

# CHAPTER 3

## INITIAL EVALUATION AND ELIGIBILITY

### INTRODUCTION

As discussed in Chapter 2, the Kansas child find process is intended to identify children who may be in need of special education services. Child find includes early childhood screening for young children from birth to age 5, and general education interventions (GEI) for children enrolled in kindergarten through 12th grade. Information obtained from screening and general education interventions will assist teams in making decisions about referrals for initial evaluation. An appraisal of the extent of the presenting concern, the effectiveness of interventions tried, and the degree to which the interventions require substantial resources are important to consider when deciding whether a child should be referred for possible special education services, and are essential in planning and conducting the initial evaluation after a referral has been made. When teams conducting general education interventions begin to question whether the child might be a child with a disability (birth to age 5) or a child with an exceptionality (Kindergarten through age 21), or when the team begins to question whether the child might need specially designed instruction beyond what can be provided through general education, then a referral for an initial evaluation needs to be considered. Also, regardless of the screening and general education intervention processes used in schools, a parent or adult student may request an evaluation at any time.

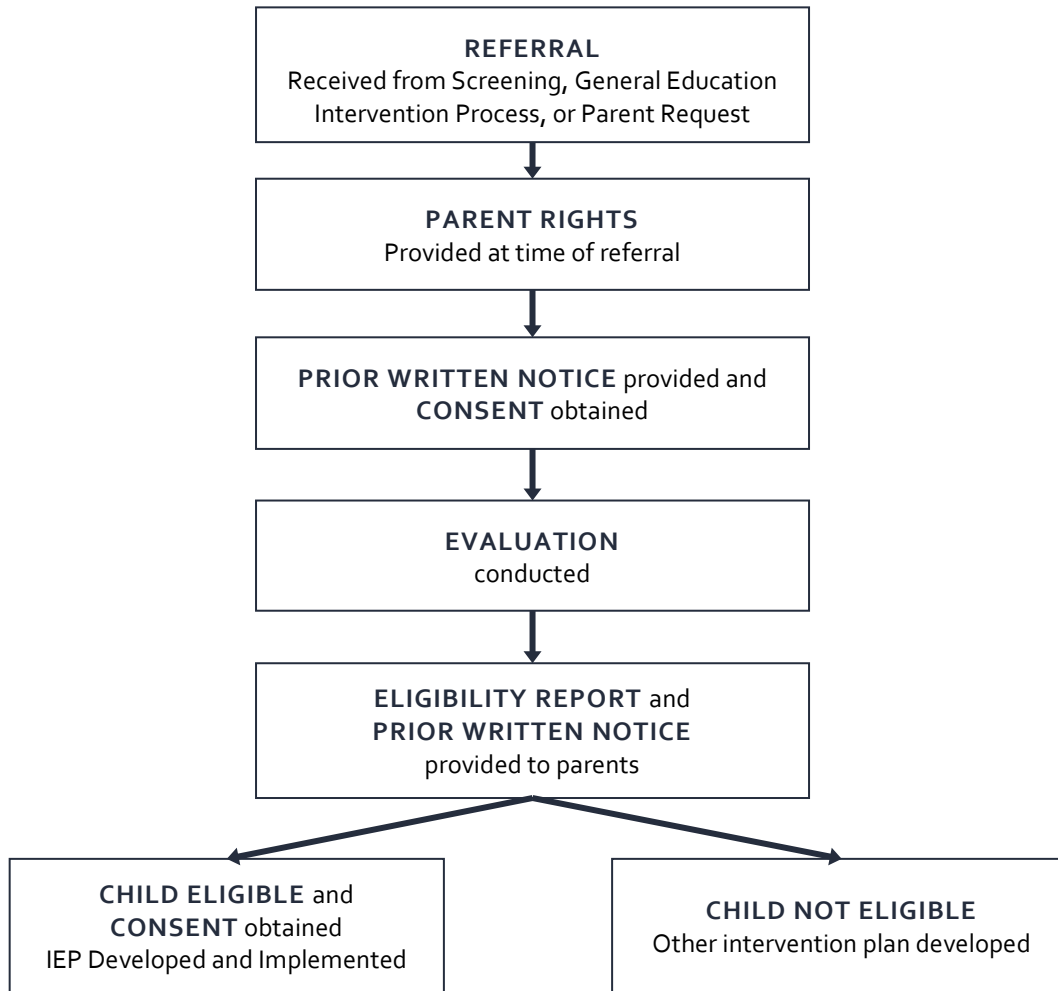
An initial evaluation involves the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to assist in determining if the child is eligible for special education. A two-pronged test for eligibility: (1) whether the child is a child with an exceptionality (disability or giftedness); and (2) by reason thereof, has a need for special education and related services, has driven eligibility decisions for many years. However, it is clear more than ever in the law that evaluations are incomplete if the evaluation does not result in the determination of the present levels of academic achievement and functional performance (related developmental needs) of the child (K.S.A. 72-3428(b)(1); K.A.R. 91-40-8(a)(c)(2); 34 C.F.R. 300.305(a)(2)(i)–(iii)). This shifts the focus of the initial evaluation from access to services to what the child needs to enable him or her to learn effectively and to participate and progress in the general education curriculum.

This chapter includes information on the required elements of the process to conduct an initial evaluation and determine eligibility, and suggests ways to synthesize the team process at the building level. The initial evaluation process begins when a referral for initial evaluation is made and applies to all children beginning at age 3.

The following topics related to initial evaluation are discussed within this chapter:

- A. Referral for Initial Evaluation
- B. Prior Written Notice and Request for Consent
- C. The Evaluation Team
- D. Timeline for Conducting the Initial Evaluation
- E. Conducting the Evaluation
- F. Eligibility Determination and Documentation
- G. Prior Written Notice for Identification
- H. Independent Educational Evaluation

## INITIAL EVALUATION



### A. REFERRAL FOR INITIAL EVALUATION

Referrals for initial evaluation may come from a variety of sources. These include:

- Early Childhood Screening
- Part C Infant-Toddler Program
- General Education Intervention Team (if using an individual problem-solving team) or Grade/Content Area Collaborative Team (if using an MTSS process)
- Parents
- Self-referral by adult student

A referral for an initial evaluation is made whenever it is suspected that a child may be a child with an exceptionality. For a preschool child the referral may be a result of screening described in K.A.R. 91-40-7(b), or from a Part C Infant-Toddler program. A school age child would participate in general education interventions (GEI) prior to the referral. As a result of GEI, the school would have data-based documentation of repeated assessments of achievement at reasonable intervals, that indicate the instruction and educational interventions and strategies presented to the child in the general education setting were not adequate and indicated an evaluation for special education is appropriate (K.A.R. 91-40-7(b), (c); 34 C.F.R. 300.309(c)(1)). Additionally, a parent or adult student may request an evaluation at any time.

Upon referral for an initial evaluation, regardless of the source, the first action the school must take is to provide the parents, or the adult student, a copy of the Parent Rights Notice (procedural safeguards) available to them (K.S.A. 72-3430(e); 34 C.F.R. 300.503). (See Parent Rights Notice at <https://www.ksde.gov/Default.aspx?tabid=544>)

**K.S.A. 72-3430. Parental rights.**

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

**K.A.R. 91-40-7. Child find.**

(b) Each board's policies and procedures under this regulation shall include age-appropriate screening procedures that meet the following requirements:

- (1) For children younger than five years of age, observations, instruments, measures, and techniques that disclose any potential disabilities or developmental delays that indicate a need for evaluation, including hearing and vision screening;
- (2) for children from ages five through 21, observations, instruments, measures, and techniques that disclose any potential exceptionality and indicate a need for evaluation, including hearing and vision screening as required by state law; and
- (3) implementation of procedures ensuring the early identification and assessment of disabilities in children.

(c) Any board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:

- (1) School personnel have data-based documentation indicating that general education interventions and strategies would be inadequate to address the areas of concern for the child.
- (2) School personnel have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met:
  - (A) The child was provided with appropriate instruction in regular education settings that was delivered by qualified personnel.
  - (B) The child's academic achievement was repeatedly assessed at reasonable intervals that reflected formal assessment of the student's progress during instruction.
  - (C) The assessment results were provided to the child's parent.
- (3) The parent of the child requests, and gives written consent for, an evaluation of the child, and the board agrees that an evaluation of the child is appropriate.

## B. PRIOR WRITTEN NOTICE AND REQUEST FOR CONSENT

Whenever a child has been referred for an evaluation, the school must provide Prior Written Notice to the parents that describe any evaluation procedures the school proposes to conduct (K.S.A. 72-3430(b)(2); 34 C.F.R. 300.304(a)). In addition, there are standard components of content the notice must contain. The purpose of providing notice to the parents is so they understand what action the public agency is proposing (in this case, to conduct an initial evaluation) and the basis used for determining the action is necessary. The Prior Written Notice must include:

- 1) A description of the action proposed by the agency;
- 2) An explanation of why the agency proposes the action;
- 3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action (K.S.A. 72-3428(b); K.A.R. 91-40-27(b); 34 C.F.R. 300.304(a)(1));
- 4) A statement that the parents have protection under the procedural safeguards and how a copy of the procedural safeguards can be obtained;
- 5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards, and
- 6) A description of other options considered and the reasons why those options were rejected; and,
- 7) A description of other factors that is relevant to the agency's proposal. (K.S.A. 72-3432, 34 C.F.R. 300.503(b)).

(See Prior Written Notice for Evaluation or Reevaluation form at <https://www.ksde.gov/Default.aspx?tabid=544>)

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the Local Education Agency (LEA) must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, that the parent understands the content of the notice. The school must have written evidence that this has been done (K.A.R. 91-40-26(b), (c); 34 C.F.R. 300.503(c)).

### 1. Preparing the Prior Written Notice

After the school receives the referral for an initial evaluation the school designates specific staff members to engage in preparatory activities to determine whether they will propose to conduct an evaluation and what procedures the evaluation will include (such as existing or new assessment tools and strategies). The school staff will consider information provided in the referral or in the parent request for an evaluation and in the child's file including information collected during general education interventions. The staff will then prepare the Prior Written Notice of proposed action to provide to the parent. Usually, this notice will inform parents that the school is proposing to conduct the evaluation. In some cases, however, the school staff may determine that there is not enough evidence to support conducting an initial evaluation and would, therefore, prepare Prior Written Notice of the refusal to conduct the initial evaluation.

