

## **INSTRUCTION**

### **SPECIAL EDUCATION PROCEDURES**

#### **Special Education and Related Services for Eligible Students**

The purpose of the District's special education program procedures is to address program areas where state and federal regulations require specific local procedures or permit local discretionary choices.

The state regulations governing implementation of special education services, pursuant to the Individuals with Disabilities Education Act, are addressed in Chapter [392-172A WAC](#). These procedures do not address all of the requirements established in the regulations. District personnel who are not familiar with the regulations need to contact the Director of Special Services and/or designee if there are questions regarding special education. These procedures describe how the District implements its special education program, but they do not add rights or services not required by state and federal laws and rules.

#### **Free Appropriate Public Education**

The District will apply annually for Federal Part B and State special education funding to assist in the provision of special education and any necessary related services. This funding is in addition to eligible special education students' basic education funding.

Services to eligible special education students birth to 21 years will be provided without charge to the student. This does not include incidental fees that are normally charged to all students. The District's special education services will meet State education standards. Special education services will include preschool, elementary and secondary education and will be provided in conformance with the student's Individual Education Plan. Services to student's birth to two years of age who qualify are provided through a contract with the Children's Center.

The District provides a continuum of services for students, regardless of the funding source. Where the District is unable to provide all or part of the special education or necessary related services, it will make arrangements through contracts with other public or non-public sources, inter-district agreements, or interagency coordination.

#### **Students Covered by Public or Private Insurance**

The District may use Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required to provide a Free Appropriate Public Education (FAPE), as permitted by the public insurance program. However, the District shall not:

- Require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA;

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- Require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim;
- Use a student's benefits under a public insurance program, if that use would:
  - ◊ Decrease available lifetime coverage or any other insured benefit;
  - ◊ Result in the family paying for services required after school hours that would otherwise be covered by the public insurance program;
  - ◊ Increase premiums or result in discontinuation of insurance; or
  - ◊ Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

The District may access a parent's private insurance proceeds to provide FAPE to an eligible student only if the parent provides informed consent. Whenever the District proposes to access the parent's private insurance proceeds, the District shall:

- Obtain parent consent in accordance with Chapter [392-172A WAC](#) each time the District wishes to access benefits for a new procedure; and
- Inform the parents that their refusal to permit the District to access their private insurance does not relieve the District of its responsibility to ensure that all required services are provided at no cost to the parents.

Before first accessing a parent's or students public benefits for the first time, and annually after the first notification, the District will provide written notification using the prior written notice provisions under [WAC 392-172A-05010\(3\)](#) that includes:

- A statement of the parental consent provisions;
- A statement of the "no cost" provisions;
- A statement that the parents may withdraw their consent to disclose personally identifiable information to the agency responsible for administering the state's public benefits or insurance, and
- A statement that a parent's withdrawal or refusal to consent does not relieve the School District of its responsibility to ensure that all required services are provided at no cost to the parents.

After providing the required notification, the District will obtain written informed consent from the parent allowing the District to disclose information from the student's educational records to the agency responsible for administering the state's public benefits or insurance programs. The consent will specify:

- The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to the student;
- The purpose of the disclosure;
- The agency to which the disclosure will be made; and
- That the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under the act.

To avoid financial cost to parents who would otherwise consent to use private insurance or public insurance if the parent would incur a cost, the District may use its Part B funds to pay the cost the parents would incur.

The IEP Case manager is responsible for providing the required notices and requests for consent to parents under this section.

### **Parent Participation and Meetings**

The District encourages parental involvement and the exchange of information regarding parents' children so that the District is able to provide appropriate services to its students. As used in these procedures, the term "parent" includes parents, legal guardians, persons acting in the place of a parent, such as relatives and stepparents, persons appointed as surrogate parents, and adult students.

Parents (and, as appropriate, students) will be provided the opportunity to participate in any meetings with respect to the identification, evaluation, educational placement, and provision of a free appropriate public education.

When a meeting is scheduled for matters other than IEP or placement decisions, parents will be:

- Notified of the meeting early enough that they will have an opportunity to attend; and
- Notified of the purpose, time, and location of the meeting and who will be in attendance.

When a meeting involves an IEP or placement, notification procedures described in the previous paragraph apply. In addition to the above notice requirements:

- Parents will be notified that the District or the parent may invite others who have knowledge or special expertise of the student. Invitation of others having knowledge or special expertise is at the discretion of the party making the invitation.
- The meetings will be scheduled at a mutually agreeable time and place.
- When the meeting involves transition needs or services, the student will also be invited.
- If another agency is or may be, responsible for payment or provision of transition services, an agency representative will be invited. If the agency representative cannot attend the meeting, District personnel shall keep the representative informed of the meeting and obtain agency information that will assist in the service provision.
- The District shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or those whose native language is other than English. The Building IEP Team Leader and/or case manager of the student responsible for inviting the parents to meetings will keep documentation of the information provided and the methods used to notify the parents of the meeting if the District is not able to convince the parent to attend. In this case, the District will document its attempts to arrange the meeting. The documentation will include records of telephone calls and the results, copies of correspondence sent to the parent, and/or other means used to contact the parent.

