

|                              |  |
|------------------------------|--|
| <b>TOPEKA PUBLIC SCHOOLS</b> | <b>REGULATION NUMBER: 6200-1</b>               |
| <b>SUBJECT:</b>              | <b>DATE OF ISSUE: 06/18/80</b>                 |
| <b>SPECIAL PROGRAMS</b>      | <b>REVISIONS: 02/07/97; 08/10/99; 06/05/09</b> |
|                              | <b>PREPARING OFFICE:<br/>SPECIAL SERVICES</b>  |

**I. PURPOSE:**

To establish procedures for ensuring the implementation of the policy pertaining to special programs.

**II. PROCEDURE:**

Specific procedures pertaining to state and federal laws and regulations--and Special Education Services provided by Topeka, USD No. 501--may be found in documents available in the office of the general director of special services.

- A. All children, prior to special class placement, shall have had a comprehensive evaluation (See Regulation 6200-3).
- B. All special classes and/or special students will be coordinated through the general director of special services or the general director's designee.
- C. Students returning to regular classes will be coordinated through the general director of special services or the general director's designee.

**III. RIGHT TO DUE PROCESS HEARING; NOTICE AND HEARING; TIME; PARENT DEFINED:**

- A. Each child, or the parent, shall be afforded the right to a due process hearing with respect to any matter relating to the identification, evaluation, educational placement of the child, the provision of a free appropriate public education, the result of a manifestation determination review, or the order of school personnel or a hearing officer to change the placement of a child with a disability.
- B. Written prior notice shall be provided to the child or parent of the involved child whenever the Board proposes 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. Said notice shall be mailed or personally delivered to said child or parent and shall include:

06/18/80

Revisions: 02/11/85; 07/26/88; 08/10/99

Topeka Public Schools

**SPECIAL PROGRAMS (continued)**

1. A description of the action proposed or refused by the Board;
2. An explanation of why the agency proposes or refuses to take the action;
3. A description of any options that the agency considered and the reasons those options were rejected;
4. A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;
5. A description of any other factors that are relevant to the agency's proposal or refusal;
6. A statement that the parents have protection under the procedural safeguards of the Special Education for Exceptional Children 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
7. Sources for parents to contact to obtain assistance in understanding the provisions of the federal law and the Special Education for Exceptional Children Act.

C. The parent of the involved child may revoke consent to the proposed action at any time and may request the due process hearing provided for in this section.

D. For the purposes of this policy and regulation, "parent" means a natural parent, adoptive parent, a person acting as parent, a legal guardian, or an educational advocate. In the event that none of the above is known or can be found, the Board shall cause proper proceedings to be instituted pursuant to the Kansas Code for Care of Children to determine whether said child is in need of care.

**IV. PROCEDURAL DUE PROCESS REQUIREMENTS; ACCESS TO RECORDS; HEARING OFFICERS:**

A. Unless the parent and school agree otherwise, within fifteen (15) days of receipt of a request for a due process hearing, school district personnel will convene a resolution meeting to discuss the issues raised in the due process complaint notice and attempt to resolve the issues. The meeting will include, at a minimum, the parent, a school representative with authority to make decisions. Counsel for either side may not attend the meeting unless the parties agree to their presence. If agreement on the issues is reached, the agreement will be reduced to writing and signed by the parties. A parent may void the agreement within three days after it is signed by providing notice to the school in writing.