The first activity the school staff should conduct is a review of existing data that is currently available including evaluations and information provided by the parents, current classroom-based, local, or state assessments, and classroom-based observations, and observations by teachers and related service providers; and the child's response to scientifically, research-based interventions, if implemented. The review of existing data, as part of the evaluation, may be conducted without a meeting and without consent from the parents (K.A.R. 91-40-8(c), (d); K.A.R. 91-40-27(e); 34 C.F.R. 300.305(b); 34 C.F.R. 300.300(d)(1)). Once the team determines that no additional data are needed, parent consent should be obtained to then conduct the evaluation based on that existing data. The Prior Written Notice would include: (1) a statement of this fact and the reasons for it; and (2) a statement of the right of the parents to request additional assessments to determine whether the child is a child with an exceptionality. Parent consent to conduct the initial evaluation is required, whether or not additional data is needed.

The purpose of reviewing existing data is to identify what additional data, if any, are needed to determine:

- a. if the child is a child with an exceptionality;
- b. whether the child needs special education and related services;
- c. the educational needs of the child;
- d. the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- e. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (K.S.A. 72-3428(i)(2); K.A.R. 91-40-8(c); 34 C.F.R. 300.305(a)(2))

When preparing the prior written notice of its proposal to conduct an initial evaluation, the school staff must plan which assessments and other evaluation measures may be needed to produce the data needed to meet the requirements of eligibility determination (K.A.R. 91-40-8(e)(1); 34 C.F.R. 300.305(c)). Every evaluation should be approached and designed individually based on the specific concerns of the child to be evaluated and existing data. Thoughtful planning is required to insure the use of appropriate tools to collect the data needed, while eliminating time spent collecting information that is either unnecessary or overly time-consuming for no clear purpose. It would be inappropriate to use the same battery of assessments for all children or to rely on any single tool to conduct an evaluation.

To ensure that the necessary and sufficient data will be collected as part of the evaluation, school staff are reminded of the importance of using a variety of assessment tools and strategies to collect relevant functional, developmental, and academic information about the child. There are also requirements that each child be observed in the child's learning environment which will also need to be included on the Prior Written Notice. The team must ensure that each evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. All appropriate domains should be considered via review of screening and/or GEI data. If potential educationally related deficits are suggested by screening, then the evaluation must provide in-depth assessment in the domain. If screening suggests adequate functioning, then in-depth assessment may be wasteful and irrelevant. In addition to these considerations, the proposed evaluation must yield information needed to rule out any exclusionary criteria when making eligibility decisions, and therefore should plan to collect any needed information related to the exclusionary criteria: lack of instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency (K.A.R. 91-40-10(c); 34 C.F.R. 300.306(b)).

In addition to the exclusionary factors discussed above, there are additional requirements to consider when evaluating a child suspected of having a specific learning disability. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group which conducts the evaluation must consider, as part of the evaluation:

- (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of child progress during instruction, which was provided to the child's parents. (K.A.R. 91-40-7(c)(3); 34 C.F.R. 300.309(b))

Appropriate instruction in reading includes the essential components of reading instruction as defined in the Elementary and Secondary Education Act as phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies. Often this information will have been collected before a child is referred for an initial evaluation; however, it is important to plan to collect it as part of the evaluation if it has not been collected prior to the evaluation.

After the review of existing data, there must be a determination of what, if any, data in addition to the existing data, will be collected during the evaluation to enable the team to complete all requirements of evaluation and eligibility including the evaluation report. The Prior Written Notice must be completed to reflect the data that will be collected as part of the evaluation. (See Prior Written Notice and Request for Consent for Evaluation at <https://www.ksde.gov/Default.aspx?tabid=544>).

#### **a. Requirements if No Additional Data are Needed**

If the school staff determine that no additional data are needed to determine whether the child is a child with an exceptionality, and to determine the child's educational needs, the school must notify the parents

- (1) of that determination and the reasons for it; and
- (2) the right of the parents to request an assessment to determine whether the child is a child with an exceptionality, and to determine the educational needs of the child (K.A.R. 91-40-8(e)).

The school district is not required to conduct the assessment described in (2) above unless requested to do so by the child's parents. In addition, if the parents request an assessment of their child, the school district may refuse to do so, but it must provide the parents with Prior Written Notice of the refusal to conduct the assessment and the reasons for the refusal. The parents may request mediation or due process if they want the assessment conducted. (See Prior Written Notice and Consent for Initial Evaluation form at <https://www.ksde.gov/Default.aspx?tabid=544>).

#### **b. Requirements if Additional Data are Needed**

If the school staff determine that additional data are needed, the staff members should plan who will collect it and plan to ensure all data will be collected within the evaluation timeline. The procedures to be used to collect the data should be described on the Prior Written Notice for the initial evaluation and provided to the parents for their consent.

#### **K.S.A. 72-3428. Initial evaluation of children prior to provision of services; procedure; duties of IEP team.**

- (i) As part of an initial evaluation, if appropriate, and as part of any reevaluation under this section, the IEP team and other qualified professionals, as appropriate, shall:
- (1) Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and
  - (2) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
    - (A) Whether the child is an exceptional child and the educational needs of the child, or in the case of a reevaluation of a child, whether the child continues to be an exceptional child and the current educational needs of the child;
    - (B) the present levels of academic and related needs of the child;
    - (C) whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    - (D) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

#### **K.A.R. 91-40-8. Evaluations.**

- (c) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements:
- (1) The evaluation team shall review existing evaluation data on the child, including the following information:
    - (A) Evaluations and information provided by the parent of the child;
    - (B) current classroom-based, local, and state assessments and classroom-based observations; and
    - (C) observations by teachers and related services providers.
  - (2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed to determine the following matters:
    - (A) Whether the child has a particular category of exceptionality or, in the case of a reevaluation of a child, whether the child continues to have such an exceptionality;
    - (B) what the present levels of academic achievement and educational and related developmental needs of the child are;
    - (C) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    - (D) whether, in the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
- (d) The team described in subsection (c) may conduct its review without a meeting.
- (e) (1) If the team described in subsection (c) determines that additional data is required to make any of the determinations specified in paragraph (2) of subsection (c), the agency, after giving proper written notice to the parent and obtaining parental consent, shall administer those tests and evaluations that are appropriate to produce the needed data.

#### **K.A.R. 91-40-10. Eligibility determination.**

- (c) An evaluation team shall not determine a child to be an exceptional child if the determinant factor for that eligibility determination is the child's lack of appropriate instruction in reading or mathematics or limited English proficiency, and if the child does not otherwise qualify as a child with an exceptionality.

#### **K.A.R. 91-40-27. Parental consent.**

- (e) An agency shall not be required to obtain parental consent before taking either of the following actions:

- (1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or
- (2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.

## 2. Request for Consent

The school must obtain informed consent from the parent of the child before conducting the evaluation (K.A.R. 91-40-27(a)(1); 34 C.F.R. 300.300(a)). In determining that informed consent is obtained, the following must be ensured (K.A.R. 91-40-1(l); 34 C.F.R. 300.9):

- a. The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
- b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- d. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

## 3. Failure to Respond or to Provide Consent

The school must make reasonable attempts to obtain consent from the parents to conduct the initial evaluation. Reasonable attempts are defined as at least 2 contacts by 2 different methods (phone calls, letters, visits, email, etc.) and documentation of such attempts should be kept including detailed records of telephone calls made or attempted and the results, copies of written correspondence sent to the parents and their response if any, and visits made to the parents' home or place of employment, and the results, if any, from the parents (K.A.R. 91-40-27(g); K.A.R. 91-40-17(e)(2); 34 C.F.R. 300.322(d)(1)).

If the parent does not provide (refuses) consent or fails to respond to a request to provide consent for an initial evaluation, the school may, but is not required to, pursue the initial evaluation by utilizing mediation or by requesting a due process hearing. The school does not violate its obligation for Child Find or for conducting an initial evaluation if it declines to pursue the evaluation (K.A.R. 91-40-27(f)(1), (3); 34 C.F.R. 300.300(a)(3)). Additionally, under the disciplinary protections, the school would not be deemed to have knowledge of the child's disability if the parent has not allowed an evaluation or refused services; or the child has been evaluated and determined not to have a disability (K.S.A. 72-3436(c)).

The district is required to locate, identify, and evaluate children who are home schooled, but not required to provide services unless the child is enrolled in a public school. If the parent of a child who is home schooled or voluntarily placed in a private school by the parents does not provide consent for the initial evaluation, or the parent fails to respond to a request to provide consent, the school can NOT use mediation or due process procedures to obtain consent. In this case the school is not required to consider the child as eligible for services and does not violate the FAPE requirement (K.A.R. 91-40-27(f)(2); 34 C.F.R. 300.300(d)(4)).

### **K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; notice; procedure.**

- (b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:
- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;
  - (2) not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child;
  - (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and
  - (4) in determining whether a child has a specific learning disability, not be required to take into consideration whether the child has a severe discrepancy between achievement and intellectual ability, and may use a process that determines if the child responds to scientific, research-based intervention as part of the child's evaluation.

### **K.S.A. 72-3430. Parental rights.**

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

- (e) A list of the rights available to the parents of exceptional children shall be given to the parents only one time each school year, except a copy also shall be given to the parents:
  - (A) Upon initial referral or parental request for evaluation;
  - (B) upon request of a parent; and
  - (C) upon the initial filing of a complaint under subsection (b)(4).

**K.S.A. 72-3432. Notice of parental rights; contents.**

The notice required by subsection (b)(2) of K.S.A. 72-988, and amendments thereto, shall include:

- (a) A description of the action proposed or refused by the agency;
- (b) an explanation of why the agency proposes or refuses to take the action;
- (c) a description of other options that the agency or IEP team considered and the reasons those options were rejected;
- (d) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (e) a description of any other factors that are relevant to the agency's proposal or refusal;
- (f) a statement that the parents have protection under the procedural safeguards of this act and, if the notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- (g) sources for parents to contact to obtain assistance in understanding the provisions of the federal law and this act.

**K.S.A. 72-3436. School district knowledge that child is child with disability prior to determination**

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

**K.A.R. 91-40-1. Definitions.**

- (l) "Consent" means that all of the following conditions are met:
  - (1) A parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.
  - (2) A parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom.
  - (3) A parent understands the following:
    - (A) The granting of consent is voluntary on the part of the parent and may be revoked at any time.
    - (B) If the parent revokes consent, the revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked
    - (C) The parent may revoke consent in writing for the continued provision of a particular service or placement only if the child's IEP team certifies in writing that the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

**K.A.R. 91-40-17. IEP team meetings and participants.**

- (e) (1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parent or to convince the parent to participate.
- (2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parent to provide notice of the meeting and to secure the parent's participation. The record shall include at least two of the following:
  - (A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls;
  - (B) detailed records of visits made to the parent's home or homes, including the date, time, and person making the visit and the results of the visit;
  - (C) copies of correspondence sent to the parent and any responses receive
  - (D) detailed records of any other method attempted to contact the parent and the results of that attempt.