If the parent cannot attend the IEP or placement meeting but wishes to participate, the District will arrange for other means to participate. This can include individual or conference phone calls, video, home visits, or other means of conferencing.

The District may proceed with the IEP or placement meeting if the District is not able to get the parent to attend. In this case, the District will document its attempts to arrange the meeting. This documentation will include records of telephone calls and the results, copies of correspondence sent to the parent, and/or other means used to contact the parent.

A meeting does not include informal or unscheduled conversations involving District personnel; conversations on issues such as teaching methodology, lesson plans, coordination of service provisions; or preparatory activities that District personnel engage in to develop a proposal or a response to a parent proposal to be discussed at a later meeting.

## **Identification and Referral (Child Find)**

### **Identification**

The purpose of Child Find is to locate, evaluate and identify children aged birth through 21 who have a disability, who are not currently receiving special education and related services, and who may be eligible for those services. All severities and conditions of disability are included.

Activities are to reach:

- Children who reside within the School District boundaries, including preschool-aged children;
- Children attending approved, nonprofit private elementary and secondary schools located within the District boundaries;
- Highly mobile children (such as homeless, foster care, and migrant children)
- Children who have a disability and may need special education services even though they are advancing from grade to grade; and
- Children at home or home-schooled.

The District will consult with parents and representatives of private school students to ensure its activities are comparable in approved, nonprofit private schools located within District boundaries. These consultations will occur annually by letter and phone.

The District reaches students who may be eligible for special education services through:

- Notification to parents of Child Find activities in its school calendar;
- Posting notices regarding screening and referral in schools and public locations including Employment Security offices, grocery stores, laundry-mats, and physicians' offices;
- Notifying and coordinating with the designated Part C lead agencies;
- Early childhood screenings conducted by the District;
- Coordination with other public and private agencies and practitioners;
- Written information provided to District staff on referral procedures;
- Training teachers and administrators on referral-evaluation-identification procedures;
- Review of student behavior, discipline, and absentee information and information gathered from District-wide assessment activities;
- Child Find ads in the newspaper;
- Media notices.

The District, through its Special Education Department, conducts early childhood screenings for age's birth to five. These occur monthly at Keewaydin Discovery Center. Students aged 6-21 years are screened at individual schools on an as-needed basis.

The screening process involves the following:

- Parents are asked to provide information to assist in assessing their child;
- Children are screened to assess cognitive, communication, physical, social-emotional, and adaptive behavior.

Parents will be notified at the screening of the results, and the parents will also be provided prior written notice of the results within ten days of the screening. If the screening supports evaluation, if possible, obtain written consent for evaluation at the exit interview or include consent forms with the written notice notifying the parents of the results. If the screening results indicate that the child does not need an evaluation, written notice shall be sent to the parents within 10 days of the screening. Evaluation occurs in accordance with evaluation procedures.

## **Referral**

A student or child, whether or not enrolled in school, maybe referred for a special education evaluation by parents, district staff, or other persons knowledgeable about the student. Each building principal will designate a person responsible for ensuring that staff understand the referral process. Referrals are required to be in writing unless the person referring is unable to write. A person who makes a referral orally should be asked to either make the referral in writing or go to the main office of the building for assistance in making the referral.

When a referral is made regarding a student, the District must act within a 25 school-day timeline to make a decision about whether or not the student will receive an evaluation for eligibility for special education services.

All certificated employees will document referrals immediately upon a referral being made to or by them. All other staff receiving a referral from another person shall notify the building principal. The building IEP Referral Team (a) records the referral, (b) provides written notice of the referral to the parent, and (c) collects and reviews District data and information provided by the parent to determine whether evaluation is warranted.

During the referral period, the building IEP referral team will collect and review existing information from all sources, including parents. Examples may include:

- Child's history, including developmental milestones;
- Report cards and progress reports;
- Individual teacher's or other provider information regarding the child;
- Assessment data;
- Medical information, if provided;
- Other information that may be relevant to assist in determining whether the child should be evaluated.

If the review of data occurs at a meeting, the parent will be invited. The building IEP Referral Team provides written notice to the parents of the decision regarding evaluation, whether or not the parents attend the meeting.

Recommendations regarding evaluation are determined by the building IEP Referral Team.

After the building IEP Referral Team reviews the request for evaluation and supporting data and does not suspect that the child has a disability, the District may deny the request. In this case, written notice, including the reason for the denial and the information used as the basis for the denial, must be given to the parent.

If the determination is that the child should be evaluated, the reviewers shall include information about the recommended areas of evaluation, including the need for further medical evaluation of the student. This information will assist the IEP Referral Team in providing parents written notice and will assist the IEP Team in selecting appropriate evaluation group members. The IEP Evaluation Team is responsible for notifying parents of the results, using prior written notice. When the determination is that the child will be evaluated, parent consent for evaluation and consent for release of appropriate records will be sent with the notice.

The School District is not required to obtain consent from the biological parent if:

- The student is a ward of the state and does not reside with a parent;
- The parent cannot be located, or their rights have been terminated; or
- Consent for an evaluation is given by an individual appointed to represent.

