a specific exceptionality; and (2) as a result of that exceptionality need special education and related services in order to access and make progress in the general education curriculum.

A child with a disability means a child evaluated in accordance with the law as having an intellectual disability, a hearing impairment (including deafness), a speech or language

⁶ 20 U.S.C. § 1412.

⁷ Id.

impairment, a visual impairment (including blindness), an emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness or multiple disabilities; and who by reason of such disability, needs special education and related services.

The school district must conduct a comprehensive evaluation using a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. This information, which includes information provided by the parent, may assist in determining whether the child is a child with a disability and the content of the child’s IEP to enable the child to be involved in and make progress in the general education curriculum.

A reevaluation must occur at least once every three years unless the parent and the school district agree that reevaluation is unnecessary.

Free Appropriate Public Education (FAPE)

States are required to provide each child a free appropriate public education (FAPE) at no cost to the families in a public school setting whenever possible that meet’s the state’s educational standards and the child’s individualized education program (IEP).⁸ The U.S. Supreme Court has interpreted “appropriate” to be primarily procedural compliance with IDEA and secondarily substantive in that the child’s IEP must be reasonably calculated to yield a benefit.⁹ Recently, the Court determined that the substantive FAPE requirement of IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁰

Least Restrictive Environment (LRE)

LRE refers to the educational environment where special education and related services are to be provided. LRE means the placement closest to a regular education environment possible that is still capable of meeting the needs of the child with a disability, thus the LRE varies from child to child.¹¹ IDEA provides that children with disabilities must be educated in a regular classroom with regular peers to the maximum extent appropriate. Children may be educated

⁸ 20 U.S.C. § 1412.

⁹ *Bd. Of Educ. V. Rowley*, 458 U.S. 176 (1982).

¹⁰ *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-I*, 580 U.S. 386, 137 S. Ct. 988 (2017).

¹¹ 20 U.S.C. § 1412.

separately only when the nature or severity of a child's disability prevents the child from being successful in a typical classroom, even with special accommodations and services.

Placement decisions must be made with consideration of each child's unique educational needs and circumstances. When determining the LRE, those making the placement determination must consider whether the child's IEP can be implemented in the regular education environment with the use of supplementary aids and services; whether placement in the regular classroom will result in any potential harmful effect on the child or the quality of services needed; and whether placement in the regular classroom, even with appropriate behavioral interventions, will significantly impair the learning of classmates.¹²

Individualized Education Program (IEP)

Once a child is identified as eligible for special education or related services, IDEA requires schools provide special education services as outlined in the child's individualized education program (IEP). An IEP is a written document for each child with a disability that is developed, reviewed, and revised in accordance with IDEA. An IEP that includes a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals; a description of how the child's progress toward meeting the annual goals will be measured; a statement of the special education and related services and supplementary aids and services to be provided to the child; an explanation of the extent, if any, to which the child will not participate in the regular class and activities; the projected date for beginning services and anticipated frequency, location and duration of such services; and when the child is 16, appropriate and measurable postsecondary goals and the services needed to meet those goals.¹³ IEP goals must be aligned with grade-level standards for all children with disabilities.

Transition

Transition services means a coordinated set of activities for a child with a disability that: (1) Is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education,

¹² 34 C.F.R. § 300.

¹³ 20 U.S.C. § 1414(d)(1)(A).

integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation; (2) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services may be special education if such services are provided as specially designed instruction. Transition services may be a related service if such services are required to assist a child with a disability to benefit from special education.

Procedural Safeguards & Parents' Rights

IDEA provides parents of children with disabilities with certain protections. A copy of the procedural safeguards must be provided to parents once per school year and a copy must also be given to parents upon certain events, including an initial referral for an evaluation, parent request for an evaluation, receipt of the first state complaint and first due process complaint in a school year, as required for certain discipline procedures and request by a parent.

Part B of IDEA requires the following procedural safeguards be made available to parents: (1) Independent educational evaluations; (2) prior written notice; (3) parental consent; (4) access to education records; (5) the opportunity to present and resolve complaints through the due process complaint and state complaint procedures; and (6) the availability of mediation.