**K.A.R. 91-40-26. Notice requirements.**

- (a) In providing any notice to the parents of an exceptional child in accordance with K.S.A. 72-990 and amendments thereto, regarding action proposed or refused by an agency, the agency shall ensure that the notice includes the following descriptions:
  - (1) a description of other options the agency considered and the reasons why those options were rejected; and
  - (2) a description of other factors that are relevant to the agency's proposal or refusal.
- (b) The notice shall be is written in a language understandable to the general public and is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (c) If the native language or other mode of communication of a parent is not a written language, the agency shall take steps to ensure all of the following:
  - (1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.
  - (2) The parent understands the content of the notice.
  - (3) There is written evidence that the requirements of paragraphs (1) and (2) of this subsection have been met.

**K.A.R. 91-40-27. Parental consent.**

- (a) Except as otherwise provided in this regulation, each agency shall obtain parental consent before taking any of the following actions:
  - (1) Conducting an initial evaluation or any reevaluation of an exceptional child;
  - (2) initially providing special education and related services to an exceptional child; or
  - (3) making a material change in services to, or a substantial change in the placement of, an exceptional child, unless the change is made under the provisions of K.A.R. 91-40-33 through 91-40-38 or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.
- (b) When screening or other methods used by an agency indicate that a child may have a disability and need special education services, the agency shall make reasonable and prompt efforts to obtain informed consent from the child's parent to conduct an initial evaluation of the child and, if appropriate, to make the initial provision of services to the child.
- (c) Unless a judicial order specifies to the contrary, each agency shall recognize the biological or adoptive parent of an exceptional child who is a minor as the educational decision maker for the child if the parent exerts the parent's rights on behalf of the child, even if one or more other persons meet the definition of parent for the particular child.

- (d) An agency shall not construe parental consent for initial evaluation as consent for the initial provision of special education and related services to an exceptional child.
- (e) An agency shall not be required to obtain parental consent before taking either of the following actions:
- (1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or
  - (2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.
- (f) (1) If a parent of an exceptional child who is enrolled or is seeking to enroll in a public school does not provide consent for an initial evaluation or any reevaluation, or for a proposed material change in services or a substantial change in the placement of the parent's child, an agency may, but shall not be required to, pursue the evaluation or proposed change by initiating due process or mediation procedures.
- (2) If a parent of an exceptional child who is being homeschooled or has been placed in a private school by the parent does not provide consent for an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, an agency shall not pursue the evaluation or reevaluation by initiating mediation or due process procedures.
- (3) An agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action.
- (4) Each agency shall document its attempts to obtain parental consent for action proposed under this regulation.
- (g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parent or parents have failed to respond.
- (h) An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities or services offered by the agency.
- (i) If, at any time after the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of all special education, related services, and supplementary aids and services, the following shall apply:
- (1) The agency shall not continue to provide special education, related services, and supplementary aids and services to the child but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of those services.
  - (2) The agency shall not use the procedures in K.S.A. 72-972a or K.S.A. 72-996, and amendments thereto, or K.A.R. 91-40-28, including the mediation procedures and the due process procedures, in order to obtain an agreement or a ruling that the services may be provided to the child;
  - (3) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids and services.
  - (4) The agency shall not be required to convene an IEP team meeting or develop an IEP under K.S.A. 72-987, and amendments thereto, or K.A.R. 91-40-16 through K.A.R. 91-40-19 for the child for further provision of special education, related services, and supplementary aids and services.
- (j) If a parent revokes consent in writing for the child's receipt of all special education and related services after the child is initially provided special education and related services, the agency shall not be required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
- (k) If a parent revokes consent for the continued provision of particular special education, related services, supplementary aids and services, or placements, or any combination of these, and the IEP team certifies in writing that the child does not need the service or placement for which consent is being revoked in order to receive a free appropriate public education, the following shall apply:
- (1) The agency shall not continue to provide the particular special education, related services, supplementary aids and services, and placements for which consent was revoked, but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of the particular special education, related services, supplementary aids and services and placements.
  - (2) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the particular special education, related services, supplementary aids and services, or placements, or any combination, for which parental consent was revoked.
- (l) If a parent who revoked consent for all special education, related services, and supplementary aids and services, under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP.

## C. THE EVALUATION TEAM

Once the consent has been obtained from the parent, a team is formed who will have the responsibility of carrying out the evaluation process. The members of the evaluation team are the same as those who would serve on the child's IEP Team (should the child be found eligible), including the parents. If the child is suspected of having a specific learning disability the team may include other qualified professionals, as appropriate.

Team members on each evaluation team may differ; however, there are specific members and skills that must be represented on the team. The makeup of this team would include:

- The parents of the child;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or if the child is less than school age, an individual qualified to teach a child of his or her age;
- Not less than one special education teacher of the child, or where appropriate, not less than one special education service provider of the child;



- A representative of the local education agency who:
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with exceptionalities,
  - Is knowledgeable about the general education curriculum, and
  - Is knowledgeable about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of evaluation results;
- At least one person qualified to conduct individual diagnostic examinations of children; and
- At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (K.S.A. 72-3404(u); K.A.R. 91-40-11(a); 34 C.F.R. 300.321; 34 C.F.R. 300.308)

**K.S.A. 72-3404. Definitions.**

(u) "Individualized education program team" or "IEP team" means a group of individuals composed of:

- (1) The parents of a child;
- (2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment;
- (3) at least one special education teacher or, where appropriate, at least one special education provider of the child;
- (4) a representative of the agency directly involved in providing educational services for the child who:
  - (A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children;
  - (B) is knowledgeable about the general curriculum; and
  - (C) is knowledgeable about the availability of resources of the agency;
- (5) an individual who can interpret the instructional implications of evaluation results;
- (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) whenever appropriate, the child.

**K.A.R. 91-40-11. Evaluation for specific learning disability; use of response to intervention process.**

- (a) If a child is suspected of having a specific learning disability and believed to need special education services because of that disability, the agency shall ensure that the evaluation of the child is made by the child's parent and a group of qualified professionals, including the following individuals:
- (1) (A) The child's regular education teacher or, if the child does not have a regular education teacher, a regular classroom teacher qualified to teach a child of the child's age; or  
(B) for a child of less than school age, an individual who is qualified to teach a child of the child's age; and
  - (2) at least one person qualified to conduct individual diagnostic examinations of children, including a school psychologist, speech-language pathologist, or remedial reading teacher.

## D. TIMELINE FOR CONDUCTING THE INITIAL EVALUATION

Kansas has established a 60 school-day timeline consistent with federal regulations (K.A.R. 91-40-8(f); 34 C.F.R. 300.301(c)). The timeline for conducting the initial evaluation starts upon receipt of written parental consent to conduct the evaluation, and ends with the implementation of an IEP if the child is found eligible for special education services or completion of the evaluation report if the child is not found eligible for special education services.

For children who transfer from one public agency to another in the same school year, assessments are coordinated with the child's prior school, as necessary and as expeditiously as possible, to ensure prompt completion of an evaluation begun by the prior school (K.S.A. 72-3428(c)(4)).

### INITIAL EVALUATION TIMELINE

The initial evaluation is to be completed within the 60-school-day timeline required in K.A.R. 91-40-8(f). There is no specified timeline for the initial evaluation itself, but several requirements must all be completed within 60 school days unless an agency can justify the need for a longer period of time or has obtained written parent consent for an extension of time. (K.A.R. 91-40-16 addresses IEP requirements, and K.A.R. 91-40-17 specifies the IEP Team participants.)

Preceding the initiation of this timeline, the school provides the parents with their Parent Rights Notice upon referral, Prior Written Notice for initial evaluation, and Request for Consent.

1. The 60-school-day timeline begins when the agency receives written parent consent to conduct the initial evaluation (K.A.R. 91-40-8(f)).
2. The initial evaluation is started within a reasonable time.
3. The initial evaluation is completed, and, on the basis of the evaluation data, the team determines eligibility for special education and related services.

4. The evaluation/eligibility team provides the parents with the Evaluation/Eligibility Report within a reasonable period of time (K.S.A. 72-3428(e)(2); 34 C.F.R. 300.306(a)(2); 34 C.F.R. 99.10(b)).
5. The school provides the parents with Prior Written Notice for proposed identification (can be combined with notice for initial services).
6. The school provides the parents with the Notice of the IEP meeting at least 10 calendar days before the meeting (K.A.R. 91-40-17(a)(2)). (NOTE: If the team believes that eligibility and IEP development may be discussed at the same meeting, the IEP Meeting Notice must describe all proposed special education decisions to be addressed at the meeting.)
7. The IEP Team meets and develops an IEP within 30 calendar days of determination of eligibility but not later than 60 school days from the receipt of written parent consent to conduct the initial evaluation (K.A.R. 91-40-8(h) and 34 C.F.R. 300.323(c)(1) ).
8. The school provides the parents with Prior Written Notice and request for consent for the initial provision of special education and related services to the child.
9. Services on the IEP are implemented not later than 10 school days after written parent consent for provision of special education services is granted, unless reasonable justification for a delay can be shown (K.A.R. 91-40-16(b)(2)).
10. The 60-school-day timeline ends when the IEP is implemented.

#### Exceptions to the Timeline

There are only three specific instances when an extension of the 60 school-day timeline may be justified:

- a. The parent of the child repeatedly fails or refuses to produce the child for the evaluation; or,
- b. If a child enrolls in a new district after the evaluation has begun and before the determination of eligibility, however, the new district is required to make sufficient progress to ensure a prompt completion of the evaluation, and the parent and the school district must agree to a specific timeline for completion.
- c. If the parent consents in writing to extend the timeline. (K.A.R. 91-40-8(f))

#### **K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; procedure.**

(c) An agency shall ensure that:

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

K.A.R. 91-40-8(f)(g)

(f) Unless an agency has obtained written parental consent to an extension of time and except as otherwise provided in subsection (g), the agency shall complete the following activities within 60 school days of the date the agency receives written parental consent for evaluation of a child:

(1) Conduct the evaluation of the child;

(2) conduct a meeting to determine whether the child is an exceptional child and, if so, to develop an IEP for the child. The agency shall give notice of this meeting to the parent as required by K.A.R. 91-40-17(a); and

(3) implement the child's IEP in accordance with K.A.R. 91-40-16.

(g) An agency shall not be subject to the time frame prescribed in subsection (f) if either of the following conditions is met:

(1) The parent of the child who is to be evaluated repeatedly fails or refuses to produce the child for the evaluation.

