

SCHOOL LAW AND SPECIAL EDUCATION

Guardian *ad litem* Basics

Guardians *ad litem*

Nuts and Bolts

October 2016

AREAS TO COVER

- McKinney-Vento Homeless Assistance Act and Elementary and Secondary Education Act of 1965 (ESEA)
- Kansas Foster Youth Graduation Requirements
- Regular Education Interventions (504 Plan)
- BASIC Special Education Law (IEP)

McKinney-Vento Homeless Assistance Act and ESSA

42 U.S.C. §§11431-11435

- Subtitle VII-B of The McKinney-Vento Homeless Assistance Act is the primary piece of federal legislation dealing with the education of children and youth experiencing homelessness.
 - Reauthorized in 2001 as part of the No Child Left Behind Act.
 - Most recently re-authorized in December 2015 by the Every Student Succeeds Act (ESSA).
 - <https://www.gpo.gov/fdsys/pkg/BILLS-11481177enr/pdf/BILLS-11481177enr.pdf>
 - <http://legcounsel.house.gov/Comps/Elementary%20And%20Secondary%20Education%20Act%2001%201963.pdf>
 - **McKinney-Vento amendments in ESSA go into effect on October 1, 2016.
- <http://center.serve.org/nche/legis/mv.php>

Definition of *Homeless*

The term "homeless children and youths"--

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and

Definition of Homeless (cont.)

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (removed under newly passed legislation)

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

<http://center.serve.org/nrhc/legis/mv-def.php>



Education for Homeless Children and Youth (McKinney-Vento) 2014-2016 Homeless Data

2014-2016 Homeless student count by district
(District Number - District Name, Number of homeless students)

207-Treco	117	287 West Franklin	55	416 Trenton	17
208-Burner Springs	15	290 Wellsville	27	418 Ash Grove	45
209-Bassett	14	295 Ottawa	235	428 Grand Bend	14
209-Rivington-Whitewater	36	305 Salina	135	434 Santa Fe Trail	44
209-Atchison	28	308 Hutchinson	111	437 Auburn Washburn	51
210-Hugoton	11	315 Colby	13	439 Sedgwick	13
218-Ephraim	66	320 Wamego	20	443 Dodge City	22
226-Roads	13	328 Valley Falls	15	445 Coffeyville	17
228-Rose Valley	96	341 Perry	15	456 Independence	17
240-Spring Hill	57	344 Jayhawk	47	453 Leavenworth	479
231-Gleason-Erskine	98	347 Penney Disette	17	457 Garden City	258
232-Delton	28	358 Baldwin City	28	461 Hesburgh	18
233-Olathe	412	353 Wellington	43	464 Tonganoxie	11
234-Fort Scott	65	367 Prairie View	18	465 Winfield	24
243-Lebo-Wesley	10	368 Garnett	32	467 Leoti	36
244-Burlington	22	367 Okemuncie	66	470 Arkansas City	193
246-Northwest	20	368 Paola	20	475 Geary County	219
247-Oberlin	10	371 Hampton	18	477 Ingalls	10
250-Fittsburg	182	374 Sublette	30	480 Liberal	240
253-Emporia	50	375 Cassie	17	487 Hutchinson	20
258-Wichita	2092	381 Harshbarger Ogden	276	490 Hillside	13
260-Derby	84	385 Andover	22	493 Eudora	28
261-Haysville	219	401 Chris Rison	36	497 Lawrence	202
262-Valley Center	64	404 Newton	35	500 Kansas City	1996
263-Mt. Lane	16	404 Lyons	25	501 Topeka	419
265-Goddard	23	409 Atchison	18	503 Parsons	16
266-Elsa	11	412 Haysville	12	508 Baxter Springs	23
268-Cheney	10			512 Shawnee Mission	418

59 other districts identified 1 or more students, but less than 10.
143 districts did not identify any homeless students.
Kansas had 286 districts during the 2014-2015 school year.