IDEA provides specific options for resolving disputes between parents and education agencies, including state complaints, mediation and due process complaints.

Confidentiality

Confidentiality of education records is a right held by all students in public schools and their parents. IDEA states that the secretary shall take appropriate action to ensure the protection of the confidentiality of any personally identifiable data, information and records collected or maintained by the secretary, state educational agencies and local educational agencies.

Private Schools

IDEA provides that children with disabilities in private schools and facilities are provided special education and related services, in accordance with the IEP, at no cost to their parents, if such students are placed in such school or facility by the state or school district as a means of carrying out the requirements of law. If the school district made a free appropriate public education available to the child and the parent places the child in a private school or facility, the school district is not required to pay for the cost of education of a child with a disability at such private school or facility.¹⁴

Funding

The IDEA grants to states program provides grants to states to offset the excess costs of providing special education and related services to children with disabilities. To be eligible for such funding, states must serve all children with disabilities from age 3 through 21 and provide a free appropriate public education to such children.

Funds are allocated first in an amount equal to the amount that a state received for fiscal year 1999. If the total program appropriation increases over the previous year, 85% of the remaining funds are allocated based on the number of children in the general population in the age range for which the state guarantees FAPE to children with disabilities and 15% of the remaining funds are allocated based on the number of children living in poverty that are in the FAPE age range.

The IDEA authorizes a portion of IDEA funds to be used by the state education agency for state-level purposes. Any funds not set aside by the state must be passed on to school districts.

IDEA also requires each state to maintain its level of state financial support for special education and related services from one year to the next. IDEA also requires local maintenance of effort by school districts to maintain total expenditures from one year to the next. School districts may use up to 15% of their allocation for early intervening services to address the needs of students who require additional academic and behavioral supports to succeed, but who are not identified as needing special education.¹⁵

¹⁴ 20 U.S.C. § 1412(a)(10).

¹⁵ 20 U.S.C. § 1411.

Other Provisions

Advisory Panel

IDEA requires states to establish and maintain an advisory panel to provide policy guidance on special education and related services for children with disabilities in the state.¹⁶

Discipline

When a child's behavior impedes the child's learning or the learning of other children, the IEP team must consider, and when necessary to provide FAPE, include in the IEP, the use of positive behavioral interventions and supports to address such behavior.

Schools may remove a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting, another setting or suspension for up to 10 consecutive school days in a school year, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, so long as those removals do not constitute a change of placement.

A disciplinary removal of more than 10 consecutive school days or a series of removals that total more than 10 school days in a school year that constitute a pattern of removals is considered a change of placement due to the length of each removal, the total amount of time that a child has been removed, and the proximity of the removals to one another.

Within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parent and relevant members of the child's IEP team must first conduct a manifestation determination through reviewing relevant information in the student's file, including the IEP, teacher observations and relevant information provided by the parents. In a manifestation determination, the group is required to determine if the child's behavior was caused by, or had a direct and substantial relationship to, the child's disability, or if the behavior was the direct result of the school's failure to implement the IEP. If the behavior is determined to be a manifestation of the child's disability, the IEP team either must conduct a functional behavioral assessment and implement a behavioral intervention plan for the child or review an existing behavioral intervention plan and modify it, if necessary, to address the behavior.

Also, unless the parent and the school district agree to a change in placement, the child is to be returned to the child's original placement.

¹⁶ 20 U.S.C. § 1412(a)(21).

SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN ACT

IDEA imposes certain requirements on states regarding the provision of special education and related services. Generally, Kansas meets the requirements of IDEA through the Kansas special education for exceptional children act (SEECA) and the rules and regulations adopted thereunder. The requirements of SEECA and the rules and regulations adopted pursuant to SEECA are much the same as IDEA with a few additional provisions. This portion of the memorandum describes the components of SEECA that are separate from the components of IDEA.