(2) The child enrolls in a different school before the evaluation is completed, and the parent and new school agree to a specific date by which the evaluation will be completed.

(h) In complying with subsection (f), each agency shall ensure that an IEP is developed for each exceptional child within 30 days from the date on which the child is determined to need special education and related services.

#### **K.A.R. 91-40-16. IEP requirements.**

(b) Except as otherwise provided in subsection (c), each agency shall ensure that the following conditions are met:

(1) An IEP is in effect before special education and related services are provided to an exceptional child.

(2) Those services to which the parent has granted written consent as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

(3) An IEP is in effect for each exceptional child at the beginning of each school year.

(4) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation.

(5) Each teacher and provider described in paragraph (4) of this subsection is informed of the following:

(A) That individual's specific responsibilities related to implementing the child's IEP; and

(B) the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

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## E. CONDUCTING THE EVALUATION

The initial evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child, the educational needs of the child, and the content of the child's IEP, including information related to enabling the child to be involved, and progress in the general education curriculum or, for preschool children, to participate in appropriate activities (K.S.A. 72-3428(b)(1)). In addition, the procedures must also lead to the determination of the present levels of academic achievement and functional performance of the child. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data to determine:

- if the child is a child with an exceptionality;
- whether the child needs special education and related services;
- the educational needs of the child;
- the present levels of academic achievement and functional performance (related developmental needs) of the child; and
- whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (K.S.A. 72-3428(i)(2); K.A.R. 91-40-8(c); 34 C.F.R. 300.305(a)(2)).

As stated previously, the data collected is critical not only for the purpose of determining whether a child is eligible for special education, but also to assist in the development of present levels of academic achievement and functional performance. Regulations clearly state that the evaluation must result in determining the content of the child's IEP (if found eligible) including information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities) (K.S.A. 72-3428(b)(1); 34 C.F.R. 300.304(b)(ii)). However, the evaluation should assist in the development of an instructional plan for the child if the child is not found to be eligible.

If the team has proposed to conduct the evaluation based only on existing data, the existing data must meet the requirements of this section for an evaluation.

### 1. Evaluation Procedures

During the evaluation process, the child is assessed in all areas related to the suspected exceptionality, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (K.A.R. 91-40-9(b)(1), K.A.R. 91-40-11(b), (c); 34 C.F.R. 300.304(c)(4)). All assessment tools and strategies must provide relevant information that directly assists in determining the educational needs of the child (K.A.R. 91-40-9(a)(9); 34 C.F.R. 300.304(c)(7)).

When conducting an evaluation, no single measure or assessment shall be used as the sole criterion for determining whether the child is a child with an exceptionality and for determining an appropriate educational program for the child. When selecting assessment tools to assist in gathering the evaluation data across the five sources of data, those conducting the evaluation must also ensure the following requirements are met (K.A.R. 91-40-9; 34 C.F.R. 300.304(b), (c)):

- Use a variety of assessment tools and strategies.
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has an exceptionality and needs special education, rather than measuring the child's English language skills.
- Assessments and other evaluation materials are:
  - selected and administered so as not to be discriminatory on a racial or cultural basis;
  - provided and administered in the child's native language or other mode of communication, and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
  - used for the purposes for which the assessments or measures are valid and reliable;
  - administered by trained and knowledgeable personnel;
  - administered in accordance with instructions provided by the producer of the assessments (Note: if an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.)

- tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient;
- selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the exceptionality category being considered for the child. If the child is found eligible, this information translates into the present levels of academic achievement and functional performance (PLAAFPs) and forms the basis for making all the decisions in the IEP. If the child is not found eligible, this information assists the school in determining other appropriate instruction and supports for the child. Ultimately, at the close of an evaluation, the team should have enough information to support the child whether or not the child is eligible for special education. The team should be able to describe where the child is currently performing within the general education curriculum and standards as well as be able to describe how (or if) the child's unique learning characteristics are impacting the child's ability to access and make progress in the general education curriculum (or for early childhood, to participate in appropriate activities). Other issues that are impacting the child's ability to function in the learning environment should also be described so that the extent of the child's needs may be realized.

There are two methods of evaluation, (i) "the child's response to scientific, research-based intervention" and (ii) "a pattern of strengths and weaknesses", which are outlined in federal regulations with regard to the identification of students with specific learning disabilities. However, in Kansas, both are also appropriate to use to determine eligibility for any of the areas of exceptionality. Below is a brief description of each method of evaluation. (K.S.A. 72-3428(b)(4))

The process based on the child's response to scientific, research-based intervention ((i) above) is referred to as Response to Intervention (RtI), and is based on a school-wide multi-tier system of interventions for all students. The evaluation data collected during this process will include results of school-wide universal screening, benchmark assessments, diagnostic assessments and processes, and information collected during problem-solving, and most importantly, the results of the child's response to various types of interventions including slope (growth), rate (closing the gap), and fidelity of those interventions. Most often, the child's response to intervention data will take the form of charts and graphs, which reflect individual child growth under various intervention conditions. Teams analyze and interpret this information to determine whether the child is a child with an exceptionality and to determine and describe the educational needs of the child.

The process based on a child's pattern of strengths and weaknesses ((ii) above) tends to rely more heavily on the results of norm-referenced tests and other assessments. Evaluation teams must decide which tests are appropriate to use given the referral question and what type of assessment is needed to answer questions about an individual student's need for intervention and support. As described before, evaluations must be individually planned based on the presenting concern and review of existing data. The automatic administration of any assessments, including intelligence or achievement tests, for an evaluation is not an appropriate practice. If the evaluation team determines that intelligence or achievement tests are needed, then these measures are analyzed to identify patterns within academic skills or cognitive functions. The administration of intelligence and achievement tests solely to examine the discrepancy is not necessary since discrepancy is not an eligibility requirement. If achievement or intelligence tests are administered, they should be interpreted in combination with other relevant data to identify the child's strengths and weaknesses, including the child's approach to tasks, characteristic patterns of learning, and difficulties in processing information. The richest source of this information comes from the data collection conducted during the General Education Intervention process, as well as data regarding interventions conducted during the initial evaluation process. Teams analyze and interpret this information to determine whether the pattern of strengths and weaknesses is characteristic of a child with an exceptionality and to determine and describe the child's educational needs.

**K.S.A. 72-3428. Initial evaluation of children prior to provision of services; notice; procedure.**

- (b) An agency shall provide notice to the parents of a child that describes any evaluation procedures such agency proposes to conduct. In conducting the evaluation, the agency shall:
- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is an exceptional child and the content of the child's individualized education program, including information related to enabling the child to be involved, and progress, in the general education curriculum or, for preschool children, to participate in appropriate activities;
  - (2) not use any single measure or assessment as the sole criterion for determining whether a child is an exceptional child or determining an appropriate educational program for the child;
  - (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

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

(c) An agency shall ensure that:

(1) Assessments and other evaluation materials used to assess a child under this section:

(A) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(B) are provided and administered in the language and form most likely to yield accurate information on what the child knows and is able to do academically, developmentally and functionally, unless it is not feasible to so provide or administer;

(C) are valid and reliable for the specific purpose for which they are used;

(D) are administered by trained and knowledgeable personnel; and

(E) are administered in accordance with instructions provided by the producer of such tests;

(2) the child is assessed in all areas of suspected exceptionality;

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

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

#### **K.A.R. 91-40-8. Evaluations.**

(c) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the child and other qualified professionals, as appropriate, comply with the following requirements:

(1) The evaluation team shall review existing evaluation data on the child, including the following information:

(A) Evaluations and information provided by the parent of the child;

(B) current classroom-based, local, and state assessments and classroom-based observations; and

(C) observations by teachers and related services providers.

(2) On the basis of that review and input from the child's parent, the evaluation team shall identify what additional data, if any, is needed to determine the following matters:

(A) Whether the child has a particular category of exceptionality or, in the case of a reevaluation of a child, whether the child continues to have such an exceptionality;

(B) what the present levels of academic achievement and educational and related developmental needs of the child are;

(C) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(D) whether, in the case of a reevaluation of the child, any additions or modifications to the special education and related services currently being provided to the child are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

#### **K.A.R. 91-40-9. Evaluation procedures.**

(a) If assessment instruments are used as a part of the evaluation or reevaluation of an exceptional child, the agency shall ensure that the following requirements are met:

(1) The assessment instruments or materials shall meet the following criteria:

(A) Be selected and administered so as not to be racially or culturally discriminatory; and

(B) be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless this is clearly not feasible.

(2) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has an exceptionality and needs special education, rather than measuring the child's English language skills.

(3) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved and progress in the general curriculum or, for a preschool child, to participate in appropriate activities that could assist in determining whether the child is an exceptional child and what the content of the child's IEP should be.

(4) Any standardized tests that are given to a child shall meet the following criteria:

(A) Have been validated for the specific purpose for which they are used; and

(B) be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment.

(5) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

(6) Assessments and other evaluation materials shall include those that are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(7) Assessments shall be selected and administered to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the results accurately reflect the child's aptitude or achievement level or whatever other factors the assessment purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the assessment purports to measure.

(8) A single procedure shall not be used as the sole criterion for determining whether a child is an exceptional child and for determining an appropriate educational program for the child.

(9) Each agency shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(b) (1) Each child shall be assessed in all areas related to a suspected exceptionality, including, if appropriate, the following:

(A) Health;

(B) vision;

(C) hearing;

(D) social and emotional status;

(E) general intelligence;

(F) academic performance;

- (G) communicative status; and
- (H) motor abilities.

(2) Each evaluation shall be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

- (c) If a child is suspected of having a specific learning disability, the agency also shall follow the procedures prescribed in K.A.R. 91-40-11 in conducting the evaluation of the child.

**K.A.R. 91-40-11. Evaluation for specific learning disability; use of response to intervention process.**

- (b) (1) A group evaluating a child for a specific learning disability may determine that the child has that disability only if the following conditions are met:

(A) The child does not achieve adequately for the child's age or meet state-approved grade-level standards, if any, in one or more of the following areas, when the child is provided with learning experiences and instruction appropriate for the child's age and grade level:

- (i) Oral expression;
- (ii) listening comprehension;
- (iii) written expression;
- (iv) basic reading skill;
- (v) reading fluency skills;
- (vi) reading comprehension;
- (vii) mathematics calculation; and
- (viii) mathematics problem solving; and

- (B) (i) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in paragraph (b)(1)(A) when using a process based on the child's response to scientific, research-based intervention; or
- (ii) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development that is determined by the group conducting the evaluation to be relevant to the identification of a specific learning disability, using appropriate assessments.