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Education For Homeless Children and Youth 2014-2015 Homeless Data

- 143 districts reported they had identified 9,715 students
- 8,173 doubled up (living with another family)
- **942 in shelters, transitional housing, or awaiting foster care**
- 95 Unsheltered (cars, parks, campgrounds, temporary trailer, or abandoned buildings)
- 505 Hotels/Motels
- 1,122 Unaccompanied Youth
- 1,695 Students with disabilities
- 1,363 Limited English Proficient (LEP)
- 237 Migrant

<http://www.ksde.org/Portals/0/Title%20Programs%20and%20Services/Homeless/Data-2014-2015KansasLEHCY.pdf>

HOMELESS YOUTH KANSAS LAWS & REGULATIONS

Kansas Laws and Regulations

- **Immunization** K.S.A. 72-5209 Provides students who are enrolling for the first time in a Kansas public school with 90 days to present proof of required inoculations. The parent or person acting as parent must sign a written statement that such tests or inoculations are in the process of being received and will be completed within 90 days. County health departments must provide appropriate inoculations to children whose families are unable to afford them.
- **Pupil Identification** K.S.A. 72-53.106 Requires schools to give written notice to local law enforcement agencies to initiate an investigation to determine the identity of the child, if proof of identity is not presented to the school within 30 days.
- **Student Records** K.A.R. 91-31-6 Requires student academic records follow the student on request, unless the student has failed to return or pay for school property (K.S.A. 72-5386). If a student's parents or persons acting as parents provide an affidavit that they are unable to return or to pay for school property that is lost or destroyed, the school district must forward the student's records as requested and note in the school records that the student has complied with the provisions of K.S.A. 72-5386.

Kansas Laws and Regulations (cont.)

- **Residency Requirements** K.S.A. 72-1046 Assigns residency to homeless children and youth.
- **Interim IEP** K.A.R. 91-12-41 Specifies that an interim individualized educational program (IEP) be developed for an exceptional child if the current IEP or records are not immediately available or if more information is needed to determine appropriate placement. Any exceptional child who transfers from one local educational agency program to another shall be placed in the special education service program which appears to be most suited to the student's needs.

<http://www.ksde.org/Portals/0/Title%20Programs%20and%20Services/Homeless-KansasLawsRegulation.pdf>

THE MOST FREQUENTLY ASKED QUESTIONS
ON THE EDUCATION RIGHTS OF
CHILDREN AND YOUTH IN HOMELESS SITUATIONS
(updated 11/09)

National Association for the Education of Homeless
Children and Youth National Law Center on
Homelessness & Poverty
P.O. Box 26274 1411 K Street, NW; Suite 1400
Minneapolis, MN 55426 Washington, DC 20005
Phone: 202-364-7392 Phone: 202.638.2535
Fax: 202-318-7523 Fax: 202.628.2737
www.naehcy.org www.nlchp.org

KANSAS FOSTER YOUTH
GRADUATION REQUIREMENTS

K.S.A. 38-2285

Awarding High School Diplomas; requirements

- a) The board of education of a school district shall award a high school diploma to any person requesting a diploma if such person:
- 1) Is at least 17 years of age;
 - 2) is enrolled or resides in such school district;
 - 3) is or has been a child in the custody of the secretary, or in the custody of a federally recognized Indian tribe in this state, at any time on or after such person's 14th birthday; and
 - 4) has achieved at least the minimum high school graduation requirements adopted by the state board of education

Regular Education Interventions (504 Plan) & Basic Special Education Law (IEP)

Americans with Disabilities Act

U.S.C. 12101 et. seq.

- Enacted 1990
- Last major Amendments, 2008

Rehabilitation Act of 1973 Section 504

- **Civil Rights Law that prohibits discrimination against persons with disabilities**
- **Regular Education Plan for a student with a disability**
 - **Student must have a documented physical or mental impairment that substantially limits one or more major life activities**

Rehabilitation Act of 1973 Section 504 (cont.)

- Accommodations in the regular classroom
 - *Specialized equipment (chair, special technology, etc.)*
 - *Preferential seating*
 - *Special testing location*
- Accommodations should place the student at a more equal level with those students who do not have a disability.
- Accommodations should be realistic and not place an undue hardship on the school.