06/18/80

Revisions: 07/26/88; 08/10/99; 06/05/09

Topeka Public Schools

**SPECIAL PROGRAMS (Continued)**

- B. A due process hearing shall be held at a time and place reasonably convenient to the parent of the involved child, shall be a closed hearing unless the parent requests an open hearing, and shall be conducted in accordance with rules and regulations relating thereto adopted by the Board. Such rules and regulations shall afford procedural due process, including the following:**
- 1. The right of the parties to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;**
  - 2. The right of the parties to be present at the hearing;**
  - 3. The right of the child, the parent of the child and their counsel or advisor to hear or read a full report of the testimony of witnesses responsible for recommending the proposed action and of any other material witnesses parties to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of the issuance of a subpoena;**
  - 4. The right of the parties to present witnesses in person or their testimony by affidavit, including expert medical, psychological, or educational testimony;**
  - 5. The right of the parties to prohibit the presentation of any evidence at the hearing which has not been disclosed to the opposite party at least five (5) days prior to the hearing, including any evaluations completed by that date and any recommendations based on such evaluations;**
  - 6. The right to prohibit the other party from raising, at the due process hearing, any issue that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing;**
  - 7. The right of the parties to have a written or, at the option of the parent, electronic, verbatim record of the hearing.**
  - 8. The right to a written or, at the option of the parent, an electronic decision, including findings of facts and conclusions.**
- C. Each due process hearing, other than an expedited hearing as provided for under K.S.A.. 72-992A, K.S.A. 72-993 of the Special Education for Exceptional Children Act and amendments thereto, shall be held no later than thirty-five (35) days from the date on which the request therefore is received. If a resolution meeting is held, but results in no resolution of the complaint within thirty (30) days of the school's receipt of the complaint, applicable timelines**

06/18/80

Revisions: 02/07/97; 08/10/99; 06/05/09

Topeka Public Schools

**SPECIAL PROGRAMS (Continued)**

for the due process hearing commence. The child and the parent of the child shall be notified in writing of the time and place of the hearing at least five (5) days prior thereto. At any reasonable time prior to the hearing, the parent and the counsel or advisor of the involved child shall be given access to all records, tests, reports, or clinical evaluations relating to the proposed action.

- D. Except as otherwise provided in K.S.A. 72-993 of the Special Education for Exceptional Children Act, and amendments thereto, during the pendency of any proceedings conducted under this act, unless the agency and parent otherwise agree, the child shall remain in the then-current educational placement of such child. If proceedings arise in connection with the initial admission of the child to school, the child shall be placed in the appropriate regular education classroom or program in compliance with K.S.A. 72-1111, and amendments thereto, unless otherwise directed pursuant to K.S.A. 72-991a of the Special Education for Exceptional Children Act, and amendments thereto.
- E. For the purpose of conducting any hearing under this section, the Board shall appoint a qualified, impartial hearing officer.

The Board shall maintain a list of the persons, other than employees of the school district, who may be appointed as hearing officers. Such list shall include a statement of the qualifications of each hearing officer. Each hearing officer shall be qualified in accordance with standards and requirements established by the Kansas State Board of Education and shall have satisfactorily completed a training program conducted or approved by the State Board. Whenever a hearing officer conducts any hearing, the hearing officer shall render a decision on the matter, including findings of fact and conclusions, not later than ten (10) days after the conclusion of the hearing. The decision shall be written or, the option of the parent, shall be an electronic decision. Any action of the hearing officer in accordance with this Subsection (C) shall be final, subject to appeal as provided in Section V.

Prior to appointing a hearing officer to conduct a due process hearing, the Board shall make its list of hearing officers available to the parent of the involved child and shall inform the parent of the right to request disqualification of any or all of the hearing officers on the list and to request the State Board to appoint a hearing officer in accordance with the procedure provided in this subsection. If the parent does not give written notice of disqualification to the agency within five (5) days after the parent receives the list, the Board may appoint from its list any hearing officer whom the parent has not requested to be disqualified. If the parent requests disqualification of all of the hearing officers and requests the appointment of a hearing officer by

**SPECIAL PROGRAMS (Continued)**

the State Board, the Board shall immediately notify the State Board and shall request the State Board to appoint a hearing officer.