(2) A child shall not be determined to be a child with a specific learning disability unless the group evaluating the child determines that its findings under paragraphs (b)(1)(A) and (B) are not primarily the result of any of the following:

- (i) A visual, hearing, or motor disability;
- (ii) mental retardation;
- (iii) emotional disturbance;
- (iv) cultural factors;
- (v) environmental or economic disadvantage; or
- (vi) limited English proficiency.

- (c) (1) The group evaluating the child shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

(2) In conducting the observation, the group may employ either of the following procedures:

(A) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(B) have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained.

## 2. Collecting Evaluation Data

Collecting relevant functional, developmental and academic information related to enabling the child to be involved in, and progress in, the general curriculum (or for a preschool child, to participate in appropriate activities) requires that data be collected not only about the child, but about the child's interactions in the curriculum, instruction, and environment as well. Every evaluation should be approached and designed individually based on the specific concerns and the selection of assessment tools based on the information needed to answer the eligibility questions. It would be inappropriate to use the exact same battery of assessments for all children or to rely on any single tool to conduct an evaluation.

Data must be collected from the five sources referred to in Kansas as GRIOT. GRIOT represents five sources of data that teams need to be aware of and use as appropriate. The following is a discussion of each of the five sources of data:

**G – General Education Interventions/Curriculum Progress:** During the initial evaluation, we must look at two different "G"s:

- (1) **General Education Interventions:** Whether you're operating within a school system that uses individual child problem solving (problem-solving teams, student information or intervention team (SIT), student assessment team (SAT), Care team, etc.) and/or a school-wide multi-tier model of interventions, when a child is referred for an initial evaluation there will be data on what scientific, research-based interventions have been used with the child and specific data about the effectiveness and results of the implementation of the interventions. K.A.R. 91-40-7(c) requires that results of the interventions provided to the child prior to a referral for an initial evaluation are documented and provided to the parent. Documentation may be done through a written intervention plan developed by the problem-solving team, which may include data that the child was provided appropriate instruction in general education settings, including repeated assessments of achievement at reasonable intervals, reflecting formal assessment of child progress during instruction. (See Chapter 2, Screening and General Education Interventions.)

(2) **General Education Curriculum Progress:** An evaluation team needs to understand how the child is progressing in general education curriculum across settings with the available supports. To do this they must understand the outcomes of the general education curriculum and how the skills represented in those outcomes relate to the needs of each child. Are the skills needed, for the child we are working with, different from the skills that general education children need? Is the instruction required for the child to learn those skills different? The general education curriculum outcomes and the supports available through general education are unique to each school. Gaining an understanding of what support is available and the level of support needed by the child is one of the most important parts of the evaluation.

**R – Record Review:** The evaluation team should also include a review of records as part of the evaluation. These records would include such things as information provided by the parents, current classroom-based assessments, information from previous services providers, screenings, previous evaluations, reports from other agencies, portfolios, discipline records, cumulative files, and other records.

**I – Interview:** It is important to understand the perceptions of significant adults in the child’s life and of the child himself. Parents, teachers, and the child can all typically provide insight into areas of strengths and needs. Interviews can also provide information about significant historical events in the child’s life as well as about his performance in the classroom and other settings.

**O – Observation:** A district must ensure the child is observed in the child’s learning environment (including the regular education classroom setting) to document the child’s academic performance and behavior in the areas of difficulty (K.A.R. 91-40-11(c); 34 C.F.R. 300.310). In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. If the child is already in an educational setting, the observation should be conducted in that setting, as opposed to bringing them into a different setting just for observation. These observations could include structured observations, rating scales, ecological instruments (e.g., Eco-Behavioral Assessment Software System (EBASS), The Instructional Environment System-II (TIES-II), behavioral interventions, functional analysis of behavior and instruction, anecdotal, and other observations (conducted by parents, teachers, related services personnel, and others). The purpose of the observation is to help the evaluation team understand the extent to which the child’s skills are impacting their ability to participate and progress in a variety of settings. Observations allow you to see firsthand how a child is functioning in naturally occurring settings. Observation data can also allow you to compare the child’s behavior to that of peers in the same setting. Observation data helps us to understand not only the child’s current functional performance but also the level of independence demonstrated which can help determine necessary supports.

**T – Test:** A wide range of tests or assessments may be useful in determining an individual child’s skills, abilities, interests, and aptitudes. Typically, a test is regarded as an individual measure of a specific skill or ability, while assessment is regarded as broader way of collecting information that may include tests and other approaches to data collection. Standardized norm-referenced tests are helpful if the information being sought is to determine how a child compares to a national group of children of the same age or grade. Criterion-reference tests are helpful in determining if the child has mastered skills expected of a certain age or grade level. Tests typically provide specific information but are never adequate as a single source of data to determine eligibility for special education. Because tests require a controlled testing environment, the result is that children are removed from their learning environments to participate. This is a very intrusive way of gathering data and the value of the data obtained should always be weighed carefully against the cost of missed class time. For this reason, tests should be thoughtfully selected and be used for specific purposes when data cannot be obtained through other sources. Some test information may already have been collected during the general education intervention process, especially if the child attends a school that uses school-wide benchmark assessment. However, additional information may need to be collected during the initial evaluation. This might include curriculum-based assessments (CBA), measurements (CBM), or evaluations (CBE), performance-based assessments (i.e., rubric scoring), or other skill measures such as individual reading inventories. The testing that needs to be done will vary depending on what information already has been collected and the needs of the individual child. Diagnostic testing might include measures of reading, math, written language, or other academic skills, or tests of motor functioning, speech/language skills, adaptive behavior, self-concept, or any domain of concern. As with all types of data collection, the information from testing needs to be useful for both diagnostic and programmatic decision-making.

GIROT offers a framework in which to organize and structure data collection. It is not that any data source or assessment procedure is inherently good or bad. All procedures and tools are appropriate as long as they are selected thoughtfully and

for the appropriate purposes. A team will not necessarily use all data sources every time an evaluation is conducted. Thoughtful planning will need to be given for each child to ensure that the team is using the appropriate tools to collect data useful for both making the eligibility determination and for program planning.

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## F. ELIGIBILITY DETERMINATION AND DOCUMENTATION

Eligibility decisions are made by a team of qualified professionals and the parents of the child who has been evaluated [K.A.R. 91-40-10(a)(1)]. The parents participate with the team of qualified professionals in every aspect of the eligibility determination, except that parents are not required to certify whether an eligibility report reflects their conclusions and are not required to submit a separate statement if it does not. Because the team of qualified professionals and the parents have almost identical responsibilities in the eligibility determination, this handbook uses the term "team" to include parents.

At the time the evaluation is completed and the information is compiled, the team should schedule a time to convene in order to make the determination of eligibility. Parents are to be provided an opportunity to participate in the eligibility meeting, which can be conducted at the same time as the IEP team meeting. The school must provide a notice of the meeting at least 10 calendar days prior to the meeting date that includes the requirements in K.A.R. 91-40-17(b)(1).

The team must ensure that information obtained from all sources used in the evaluation is documented and carefully considered (K.A.R. 91-40-10(d)(2); 34 C.F.R. 300.306(c)(1)(ii)). The parents and qualified professionals review the results of the initial evaluation to determine:

- (1) whether the child is a child with an exceptionality as defined in federal and state laws and regulations (K.A.R. 91-40-1(k), (w); and
- (2) the educational needs of the child (K.A.R. 91-40-10(a)(1); 34 C.F.R. 300.306(a)).

When interpreting evaluation data for the purpose of making these determinations, the team must:

- draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- ensure that information obtained from all of these sources is documented and carefully considered (K.A.R. 91-40-10(d); 34 C.F.R. 300.306(c)(1)(i), (ii)).

The team must ensure that the child meets the definition of one of the categories of exceptionality and, as a result of that exceptionality, needs special education and related services (i.e., 2 pronged test) (K.A.R. 91-40-1(k), (w); 34 C.F.R. 300.8). If a child meets the definition of an exceptionality category but does not need special education and related services, the child will not be determined to be eligible. If the child has a need for special education and related services but does not meet the definition of an exceptionality category, the child will not be determined to be eligible. In the case of a child who is found to have a disability, but does not need special education and related services, a referral for a 504 evaluation may be considered. The team may utilize the "Eligibility Indicators" document at <https://www.ksde.gov/Default.aspx?tabid=553> when making the eligibility determination.

### 1. Determining Whether the Child is a Child with an Exceptionality

The team reviews the data to determine whether or not the child is a child with an exceptionality. To do this, team members compare the data about the child to see if there is a match to one of the exceptionality categories defined in the regulations. However, even when the data point to a particular area of exceptionality, the team must examine exclusionary factors before determining the child is a child with an exceptionality.

Regulations are very clear with regard to the fact that a child must NOT be determined to be a child with an exceptionality if:

- (a) the determinant factor is:
  - Lack of appropriate instruction in reading, including **the essential components of reading instruction (defined in the Elementary and Secondary Education Act as phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies)**;
  - Lack of appropriate instruction in math; or
  - Limited English proficiency ; and
- (b) the child does not otherwise meet the eligibility criteria as a child with an exceptionality (K.S.A. 72-3428(f); K.A.R. 91-40-10(c); 34 C.F.R. 300.306(b)).



**There are unique issues that must be examined before a child may be determined to have a specific learning disability.** As defined in K.A.R. 91-40-1 (mmm), "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. **Dyslexia is a specific learning disability. In recent years, much debate has occurred regarding dyslexia and whether it is covered under the Individuals with Disabilities Education Act (IDEA) and in Kansas. The IDEA, as well as Kansas statute and regulations, recognize dyslexia as a disability as stated within the definition of specific learning disability.**

The term specific learning disability shall not include learning problems that are primarily the result of any of the following: (1) Visual, hearing, or motor, disabilities; (2) intellectual disability; (3) emotional disability; or (4) environmental, cultural, or economic disadvantage. It is important that the team attend to collecting the data needed to examine these issues prior to and/or as part of the initial evaluation. According to K.A.R. 91-40-11(b) (34 C.F.R. 300.309(a)), the group evaluating a child for a specific learning disability collects the following:

- (a) Data to determine that the child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
  - oral expression;
  - listening comprehension;
  - written expression;
  - basic reading skill;
  - reading fluency skills;
  - reading comprehension;
  - mathematics calculation;
  - mathematics problem solving.

Additionally, in order for a child to be eligible as a child with a specific learning disability, the evaluation and eligibility report must document that the child meets the following conditions:

- a. The child does not achieve adequately for the child's age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards,

**AND**

- (i) The child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention;

**OR**

- (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.
- b. The determinate factor for why the child does not achieve adequately for the child's age or does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
  - A visual, hearing or motor disability;
  - intellectual disability;
  - emotional disability;
  - cultural factors;
  - environmental or economic disadvantage; or
  - limited English proficiency (K.A.R. 91-40-9(a)(2)(3), K.A.R. 91-40-11(b); 34 C.F.R. 300.309(a)(3)).