504 Grievance Procedures

- **Policies developed by the school district**
- **Filed directly with the Office of Civil Rights (OCR) resulting in an OCR investigation**

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

All eligible school-aged children & youth with disabilities are entitled to receive a free appropriate public education

- 20 U.S.C. 1400
- Kansas Statutes Annotated, Chapter 72, Article 9
Special Education
- Kansas Board of Education Regulations, Chapter 91,
Article 40 Special Education

Procedural Safeguards

- Kansas State Department of Education –
Parent Rights in Special Education
(Procedural Safeguards)
- K.S.A. 72-988. Parental rights.

Free Appropriate Public Education (FAPE)

School districts are required to provide a free appropriate public education to children, between the ages of 3 and 21, with disabilities who reside in the school district and who qualify and need special education services.

“Free Appropriate Public Education” 20 U.S.C. section 1401 (9)...

(9) Free appropriate public education. The term “free appropriate public education” means special education and related services that—

- a) have been provided at public expense, under public supervision and direction, and without charge;
- b) meet the standards of the State educational agency;
- c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- d) are provided in conformity with the individualized education program required under section 1414 (d) of this title.

“Free Appropriate Public Education”

K.S.A. 72-962

"Free appropriate public education" means special education and related services that:

- (1) Are provided at public expense, under public supervision and direction, and without charge;
- (2) meet the standards of the state board;
- (3) include an appropriate preschool, elementary, or secondary school education; and
- (4) are provided in conformity with an individualized education program.

Evaluation for Special Education Services

Often begins as a referral to the school's Student Improvement Team (SIT) to create a SIT plan first as a regular education intervention

- **SPECIAL EDUCATION EVALUATION**
 - **PARENTS MUST CONSENT FOR THE FORMAL SPECIAL EDUCATION EVALUATION**

Student in DCF custody

**Rights of Parents Intact
(no parental rights termination)**

PARENT MUST CONSENT

Student in DCF custody

*Parent unknown or unavailable or terminated
and student appears to be an exceptional child*

THEN

***Educational Advocate** must be named*

K.S.A. 38-2218 Educational decision;
educational advocates for exceptional children

PROCEDURE TO APPOINT AN EDUCATIONAL ADVOCATE

38-2218. Educational decisions; educational advocates for exceptional children. (a) When the court has granted legal custody of a child in a hearing under the code to an agency, association or individual, the custodian or an agent designated by the custodian shall have authority to make educational decisions for the child if the parents of the child are unknown or unavailable. When the custodian of the child is the secretary, and the parents of the child are unknown or unavailable, and the child appears to be an exceptional child who requires special education, the secretary shall immediately notify the state board of education, or a designee of the state board, and the school district in which the child is residing that the child is in need of an education advocate.

Must start with The Secretary (DCF) NOT the GAL or the Court

The Kansas State Board of Education has named the State Designee

FAMILIES TOGETHER

DCF PPM 5257 Education Advocates

- Due Diligence Effort to Locate Parents
- No referral for Education Advocate services may be made unless due diligence/reasonable efforts have been made and documented in the child's case file.
- The Case Management Provider staff shall refer any eligible child by completing the PPS 5140, Education Advocate Referral Form. The PPS 5140 and any other correspondence regarding the referral shall be sent to Families Together at the address provided on the PPS 5140.
- All persons desiring to become an Education Advocate shall attend training and be appointed by KSDE

SPECIAL EDUCATION EVALUATION

Initial evaluation is usually conducted by the school psychologist and other special education providers (i.e. occupational therapist, speech/language therapist, school social worker, etc.)