History and Framework

Prior to 1974, only half of children with a disability were receiving special education services. As a result, the legislature passed SEECA in 1974 which required school districts to develop special education programs by July 1979.¹⁷

The stated purpose of SEECA is “to provide for educational opportunities which will contribute to the development of each exceptional child in this state in accord with his abilities and capacities.”¹⁸

School Finance Litigation

The constitution of the state of Kansas does not explicitly mention special education or related services. However, the Kansas supreme court has indicated that special education funding is part of the overall school finance funding formula, which must be in compliance with Article 6, Section 6(b) of the constitution.

At the beginning of the *Montoy v. State* litigation, the plaintiffs challenged the overall constitutionality of the state’s school finance system, including a specific challenge to the constitutionality of the state’s funding for special education and related services.¹⁹ In 2003, the district court held the state school finance system unconstitutional.²⁰ On the issue of special education funding, the district court found that the state “further diminishes the availability” of general educational funds because the legislature only reimburses 85% of the special education

¹⁷ Martinez, Dr. Sherrill and Lue Ann Snider, “A History of Kansas Education” (Kansas Department of Education 2001).

¹⁸ 1974 HB 1672 Sec. 1.

¹⁹ *Montoy v. State*, 275 Ka. 145, 147-50 (2003) (*Montoy I*).

²⁰ *Montoy v. State*, No. 99-C-1738, 2003 WL 22902963, at 49 (Kan. Dist. Ct. Dec. 2, 2003).

excess costs which causes districts to transfer at least 15% of their general fund dollars to provide for special education.²¹

In *Montoy II*, the Kansas supreme court held that the district court's findings were supported by substantial competent evidence and upheld the district court's ruling that the state's school finance system was unconstitutional.²² The legislature responded to the Court's ruling by increasing special education funding at the statewide excess costs reimbursement rate. In *Montoy IV*, the Court approved of the legislature's actions and determined the school finance formula was in constitutional compliance.²³

In the *Gannon v. State* school finance litigation, as part of plaintiffs arguments upon the constitutionality of the school finance system as a whole, plaintiffs argued that the legislature was not sufficiently funding special education state aid at the 92% rate provided in statute.²⁴ In *Gannon V*, the Kansas supreme court held that the issue of underfunding special education state aid may be relevant to whether the total funding of the school finance system is adequate, but the school finance formula is not rendered structurally inadequate because the 92% entitlement is not reached.²⁵

In *Gannon VI*, when reviewing the increases made to the school finance system, the Court noted that the legislature increased special education funding by \$44.4 million for the 2018-2019 school year and that it also provided for an additional \$7.5 million in each year until 2022-2023.²⁶ The Court mentioned Plaintiff's argument that the increase only brought the funding to 83% of statewide excess costs but the Court did not further discuss the matter.

In *Gannon VII*, the Court noted that the legislature increased special education funding along with a multitude of other school finance increases.²⁷

Implementation and Administration

SEECA requires the state board to ensure the provisions of IDEA and SEECA are met, to adopt and administer the state plan, enact rules and regulations, adopt dispute resolution

²¹ *Id.*

²² *Montoy v. State*, 279 Kan. 817 (2005).

²³ *Montoy v. State*, 282 Kan. 9, 21-22 (2006) (*Montoy IV*).

²⁴ *Gannon v. State*, 298 Kan. 1107, 1116 (2014) (*Gannon I*).

²⁵ *Gannon v. State*, 306 Kan. 1170, 1184-85 (2017) (*Gannon V*).

²⁶ *Gannon v. State*, 308 Kan. 372, 381, (2018) (*Gannon VI*).

²⁷ *Gannon v. State*, 309 Kan. 1185, 1189-90 (2019) (*Gannon VII*).

procedures, ensure that all educational programs for exceptional children are under the general supervision of individuals who are responsible for educational programs for exceptional children and that such individuals meet the educational standards prescribed by the state board.