As previously discussed in the Conducting the Evaluation section, under Evaluation Procedures, the use of discrepancy between ability and achievement is not good practice and should not be used as the determining factor when documenting a pattern of strengths and weaknesses.

If the evaluation data indicates there is a match with a particular category of exceptionality and the team has ruled out the presence of any exclusionary factors, the team may determine that the child meets one of the requirements of eligibility as a child with an exceptionality (Prong 1 of the test of eligibility). If there is not a match or exclusionary factors are present, the team must determine that the child does not meet the eligibility of a child with an exceptionality.

## 2. Determining Whether the Child Needs Special Education and Related Services

The second prong of the test of eligibility is to determine whether or not the child needs special education and related services.

### Definition of Special Education

Special education means specially designed instruction (K.A.R. 91-40-1(kkk); 34 C.F.R. 300.39(a)(1)), and, that specially designed instruction means adapting the content, methodology or delivery of instruction to address the unique needs of a 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 (K.A.R. 91-40-1(III); 34 C.F.R. 300.39(b)(3)(i), (ii)). This implies that in order to have a need for special education, the child has specific needs which are so unique as to require specially designed instruction in order to access the general education curriculum. If the child only needs accommodations or modifications that do not require specially designed instruction, the child's needs may be met through a Section 504 plan or other means instead of an IEP.

### Related Services as Special Education

The IDEA gives states the authority to define certain related services as special education rather than a related service (34 C.F.R. 300.39(a)(2)(i)). Accordingly, under Kansas law any related service is special education if the service consists of specially designed instruction to meet the unique needs of the child (K.A.R. 91-40-1(kkk)(2)). Further, occupational therapy, physical therapy, and interpreter services for deaf children are special education if a child would be educated in a more restrictive environment without any of these services (K.A.R. 91-40-1(kkk)(3)). Thus, if the team determines a child with a disability needs a service that meets these criteria, the child needs special education and meets the second prong of the eligibility test. This determination must be made based on the child's individual needs, not based on the child's disability category.

### Using Data to Determine Eligibility

Kansas regulations at K.A.R. 91-40-7(c), require that prior to referral for an initial evaluation the school must have data-based documentation of having provided appropriate instruction to the child and having implemented educational interventions and strategies for the child, along with repeated assessments of achievement at reasonable intervals, which reflect formal assessment of the child's progress during instruction. The results of which indicate that the child is suspected of having an exceptionality and may require special education and related services. If the school is implementing a multi-tiered model of intervention, it will have data regarding the child's needs related to the intensity of instruction and supports required for the child to be successful.

The team must review the evaluation data in such a way as to understand the extent of the child's needs with regard to specially designed instruction. The team should be able to use the data to describe the intensity of the support needed to assist the child in accessing and progressing in the general education curriculum. It is only through this discussion that the team can determine whether or not the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided without the support of special education.

If the team determines that the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided in regular education without the support of special education, the team may determine that the child needs special education and related services (Prong 2 of the eligibility test). If the data suggests the child's needs for instruction can be provided within regular education without the support of special education and related services, the team must determine that the child is not in need of special education and related services.

## 3. Eligibility Report

The evaluation team shall ensure that the information obtained from all sources is documented and considered. After carefully considering all data and making the eligibility determination, the team then must document the decision made regarding the child's eligibility for special education and related services. Once the evaluation report and documentation of eligibility has been completed, each team member, other than the parent, must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions (K.A.R. 91-40-10(a)(2); 34 C.F.R. 300.311(b)). (See Evaluation/Eligibility Report Content Checklist at <https://www.ksde.gov/Default.aspx?tabid=553>).

The evaluation report serves as the documentation of the child's eligibility. The evaluation report must be provided, at no cost, to the parent (K.A.R. 91-40-10(b); 34 C.F.R. 300.306(a)(2)). Additionally, the school is not required to classify a child with an exceptionality according to the child's category of exceptionality if such child is regarded as a child with an exceptionality and is provided FAPE (K.A.R. 91-40-10(g)).

There are specific requirements for reporting the eligibility determination (K.A.R. 91-40-10(a), (e); 34 C.F.R. 300.311).

The evaluation report must include the following statements:

- a. whether the child is a child with an exceptionality;
- b. the basis for making the determination, including an assurance that the determination was made in accordance with applicable laws and regulations;
- c. the relevant behavior noted during the observation of the child; and for specific learning disability the relationship of that behavior to the child's academic functioning;
- d. the educationally relevant medical findings, if any;
- e. for a child determined to have a learning disability, the report must include documentation of the following:
  - (i) the child does not achieve adequately for the child's age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards;  
**AND**
    - o the child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention; **OR**
    - o the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.
  - (ii) the team determines the reason the child does not achieve adequately for the child's age, does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
    - o A visual, hearing, or motor disability;
    - o intellectual disability;
    - o emotional disability;
    - o cultural factors;
    - o environmental or economic disadvantage; or
    - o limited English proficiency.
  - (iii) if the child has participated in a process that assesses the child's response to scientific, research-based intervention (RtI), the report must also document
    - o the instructional strategies used; and
    - o the student-centered data collected.
  - (iv) Documentation that the child's parents were notified about the process, including the following information:
    - o the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided
    - o strategies for increasing the child's rate of learning; and
    - o the parent's right to request an evaluation (K.A.R. 91-40-10(e), (f); K.A.R. 91-40-9(a)(2), (3), K.A.R. 91-40-11; 34 C.F.R. 300.309(a)(3); 34 C.F.R. 300.311(a)); and
- f. Signatures of each team member, except the parent, indicating whether the report reflects their conclusion. If it does not reflect the team member's conclusion, the team member must submit a separate statement presenting that team member's conclusion.

**Kansas State Policies on the amount and nature of student performance data collected and general education services provided**

The State's policy regarding the amount and nature of student performance data collected and general education services provided when a child participates in a process that assesses the child's response to scientific, research-based intervention is provided in Kansas regulation K.A.R. 91-40-7(c), and is as follows:

- (c) Any board may refer a child who is enrolled in public school for an evaluation if one of the following conditions is met:
- (1) School personnel have data-based documentation indicating that general education interventions and strategies would be inadequate to address the areas of concern for the child.
  - (2) School personnel have data-based documentation indicating that before the referral or as a part of the referral, all of the following conditions were met:
    - (A) The child was provided with appropriate instruction in regular education settings that was delivered by qualified personnel.
    - (B) The child's academic achievement was repeatedly assessed at reasonable intervals that reflected formal assessment of the student's progress during instruction.
    - (C) The assessment results were provided to the child's parent or parents.
    - (D) The assessment results indicate that an evaluation is appropriate.
  - (3) The parent of the child requests, and gives written consent for, an evaluation of the child, and the board agrees that an evaluation of the child is appropriate.

**K.S.A. 72-3428. Initial evaluation of children prior to provision of services; parental consent; procedure.**

- (e) Upon completion of the administration of assessments and other evaluation materials:
- (1) The determination of whether the child is an exceptional child shall be made by a team of qualified professionals and the parent of the child in accordance with this section; and
  - (2) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.
- (f) In making a determination of eligibility under this section, a child shall not be determined to be an exceptional child if the determinant factor for such determination is lack of instruction in reading, including instruction using the essential components of reading instruction, math or limited English proficiency.
- (g) (1) If it is determined that a child is an exceptional child, the agency shall seek consent from the parent of the child to provide special education and related services to the child. No such services shall be provided until consent is given by the parent.
- (2) If the parent of a child refuses to consent to the provision of services, or fails to respond to a request for consent to services, the agency:
- (A) Shall not initiate any procedure or proceeding under this act to gain authority to provide services to the child;
  - (B) shall not be considered to be in violation of the requirement to provide a free appropriate public education to the child; and
  - (C) shall not be required to convene an IEP meeting or develop an IEP for the child.

**K.A.R. 91-40-1. Definitions.**

- (k) "Child with a disability" means the following:
- (1) A child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services; and
  - (2) for children ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services.
- (w) "Exceptional children" means children with disabilities and gifted children.
- (kkk) "Special education" means the following:
- (1) Specially designed instruction, at no cost to the parents, to meet the unique needs of an exceptional child, including the following:
    - (A) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
    - (B) instruction in physical education;
  - (2) paraeducator services, speech-language pathology services, and any other related service, if the service consists of specially designed instruction to meet the unique needs of a child with a disability;
  - (3) occupational or physical therapy and interpreter services for deaf children if, without any of these services, a child would have to be educated in a more restrictive environment;
  - (4) travel training; and
  - (5) vocational education.

**K.A.R. 91-40-10. Eligibility determination.**

- (a) (1) After completion of appropriate evaluation procedures, a team of qualified professionals and the parent of the child who has been evaluated shall prepare a written evaluation report that includes a statement regarding each of the following matters:
- (A) The determination of whether the child has an exceptionality;
  - (B) the basis for making the determination;
  - (C) the relevant behavior noted during the observation of the child;
  - (D) the relationship of that behavior to the child's academic functioning;
  - (E) educationally relevant medical findings, if any; and
  - (F) if the child was evaluated for a specific learning disability, the additional information specified in subsection (e).
- (2) Each team member shall certify in writing whether the report reflects the member's conclusion. If the report does not reflect that member's conclusion, the team member shall submit a separate statement presenting the member's conclusion.
- (b) Each agency shall provide, at no cost, a copy of the evaluation report to the child's parent.
- (c) An evaluation team shall not determine a child to be an exceptional child if the determinant factor for that eligibility determination is the child's lack of appropriate instruction in reading or mathematics or limited English proficiency, and if the child does not otherwise qualify as a child with an exceptionality.
- (d) Each evaluation team, in determining whether a child is an exceptional child and what the educational needs of the child are, shall meet the following requirements:
- (1) The evaluation team shall draw upon information from a variety of sources, including the following:
    - (A) Aptitude and achievement tests;
    - (B) parent input;
    - (C) teacher recommendations;
    - (D) physical condition;
    - (E) social or cultural background; and
    - (F) adaptive behavior.
  - (2) The evaluation team shall ensure that the information obtained from all of the sources specified in paragraph (1) of this subsection is documented and considered.
- (e) If the evaluation team and the parent determine the parent's child to be a child with a specific learning disability, the evaluation team and the parent shall prepare a written evaluation report that includes a statement regarding each of the following matters:
- (1) An indication of whether the child has a specific learning disability;
  - (2) the basis for making the determination, including an assurance that the determination has been made in accordance with applicable laws and regulations;
  - (3) the relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
  - (4) educationally relevant medical findings, if any;
  - (5) an indication of whether the child meets the following criteria:
    - (A) Does not achieve adequately for the child's age or meet state-approved grade-level standards; and
    - (B) (i) Does not make sufficient progress to meet age standards or state-approved grade-level standards; or

- (ii) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development; and
- (6) the determination of the team concerning the effect of the following factors on the child's achievement level:
- (i) Visual, hearing, or motor skills disability;
  - (ii) mental retardation;
  - (iii) emotional disturbance;
  - (iv) cultural factors;
  - (v) environmental or economic disadvantage; and
  - (vi) limited English proficiency.
- (f) If the child has participated in a process that assessed the child's response to scientific, research-based intervention, the evaluation report shall also address the following matters:
- (1) The instructional strategies used and the student-centered data collected; and
  - (2) the documentation indicating that the child's parent was notified about the following:
    - (A) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - (B) strategies for increasing the child's rate of learning; and
    - (C) the parent's right to request an evaluation.
- (g) (1) Except as provided in paragraph (2) of this subsection, after a child has been determined to be a child with an exceptionality and has been provided special education or related services, an agency shall conduct a reevaluation of the child before terminating special education or related services to the child.