***K.S.A. 38-2219 (a)(3)**

SPED ELEGIBILITY

Eligibility determined by an identified disability or a significant discrepancy between ability and achievement

CATEGORIES OF DISABILITIES

- **Specific Learning Disability**
- **Communication Disorder**
- **Intellectual Disability, Cognitive Impairment**
- **Behavior Disorder, Emotional Disability**
- **Autism Spectrum Disorder**
- **Deaf, Hard of Hearing**
- **Low vision, blind**
- **Physical Disability**
- **Traumatic brain injury**
- **Other Health Impairment**
- **Developmental Delay**

INDIVIDUALIZED EDUCATION PLAN (IEP)

- **Individualized Education Plan (IEP)**
 - **Revised 1 time per year**
 - **Blueprint for special education services**
 - *Annual Goals*
 - *What kind of services*
 - *Who will provide the services*
 - *How often will the services be provided*
 - *Other special accommodations*
 - i.e. Student has behaviors that impede the ability to learn...request that the IEP include a Behavioral Intervention Plan (BIP)

**SPED
TRANSITION SERVICES**

Beginning age 14 – the IEP should include a statement of the transition service needs that focuses on the child’s courses of study (i.e. advanced placement courses, community experiences, or a vocational education program)

GAL –

If child has an IEP and the plan is Another Planned Permanent Living Arrangement...make sure goals in both IEP and CINC Transition Plan are consistent

SPECIAL EDUCATION FORMAL
COMPLAINT PROCEDURE

LEAST RESTRICTIVE ENVIRONMENT
(LRE)

DISCIPLINARY ACTION FOR CHILD WITH A DISABILITY & CHANGE IN PLACEMENT

- Short-term Removal = 10 days or less = NOT a change in placement
- Long-term Removal = *more* than 10 days = Change in placement

Procedures for Disciplinary Violations

MANIFESTATION DETERMINATION HEARING

- Review must be held within 10 school days of the disciplinary action
- Determine the relationship between the child's disability and the conduct that is subject to the disciplinary action
- IF THE CONDUCT IS A MANIFESTATION OF THE CHILD'S DISABILITY...
 - Conduct a functional behavioral assessment & implement a behavioral intervention plan

MANIFESTATION DETERMINATION HEARING

- **72-991a. Change in placement of child with disability to alternative setting as disciplinary action for certain behavior; duties of IEP team and hearing officer; behavioral assessment and intervention plan; determination and review procedure.**

DUE PROCESS HEARING & REVIEW

72-992a. Same; parental disagreement with determination; due process hearing and review.

a) The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under K.S.A. 2012 Supp. 72-991a, and amendments thereto, or an agency that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or to others, may request a hearing.

DUE PROCESS HEARING & REVIEW (cont.)

- a) A hearing officer appointed under this act shall hear, and make the determination regarding, an appeal requested under subsection (a).
- b) In making the determination under subsection (b), the hearing officer may order a change in placement of the child. In such situations, the hearing officer may:
 - 1) Uphold the manifestation determination;
 - 2) uphold the interim alternative educational placement of the child;
 - 3) return the child to the placement from which the child was removed; or
 - 4) order a change in placement of the child to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

Supreme Court RULE 110A GAL Role

GAL has the duty to MONITOR implementation of service plans & court orders.

- Does this include SIT, 504, & IEP service plans? Participation? “Monitoring” for compliance? What is required under the scope of representation and court appointment?
- Is the GAL required to represent the child in a manifestation determination hearing under IDEA due process? Should the GAL participate?

RESOURCES

- **Kansas State Department of Education/ Kansas State Board of Education** (<http://www.ksde.org/Home>)
 - [Guidelines for Self-Determination \(PDF\)](#)
 - [Parent Rights Determination Notice \(PDF\)](#)
 - [Kansas Special Education Process Handbook](#) ***VERY COMPREHENSIVE
- **Families Together** (<http://families-together-inc.org/>)
 - For more information, contact: Darla@families-together-inc.com or Kris@families-together-inc.org or call the Topical Center.
- **Keys for Networking** (<http://www.keys.org/>)
- **American Bar Association Center on Children and the Law** (www.abanet.org/child/home.html)
- **National Information Center for Children and Youth with Disabilities (NICHCY)** (<http://www.parentcenterhub.org/nichcy-resources/>)
- **Kansas Disabilities Rights Center (DRC)** (<http://www.drc-kansas.org/>)
- **Kansas Special Education Legal Questions:**
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