**V. APPEAL AND REVIEW; PROCEDURE; DUTIES OF STATE BOARD; HEARING OFFICERS:**

- A. Written notice of the result of any due process hearing shall be given to the school district and shall be sent by certified mail to the affected child or the parent, counsel or advisor of the child within twenty-four (24) hours after the result is determined. Such decision, after deletion of any personally identifiable information contained therein, shall also be transmitted to the state board which shall make the decision available to the State Advisory Council for Special Education to the public upon request.**
- B. Any party to the due process hearing may appeal such decision to the Kansas State Board of Education by filing a written notice of appeal with the Commissioner of Education not later than thirty (30) calendar days after the date of the postmark on the written notice specified in subsection A.**
  - 1. A review officer appointed by the state board shall conduct an impartial review of the decision. The review officer shall render a decision not later than twenty (20) calendar days after the notice of appeal is filed. The review officer shall:**
    - a. Examine the record of the hearing;**
    - b. Determine whether the procedures at the hearing were in accordance with the requirements of due process;**
    - c. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the review officer;**
    - d. Seek additional evidence if necessary;**
    - e. Render an independent decision on any such appeal not later than five (5) days after completion of the review; and**
    - f. Send the decision on any such appeal to the parties and to the state board.**
  - 2. For the purpose of reviewing any hearing and decision under provision (1), the state board may appoint one or more review officers. Any such appointment may apply to a review of a particular hearing or reviewing a set or class of hearings as specified by the state board in making the appointment.**
- C. The decision made by the State Board of Education under this section may be appealed to the District Court of Shawnee County, Kansas, in the manner**

**SPECIAL PROGRAMS (Continued)**

provided by the Act for Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601, et seq.) or to federal court as allowed by federal law.

- D. Any action in federal court shall be filed within thirty (30) days after service of the review officer's decision.

**VI. ADMINISTRATION OF OATHS; ISSUANCE OF SUBPOENAS; COSTS; APPEAL TO DISTRICT COURT; CERTAIN ACTIONS PROHIBITED; EXCEPTIONS:**

- A. Any hearing officer conducting a hearing under this policy and regulation may administer oaths for the purpose of taking testimony therein.
- B. Any hearing officer conducting a hearing under this policy and regulation or any party to any such hearing may request the Clerk of the District Court of Shawnee County, Kansas, to issue subpoenas for the attendance and testimony of witnesses and the production of all relevant records, tests, reports, and evaluations in the same manner provided for the issuance of subpoenas in civil actions pursuant to K.S.A. 60-245, and amendments thereto.
- C. Any person conducting a hearing under this policy and regulation, at the request of either party, may grant specific extensions of time beyond the limitations specified in Sections IV and V.
- D. Any person conducting a hearing under this policy and regulation shall consider any request for discovery in accordance with the provisions of K.S.A. 77-522, and amendments thereto, except that depositions of witnesses who will be available for the hearing shall not be not allowed.
- E. Every hearing and review under this policy and regulation shall be provided at no cost to the child or parent of the child. The costs of any hearing provided for by the board shall be paid by the school district.
- F. Any review officer conducting a review under this policy and regulation may hold a hearing to receive additional evidence. Every such hearing shall be conducted in accordance with the requirements under this policy and regulation.

**VII. MANDATORY SPECIAL EDUCATION SERVICES; CONDITIONS; ADMISSION TO STATE INSTITUTIONS:**

- A. Each school district shall be required, to the maximum extent possible, educate children with disabilities with children who are not disabled, and to provide

06/18/80

Revisions: 02/07/97; 08/10/99; 06/05/09

Topeka Public Schools

**SPECIAL PROGRAMS (Continued)**

special classes, separate schooling or for the removal of children with disabilities from regular education environment only when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be satisfactorily achieved.

- B. Nothing in this section shall be construed to authorize the state board or the Board to function as an admitting agency to the state institution or to limit or supersede or in any manner affect the requirements of the Board to comply with the provisions of K.S.A. 72-966, and amendments thereto, to provide special education services for each exceptional child in the school district unless and until such child meets the criteria for admission to a state institution and is so admitted by the state institution. Each state institution shall furnish such criteria to the Board upon request.

**VIII. ENROLLMENT OF EXCEPTIONAL CHILDREN BY PARENT;  
COMPULSORY ATTENDANCE:**

- A. Where a determination has been made as provided in this policy and regulation that a child is an exceptional child and special education services are necessary for such child, it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide such services privately.
- B. The provisions of Section A do not apply to gifted children or to the parents of gifted children.

**IX. ADDITIONAL DUE PROCESS RIGHTS:**

Sections III through VII are intended to reflect Kansas law dealing with special education due process rights (K.S.A. 72-961, et seq.). Additional rights are guaranteed under federal law, and a full explanation of all rights relating to special education evaluation and placement may be obtained by contacting the general director of special services at the Topeka Unified School District No. 501 Administrative Center.