## G. PRIOR WRITTEN NOTICE FOR IDENTIFICATION

After the eligibility determination is made, the school is required to provide Prior Written Notice to the parents that the school proposes to initially identify the child as a child with an exceptionality and that the child requires special education and related services. Likewise, school personnel must give Prior Written Notice to the parents if they determine that a child is not eligible for special education or related services. The required content of the Prior Written Notice is identical to the content described earlier in Section B of this chapter. However, parent consent is not required for identification of a child with an exceptionality. (See Prior Written Notice and Consent for Identification sample form at <https://www.ksde.gov/Default.aspx?tabid=544>)

## H. INDEPENDENT EDUCATIONAL EVALUATION

After an initial evaluation (or reevaluation, see chapter 7) is completed, if the parents disagree with the school's evaluation, they have the right to ask for an independent educational evaluation at public expense. If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the school, if it meets the school's criteria, in any decision made with respect to the provision of FAPE to the child.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the child in question. Public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

If the parent requests an independent educational evaluation, the school must either:

- Provide information to the parent about where an independent educational evaluation can be obtained, the agency criteria (which may include qualifications of examiners and location to obtain the evaluation); and
- Ensure that the evaluation is provided at public expense, unless a special education due process hearing officer determines that the independent educational evaluation did not meet agency criteria; or
- Initiate a due process hearing to show that the school's evaluation was appropriate.

If a parent requests an independent educational evaluation, the agency may ask the reason for the objection to the public evaluation. However, the explanation by the parent shall not be required, and the agency shall not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

A due process hearing would determine whether the school must pay for the independent educational evaluation. If the school's evaluation is found to be appropriate and the parents still want an independent educational evaluation, the expense is the responsibility of the parents. When an independent educational evaluation is conducted, the school or a special education due process hearing officer, or both must consider the results of the independent educational evaluation in decisions made with respect to a free appropriate public education for the child.

If an independent educational evaluation is provided at public expense, the criteria under which the evaluation is obtained must be the same as the criteria that the school uses when it initiates an evaluation. These criteria may include the location of the evaluation and the qualifications of the examiner. The credentials of the independent evaluator or evaluators must be comparable to the school's evaluators. The school may set reasonable limitations on the costs for which it will be responsible. The school may have to exceed those costs if necessary to ensure that the independent educational evaluation meets the child's unique needs.

If a special education due process hearing officer requests an independent educational evaluation, the evaluation is provided at public expense. The school either pays the full cost of the evaluation, or ensures that the evaluation is otherwise provided at no cost to the parents. A parent is entitled to only one independent education evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees (34 C.F.R. 300.502(b)(5)).

**K.A.R. 91-40-12. Right to independent educational evaluation.**

- (a) (1) Subject to the conditions specified in this regulation, the parent of an exceptional child shall have the right to request an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the agency.  
(2) The parent shall be eligible for only one independent educational evaluation at public expense in response to an evaluation conducted by the agency.
- (b) If a parent requests an independent educational evaluation of the child, the agency, without unnecessary delay, shall take one of the following actions:
  - (1) Initiate a due process hearing to show that its evaluation is appropriate; or
  - (2) (A) Provide information to the parent about where an independent educational evaluation may be obtained and the agency criteria prescribed under subsection (g) that apply to independent educational evaluations; and  
(B) take either of the following actions:
    - (i) Pay the full cost of the independent educational evaluation or otherwise ensure that the evaluation is provided at no cost to the parent; or
    - (ii) initiate a due process hearing to show that the evaluation obtained by the parent does not meet agency criteria.
- (c) If the agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent shall still have the right to an independent educational evaluation, but the agency shall not be required to pay the cost of that evaluation.
- (d) If a parent requests an independent educational evaluation, the agency may ask the reason for the objection to the public evaluation. However, the explanation by the parent shall not be required, and the agency shall not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.
- (e) If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. The results of this evaluation may be presented as evidence at a due process hearing regarding that child.
- (f) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be paid by the agency.
- (g) (1) Subject to the provisions of paragraph (2) of this subsection, each agency shall adopt criteria for obtaining an independent educational evaluation at public expense. The criteria may include the qualifications of the examiner and the location of the evaluation, but shall not impose other conditions or timelines for obtaining the evaluation.  
(2) The criteria adopted by an agency under paragraph (1) of this subsection shall be the same as the criteria that the agency uses when it conducts an evaluation, to the extent that those criteria are consistent with the parents' right to obtain an independent educational evaluation.

## QUESTIONS AND ANSWERS ABOUT INITIAL EVALUATION AND ELIGIBILITY

**1. Can a district require a mandatory time period for the implementation of interventions before a child can be referred for a special education evaluation?**

No, a child who is suspected of having a disability must be evaluated, and it is inconsistent with federal law to use a GEI system in a manner which delays evaluations of children who are suspected of having a disability. Whether the system is called a student information or intervention team (SIT), general education intervention (GEI), Multi-Tier System of Supports (MTSS), or Response to Intervention (RtI), it cannot be used in a manner which results in delaying evaluation of children who are suspected of having a disability.

There are numerous court decisions stating that requiring a student to go through one of these systems, or to stay in one of these systems, for a specified time, before being referred for a special education evaluation is inconsistent with law. The U.S. Department of Education's Office of Special Education Programs released a memorandum on January 25, 2011, which expresses the same opinion. If school personnel suspect a child has a disability and needs special education services, the school has a legal duty to refer the child for an evaluation even if the child has not been involved in one of these systems or has only just begun to be involved in one of these systems. Our state regulations, at K.A.R. 91-40-7(c)(3), expressly authorize districts to evaluate a child without going through any GEI if the child's parents consent to an evaluation and the school agrees that an evaluation is appropriate.

**2. If the district decides not to evaluate a child, is the district required to continue the GEI process with the student?**

No. There is no mandated intervention process for when a district or cooperative refuses to evaluate a child. When this occurs the district or cooperative is required to give the parents a Prior Written Notice telling the parents that the child will not be evaluated and telling the parents why that decision was made. This notice also tells parents that certain procedural safeguards are available to the parents, including a right to initiate a due process hearing. There is not a legal requirement that a student participates in a GEI process for eight weeks or for any other specified time, including after a district or cooperative has refused a request for an evaluation.

**3. What triggers a referral for a special education evaluation?**

There are four ways that a child may be referred for a special education evaluation. (1) The parent requests an evaluation; (2) the child is referred based on an early childhood screening or from a Part C Infant-Toddler program; (3) an adult student requests an evaluation; or (4) school personnel suspect that a child may be a child with an exceptionality and need special education services. Typically, school personnel determine this through the GEI process.

**4. What happens when a child transfers to a different school district during the initial evaluation?**

Assessments for a child who transfers to a different school district during the initial evaluation are coordinated with the child's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. The 60 school day timeline for the initial evaluation may be extended only if the new school is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the new school agree to a specific time when the evaluation will be completed.

**5. How can school staff ensure that evaluation materials and procedures used to assess racially and culturally diverse children are appropriate?**

It is important that professionals conducting evaluations be aware of the potential bias that exists in all areas of assessment and seek to choose techniques and tools that reduce bias to the largest extent possible. This may involve being more aware of the growing body of research literature on this topic, developing a deeper understanding of the cultural and linguistic diversity represented in the school, purchasing evaluation materials that have been developed to reduce bias, and utilizing trained bilingual examiners. Further, professionals conducting the evaluation must document the extent that an assessment was not conducted under standard conditions (e.g., giving a standardized test in a language other than the one it was originally developed for). Teams should carefully consider the presence of bias and interpret the results of that evaluation accordingly.

**6. What are the qualifications of the people doing the assessment?**

The qualifications of the examiner will depend on the type of assessment being administered as well as the suspected exceptionality of the student. Each assessment must be given by “trained and knowledgeable” personnel in accordance with any instructions provided by the producer of the assessment (34 C.F.R. 300.304(c)(1)(iv) and (v); K.A.R. 91-40-9(a)(4)(B)). Many standardized test instructions include a description of the qualifications required of the examiner, and the examiner must meet those qualifications. Further, if the student is being evaluated for a specific learning disability, the evaluation team must include at least one person qualified to conduct individual diagnostic examinations, such as a school psychologist, speech-language pathologist, or remedial reading teacher (34 C.F.R. 300.308(b); K.A.R. 91-40-11(a)(2)). It is important to note that assessments during initial evaluations encompass much more than test administration. When planning to collect the data for an evaluation, teams should determine which individuals have the most appropriate skills and knowledge to obtain whatever data is needed.

**7. May an initial evaluation consist only of existing data?**

Yes. Existing data should be reviewed as a part of any initial evaluation. The review of existing data may occur without parent consent. This would include evaluations and information provided by the parents, current classroom-based, local, or state assessments; classroom-based observations; and observations from teachers and related service providers. For an initial evaluation, such data would help the team decide if more information is needed to determine eligibility—both the presence of an exceptionality and the determination of the child's educational need. The existing data also will help identify the present levels of academic achievement and related developmental needs of the child; whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child; and to participate, as appropriate, in the general education curriculum, or for preschool-age children, appropriate activities. If the team has enough information from all five required sources of data (GEI or Screening, Record Review, Interviews, Observations, Tests), the team may conclude that no additional data are needed and eligibility may be determined based upon existing data. Once the team determines that no additional data are needed, parent consent should be obtained to then conduct the evaluation based on that existing data. The Prior Written Notice would include: (1) a statement of this fact and the reasons for it; and (2) a statement of the right of the parents to request additional assessments to determine whether the child is a child with an exceptionality. Parent consent to conduct the initial evaluation is required, whether or not additional data is needed.

