

QUESTIONS AND ANSWERS ABOUT PARENT RIGHTS

1. Is it acceptable to give the Parent Rights document when the IEP meeting is held?

No. Parents must be mailed or personally delivered a copy of the Parent Rights document with the written notice of the IEP meeting, at least 10 calendar days before the actual meeting. The rationale for parents' having a copy of their procedural safeguards is to have sufficient time to review the document, understand their rights, and if needed contact someone for assistance or further information.

2. Must the Parent Rights document be provided if an IEP goal is changed mid-year?

Yes. A change in the IEP necessitates an IEP meeting, and a copy of the Parent Rights document would be mailed or personally delivered to the parents along with the notification of the IEP meeting.

3. How can schools enhance parent involvement?

Schools must now include parents as members of all decision making teams. Many schools have been doing this for some time. Perhaps the person who has the most contact with the parents could consistently be the one to call them about best times to meet for evaluation, IEP, and educational placement meetings. That person could be listed as the contact if parents have questions, and sign letters to provide Prior Written Notice and obtain informed parent consent for special education actions. Parents are also to be involved in the school-based improvement planning. Parent input is sought and included in all decision making aspects of their child's educational program. Parents are to be valued as being the most knowledgeable about their child.

4. What are the exceptions for students who are only identified as gifted?

Under the Kansas Special Education for Exceptional Students Act (revised 1999), students who are gifted have most of the same rights as students with disabilities. However, preschool children from ages 3 through 5 are not eligible to receive gifted services. IDEA-97 discipline protections for students with disabilities do not apply to students who are gifted. LRE requirements are different for students who are gifted, but they are entitled to individual placement decisions. The alternate assessment and modified State assessments are not available to them. Students who are gifted are not eligible for extended school year services. Special education services are not compulsory for students who are gifted. Finally, students who are gifted and who are in the custody of the Department of Corrections (ages 18-21) are not entitled to services under IDEA-97, unless they have a disability as well.

5. Who can give consent for a student's educational program?

Parents and/or legal educational decision makers must be given Prior Written Notice and provide or withhold consent for decisions such as the student's initial evaluation or reevaluation, provision of a free appropriate public education, and educational placement. The Education Advocate is officially appointed to work with the school in planning and monitoring the student's school program, and may grant or withhold consent just as parents may. See the chart on page 1-10 within this chapter for further information about determining who may grant consent for educational decisions.

6. What if there is disagreement about an action that requires consent?

Parents and other legal educational decision makers should clarify the issues about which there is no disagreement. Those actions, or portions of the IEP, should be implemented without delay.

For the area of disagreement requiring consent, there are two options: Mediation as an impartial proceeding whereby a mediator works with the parents and the school representative to reach consensus and develop a written agreement, and a due process hearing in which a hearing officer makes the decision. In mediation, both parties must agree they want to mediate. There is no cost to the parents or to the school. In due process, either the parents or the school may request a hearing.

7. Are there times when Prior Written Notice is required and consent is not?

Yes. Prior Written Notice is required (but consent is not) for:

- Identification of a student as a student with exceptionalities;
- Change in educational placement if not a substantial change in placement as defined KSA 72-961(rrr), more than 25% of the school day;
- Change in services if not a material change in a service as defined by KSA 72-961(mm), 25% or more of the amount of service;
- In very specific circumstances under which a substantial change in placement or material change in services, if the school can "demonstrate that it has taken reasonable measures to obtain parental consent to a substantial change in placement or material change in services and the student's parent has failed to respond. If the parent fails to respond to the request for parental consent to a substantial change in placement or a material change in services, the school must maintain detailed records of written and verbal contacts with the parent and the response, if any received from the parent" (KAR 91-40-27(e).

8. What are the school's responsibilities for notice and consent with divorced parents?

If parents are divorced, regardless of which parent has primary custody, the school should notify both parents unless a court order precludes this from happening. This applies to all Prior Written Notice requirements as well as notice of an IEP meeting. If the school is only aware of one parent's address, there is no requirement to locate the other parent in order to provide notice.