Additionally, SEECA imposes certain responsibilities on local boards of education, including requiring such boards to adopt and implement procedures to assure that all exceptional children in need of special education and related services are identified, located and evaluated and to provide a free appropriate public education for exceptional children.²⁸

SEECA also requires that, except as otherwise provided in statute, it is the “duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child’s IEP or to provide for such services privately.”²⁹

Differences between IDEA and SEECA Special Education Requirements

IDEA requires that all children, including those with disabilities, have access to a free appropriate public education, provides the rights of such children and their parents and prescribes the responsibilities of state and local educational agencies in ensuring those rights are provided. SEECA and its rules and regulations provides the same requirements and rights as IDEA with a few additional requirements not imposed by IDEA. Those additional requirements include the following:

- Gifted children are included in the definition of exceptional children and are eligible for special education and related services.³⁰
- Exceptional children who attend private school may have an IEP if requested.³¹
- Parental consent is required if there is a substantial change in placement or material change in services.³²
- The child’s IEP must include postsecondary goals and transition services necessary to achieve such goals beginning at the age of 14 (instead of 16).³³

²⁸ K.S.A. 72-3410.

²⁹ K.S.A. 72-3421(a).

³⁰ K.S.A. 72-3404(g).

³¹ K.S.A. 72-3462 and K.A.R. 91-40-43.

³² K.S.A. 72-3430.

³³ 72-3429(c)(8).

- A parent may appeal the written decision of the state complaint investigator.³⁴
- Special education due process hearing officers are required to be licensed attorneys.³⁵
- Before a child can be evaluated for special education and related services, general education interventions must be implemented, or the school must be able to demonstrate that such interventions are inadequate.³⁶
- A written evaluation report is required for all children who are evaluated for special education and related services, not just for those with a special learning disability.³⁷
- Facilities for exceptional children are required to be comparable to general education facilities and shall provide age-appropriate environments for exceptional children.³⁸

Funding

Special Education State Aid (Categorical Aid)

Special education state aid is provided to school districts to assist with the costs of providing special education and related services required by IEPs that are over and above the regular education that all students are entitled to receive. Special education state aid is provided for the following four types of special education expenditures distributed in the following order:

- Medicaid replacement state aid;
- Catastrophic state aid;
- Transportation aid; and
- Special education teacher aid.

K.S.A. 72-3422 requires the state board to determine the amount of special education state aid each school district shall receive for the next school year based on the excess costs calculation process provided in the statute. Special education state aid provides reimbursement based on the statewide excess costs. To calculate statewide excess costs, K.S.A. 72-3422(a)(1) through (10) generally requires the state board to:

- Determine the total amount of expenditures of all school districts for the provision of special education and related services;

³⁴ K.S.A. 72-3430 and K.A.R. 91-40-51(f).

³⁵ K.A.R. 91-40-29(b)(1)(A).

³⁶ K.A.R. 91-40-7(c).

³⁷ K.A.R. 91-40-10(a)(1).

³⁸ K.A.R. 91-40-52(d).

- Subtract the amount of regular education funding that districts receive for students who receive special education and related services;
- Subtract other dedicated sources of special education funding such as federal funding and Medicaid funding.

K.S.A. 72-3422(a)(11) then provides that school districts shall be entitled to receive special education state aid at a rate of 92% of the statewide excess costs. If the amount appropriated for special education state aid is insufficient to meet each school district's entitlement, state law provides that reductions shall be prorated among all districts.³⁹ All special education state aid moneys are required to be deposited in each school district's special education fund.⁴⁰

Special Education and Related Services Weighting

K.S.A. 72-5157 provides for a special education and related services weighting that is used to calculate a school district's total foundation aid but is then subtracted from total foundation aid as a component of local foundation aid, so the special education and related services weighting does not impact the amount of state foundation aid a school district is to receive.⁴¹ Instead, the special education and related services weighting increases the total funding school district's use to determine and levy their local option budget.

The weighting is determined by dividing the amount of special education state aid a district receives pursuant to K.S.A. 72-3422 by the BASE aid amount for the current school year.

³⁹ K.S.A. 72-3423.

⁴⁰ K.S.A. 72-3422(f).

⁴¹ K.S.A. 72-5132.