**8. Is this (an initial evaluation may consist of only existing data) also true for children transitioning from Part C Services?**

Yes. When conducting initial evaluations on young children transitioning from Infant Toddler Services (Part C) to Preschool Services (Part B), evaluation teams are encouraged to review and use existing assessment data, progress monitoring, and other information presented in the Individual Family Service Plan (IFSP). Often, the information presented may be useful in determining if the child has a disability, whether the child needs special education and related services, and the nature and extent of the special education and related services that the child needs. If projected services will be changed considerably from what was provided in the IFSP, it may be necessary to conduct further assessments or gather additional information to identify the child's present levels of academic achievement and functional performance (related developmental needs) of the child; and determine whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate in appropriate activities.

**9. What starts the 60-school-day timeline for evaluation?**

The 60-school-day timeline for evaluation begins when the agency receives written parental consent to conduct the initial evaluation. When an agency receives a parent's request for an initial evaluation of their child, the agency must provide the parent with a Prior Written Notice, either proposing to conduct the requested evaluation or refusing to conduct the requested evaluation. The 60-school-day timeline cannot be delayed by unreasonably delaying a response to a parent's request for an initial evaluation. Under most circumstances, the Kansas State Department of Education considers 15 school days to be a reasonable time in which to respond to a parent's request for an evaluation. Any delay in excess of 15 school days in responding to a parent's request for an evaluation with a Prior Written Notice will require a reasonable justification for the delay. (See Chapter 1.) It is recommended that the date the parent's request for evaluation is received is noted somewhere in the student's education records.



**10. What is required to successfully meet the 60-school-day timeline for evaluation?**

If the student is eligible, the timeline is successfully met when the IEP is implemented. If the student is not eligible, the timeline is successfully met when the Prior Written Notice is given to the parents indicating that it has been determined that a child is not eligible for special education or related services.

**11. What is the parent’s role in the review of existing data?**

As members of the evaluation team, parents may review any existing data, as well as provide existing data to the evaluation team. Parents may contribute relevant medical data or other records that the parent has concerning the child.

**12. Does an evaluation report have to specify the particular category of exceptionality under which a child has been identified?**

Kansas regulations, at K.A.R. 91-40-10(a)(1)(A), require that the evaluation report include a statement as to whether the child has an exceptionality. These regulations do not require that the evaluation report include the particular category of exceptionality in which a child has been identified.

However, no information should be withheld from parents. It is important that parents be informed of the particular category of exceptionality in which eligibility for special education was determined, and which is reported by the school to the state through the Management Information System (MIS). In a court case where the school did not inform the parents that the special education evaluation identified their child as having autism, the United States Circuit Court of Appeals said:

“Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. . . . These procedural violations, which prevented Amanda’s parents from learning critical medical information about their child, rendered the accomplishment of the IDEA’s goals—and the achievement of a FAPE—impossible.” *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892, 894 (9th Cir. 2001).

In essence, this court said that the IEP team could not create a valid IEP that addressed the child’s unique needs if required members of the team (the parents) were not fully informed of the evaluation results, which indicated their child had autism. Although this court did not address it, when a parent is not fully informed of the results of an evaluation, it is also likely that any consent given by the parent will be deficient. For these reasons, it is recommended that the evaluation report include the specific category of exceptionality in which a child is identified as an exceptional child. If the category of exceptionality is not identified in the evaluation report, it is important that school personnel document in some other way that the parents have been informed of this important information.

**13. There are several categories of disability that reference particular disorders within them (e.g., specific learning disability (SLD) includes perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia; other health impairment (OHI) may include asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome; emotional disability (ED) includes schizophrenia; etc.) Does this mean that the school team is diagnosing these disorders? Does this mean the school team must obtain (e.g., from a physician or clinical psychologist) a diagnosis of one of these disorders?**

No. The work of a school psychologist and evaluation/eligibility team needs to focus on the question of eligibility within the categories defined by state and federal special education regulations. This does not require the school team to diagnose particular disorders associated with any category of disability within the Individuals with Disabilities Education Act (IDEA). What it requires is that data exists to meet both prongs of eligibility (e.g., presence of an exceptionality, as defined in regulation, and need for specially designed instruction).

A diagnosis made outside a school team is not always needed. The definition of the category should guide school teams regarding this matter. For example, when a team is considering the category of OHI, which, by definition requires the presence of a chronic or acute health problem, health information would be required. On the other hand, a diagnosis is not required by the definition of ED or SLD. A diagnosis may provide supporting documentation, but it is not required for a determination of eligibility.

Parents may have already obtained information about particular disorders their child may have and may provide it to the school team. A school team may also determine that additional information from clinical or medical personnel is

needed, but if so, the school would need to obtain this at no cost to the parents. This information should be considered by the evaluation/eligibility team during the process of determining eligibility.

**14. What evidence is needed to show that behavior “adversely affects educational performance”?**

This is a part of the definition for several disability categories. Documentation of this may include information regarding things such as: exclusion from the classroom or extracurricular activities; inability to access the general education curriculum; low achievement scores; inability to participate in group learning activities; failing grades; inability to progress to the next grade level or failure to earn credit; etc. While low achievement scores may be supporting evidence of the disability adversely affecting the student’s educational performance, it should not be the sole criterion for determination of eligibility.

**15. If the eligibility determination team fails to reach consensus about a child’s eligibility for special education, who makes the decision?**

The team should try to reach consensus about the eligibility decision. If a member of the school team does not agree with the others, they must record their disagreement on the eligibility report and submit a separate statement presenting their conclusions. Parents who disagree with the report may, but are not required to, submit a separate statement. However, if the team cannot reach agreement, the final decision rests with the person who serves as the LEA representative at the eligibility determination meeting.

**16. Because KSDE discourages use of aptitude/achievement discrepancy as the determining factor for eligibility under the category of specific learning disability (SLD), is it still considered good practice to use cognitive assessment?**

Discouraging the use of IQ-achievement discrepancy as the determining factor for eligibility determination does not mean discouraging the appropriate use of IQ and achievement tests. However, the automatic administration of any intelligence or achievement test for evaluating all students is not considered appropriate practice.

For each referral of an individual student, the evaluation team must decide (1) which tests are appropriate to use given the referral question(s), and (2) what type of assessment will answer questions about an individual student's need for intervention and support. In general, eligibility decisions should focus on student achievement within the context of age and/or grade-level standards, and not on within-child deficits for a student with a specific learning disability.

If using the cognitive correlates approach within a Patterns of Strengths and Weaknesses method of evaluation, you will need to collect information about a student’s cognitive skills. An intelligence test might be used to collect information about some of these skills, but the evaluation team might decide to assess these skills using other tests which have technical validity and provide useful information. It is the responsibility of the evaluation team to decide which abilities and skills need to be measured and how the members of the evaluation team will collect the needed information.

If using the Response to Intervention (RtI) method of evaluation, most of the data will come from universal screening, the diagnostic process, progress monitoring, and intervention logs demonstrating focus of intervention, intensity, fidelity, and student response. Any additional assessment and intervention to be conducted should be based on the referral question. Based upon the GEI data, the team will need to decide whether or not additional data, including an assessment of cognitive skills, needs to be completed.

Regardless of the method of evaluation used, the team must make sure it addresses all issues related to the referral concern for an individual student. If there are concerns about behavior, attention, or motor skills, for example, then additional information about the student's functioning in those domains will need to be collected and analyzed as well. The revised Eligibility Indicators Document can help the evaluation team identify information that is needed for meeting the two-prong test of eligibility, including consideration of the exclusionary criteria for each category of exceptionality. That document is available at <https://www.ksde.gov/Default.aspx?tabid=553>.

**17. Once a child has been exited from special education services, must you complete an initial evaluation upon a referral to determine need for special education?**

Yes. Once a child who has been identified as a child with an exceptionality has been exited, either through revocation of consent or a reevaluation resulting in a determination that the child is no longer eligible, a subsequent evaluation would be an initial evaluation. A reevaluation is used to determine continued eligibility and continued need for special education and related services. As such, a reevaluation only applies to a child currently identified as a child with an exceptionality. However, this does not necessarily mean the initial evaluation must include new assessments. If

appropriate as a part of the initial evaluation, the team must conduct a review of existing data. If there is enough current data available, the team may determine there does not need to be any further assessments conducted.

**18. If the parent presents written information from an outside agency (i.e., medical doctor) stating the need for an evaluation and/or IEP is the school district obligated to complete an evaluation to determine eligibility?**

This should be considered a referral for an evaluation. However, the school has the right to determine the need for an evaluation. In most cases, the school should ensure that the child has been presented with appropriate GEIs whether before or during the evaluation and collect data to determine the child's need for an evaluation. The school must provide Prior Written Notice to the parent if school staff proposes to conduct an evaluation or refuse to conduct an evaluation.

**19. How should school staff respond if the parent and/or outside agency request a specific assessment be completed as part of an evaluation?**

The school evaluation team is to determine what assessments are to be conducted as part of the evaluation. They should consider any request from the parent or outside agency; however, if the school proposes to conduct the evaluation without additional data, the parent may request that the school conduct an assessment to determine if the child is a child with an exceptionality and to determine the educational needs of the child.

**20. If a parent presents an outside evaluation report to the school, is the school district obligated to implement the recommendations made by the outside evaluation team?**

After an initial evaluation is completed, if the parents disagree with the school's evaluation, they have the right to ask for an independent educational evaluation at public expense. If the parent obtains an independent educational evaluation at public expense or provides the agency with an evaluation obtained at private expense, the results of the evaluation shall be considered by the school, if it meets the school's criteria, in any decision made with respect to the provision of FAPE to the child. However, the school is not obligated to implement the recommendations made by the outside evaluation team.

**21. May diagnostic assessments be used prior to a referral for special education evaluation and obtaining parental consent?**

Parent permission is not required to administer assessments that are used to plan GEI and instruction. This would include assessments that are given to all students, as well as additional assessments that are given to individual students to obtain data needed to better match instruction with student needs.

Parents always need to be informed about the school's practices for collecting data and providing instruction. Often this information is included in parent handbooks, newsletters, and other communications. Parents should also be provided with copies of their child's data which is collected as interventions are provided and monitored. Schools should include parents in decision making whenever possible.

Prior Written Notice and informed parental consent is required before beginning an evaluation for special education. This is a parent right that is protected by special education statute and regulation.