Consent from one parent is sufficient. In the event that the school receives consent forms from both parents, with one providing consent and the other denying consent, the school must fulfill its obligation to provide FAPE to the student. The parent who denies consent has the right to request mediation or file for due process.

9. What are the qualifications of an Education Advocate?

Requirements for Education Advocates are established in KSA 38-1513a. Education Advocates must:

- be 18 years or older,
- attend the Families Together training for Education Advocates so they have knowledge and skills to be sure the student is adequately represented, and
- provide three references for appointment as an Education Advocate.

Education Advocates cannot be:

- employees of the agency required by law to provide special education services,
- employees of KSDE or any agency directly involved in providing educational services for the student, or
- people with a professional or personal interest that would conflict with the student's best interests.

SRS caseworkers, subcontracting agency caseworkers, foster parents, group home workers, retired professionals (such as teachers, school administrators, school psychologists, counselors, and social workers), and local community volunteers may be Education Advocates, if they receive the training from Families Together.

There are other rules for Education Advocates: If the student is in a State institution, the Education Advocate cannot be an SRS employee. If the student is in permanent or constant foster care, the Education Advocate may be the foster care providers if they have been trained. If the student is not in a State institution, the Education Advocate may be an SRS employee if s/he has been trained.

10. What is the training for Education Advocates?

KSDE and Families Together have developed a three-hour training session about the Education Advocate's roles and responsibilities. This training covers the identification, evaluation, free appropriate public education, and educational placement for students receiving special education services. The training session also prepares Education Advocates with the skills they will need to represent the student well.

Families Together offers training sessions throughout Kansas during the school year. These are open to all interested persons. Parents, guardians, stepparents, foster and adoptive parents, persons acting as parents, and SRS caseworkers are encouraged to attend. People who want to be Education Advocates MUST attend this training before they can be appointed.

11. May an Education Advocate be assigned to represent a student over the age of 18?

In Kansas, students from age 18 through 21 years have attained the age of majority, and so they become their own advocates. If the student is a ward of the State and determined to be a Child in Need of Care by SRS, s/he would have an Education Advocate appointed at age 18, or before if necessary. If the student has been judged to be unable to represent himself/herself, a guardian may be appointed by the court.

12. Are Education Advocates appointed for a student who is gifted?

Yes. In Kansas, services for students who are gifted are provided through the special education system in public schools. An Education Advocate would be appointed in the same way for students ages 5 to 18 who are gifted.

13. What are the responsibilities of an Education Advocate?

Just as parents or other legal educational decision makers, the Education Advocate represents the student in the process of identification, evaluation, educational placement, and provision of a free appropriate public education. An Education Advocate has no financial responsibility or other responsibility for the day-to-day care of the appointed student.

The Education Advocate must:

- Protect the student's rights in the education and decision making process including the identification, evaluation, educational placement, and provision of FAPE to the student;
- Follow confidentiality requirements of State and Federal laws;
- Participate in developing the student's IEP; and
- Have other rights afforded to parents under Federal and State laws.

14. How do we document a notice of an IEP meeting was provided to the parents? Do we need parent signature?

If a copy of the IEP notice including the date it was sent is in the file, that is documentation. Parent signature on the notice is not required.

15. What is the difference between "Prior Written Notice" and "10-Day IEP Notice?"

"Prior Written Notice" is provided to the parents before the school proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of special education and related services (FAPE) to the child. This Notice is provided prior to taking any action.

"The 10-Day IEP Notice" is given to parents at least 10 calendar days before the IEP meeting to review and revise the IEP. If a change in identification or educational placement or the need for more evaluation information is determined to be needed during the meeting, then the "Prior Written Notice" would be given to parents before that action could take place.

16. After students are age 14 or older, is the school required to provide the students with their own separate 10-day IEP meeting Notice?

No, the school is not required to send the students their own separate Notice. However, students ages 14 to 17 must be invited with documentation of student's participation in the IEP meeting or input into the IEP. After the age of majority (18 in Kansas), the public agency MUST provide any Notice to BOTH the student and the parents. The parents are only notified of the meeting. To attend the meeting, they will have to be invited by their child or the public agency.