When the parent provides consent, the District shall select an evaluation group. The evaluation group is to complete the evaluation within 35 school days after the District's receipt of parent consent.

If a parent does not provide written, informed consent for the evaluation, notify the Director of Special Services. District staff will make a determination as to whether it wishes to use mediation to seek agreement to evaluate or file a due process hearing to override the parent's refusal to consent. The District may not override a parent's refusal to consent for an evaluation if the student is homeschooled or is unilaterally placed in a private school. If the parent does not provide written informed consent and the District does not use mediation or prior written notice, the building IEP Referral Team will provide the parent with prior written notice informing the parent that the District cannot proceed with the evaluation to determine eligibility and is not responsible for providing special education and related services without an initial evaluation to determine eligibility.

### **Evaluation of Students moving from Part C to Part B and Participation in Transition Planning Conference**

The District will participate in transition planning conferences arranged by the local lead agency as designee of the Part C lead agency for each student who may be eligible for preschool

services. Transition plans will be designed to promote uninterrupted provision of appropriate services to the child.

1. The Parent Liaison will serve as the point of contact with the family resource coordinator for timely execution of transition planning conferences that are arranged at least 90 days before the student's third birthday by the designee of the Part C agency;
2. The District will follow the procedures for obtaining consent and conducting an initial evaluation if it determines that the student will be evaluated to determine eligibility for Part B services;

The District will follow the procedures for timelines and evaluation requirements for students moving from Part C to Part B except students turning three, who were previously determined eligible for early intervention services under Part C of IDEA, will be evaluated for initial eligibility for special education services under Part B of IDEA. The evaluation must be completed in enough time to develop an initial IEP by the date of the student's third birthday.

### **Evaluation Requirements**

The purpose of evaluation is to collect information about a student's functional, developmental and academic skills and achievements from a variety of sources to determine eligibility for special education and related services, and to develop an IEP. This includes information provided by the parent. All information gathered in this process is reviewed by the IEP team or other group of qualified professionals.

The evaluation must be an individual assessment designed to determine whether:

- The student has a disability that adversely affects educational performance; and
- The student requires special education and any necessary related services, and,
- The nature and extent of special education and related services needed by the student.

The District's building IEP Referral Teams will select the members of the evaluation group. Members selected must be knowledgeable about the student and the areas of suspected disabilities. Qualifications of a group member include having the appropriate professional license or certification and may include outside practitioners when necessary. When assessing for specific learning disabilities, the parent and a group of qualified professionals must be part of the group. If the student requires a medical evaluation in order to determine eligibility, the District will coordinate with the parents to arrange for the evaluation at District expense or through the use of public or private insurance if the parent consents to allow the District to use the insurance.

Evaluation procedures or materials shall be free of racial, cultural, or sexual/gender bias, and they must be used for the purpose for which they are valid and reliable. Tests must be appropriate for the student's age and stage of developmental level. Tests could be administered in the native language of the student or conducted in the mode of communication most familiar to the student. If it appears to be clearly not feasible to conduct a procedure or test in the mode of communication most frequently used by the student, the IEP team will contact the Director of Special Services or designee to develop an individualized strategy for valid evaluation of the student's skills. The inclusion of parents in this collaboration is strongly encouraged.

Specific areas to be included in the evaluation are determined by the building IEP Referral Team and other qualified professionals, as appropriate, as part of a review of existing data concerning the student. The evaluation shall not rely on one source or procedure as the sole criterion for determination. Areas of evaluation should include but are not limited to, health, vision, hearing, social skills, emotional status, general intelligence, academic performance, communication skills, and motor abilities.

The evaluation group shall use a variety of methods, tools, and strategies designed to gather relevant functional and developmental information and should include:

- Review of existing data, including corresponding response to intervention (RTI) documentation;
- Relevant functional and developmental information;
- Information from parents;
- Information from other providers;
- Information related to enabling access to, and progress within, the general education curriculum and assisting in determining whether there is a disability and the content of the IEP;
- Current classroom-based evaluations, using criterion-referenced and curriculum-based methods, anecdotal records, and observations;
- Teacher and related service providers' observations;
- Testing and other evaluation materials, which may include medical or other evaluations when necessary.

All current evaluation data, as well as data previously reviewed by the team, must be considered. Professional members of the evaluation team shall be familiar with qualifying disability definitions and criteria in Federal and State rules.

The review of the existing data may be in the form of a meeting of IEP team members or maybe conducted without a meeting. It includes data provided by the parents, data gathered in the general education classroom or from State and District level assessments. The data may provide information about the student's physical condition, social or cultural background, and adaptive behavior. If it is determined that no additional testing data is necessary to make a decision about eligibility, the parents will be notified that no additional testing is necessary and of their right to request additional assessments. The District will complete the evaluation using existing data.

When additional assessments are necessary, the group members have the responsibility of selecting, administering, interpreting, and making judgments about evaluation methods and results and ensuring that the tests and assessments are administered by qualified personnel in accordance with the instructions of the test producer. The gathering of additional data, in combination with existing data, must be sufficiently comprehensive to address all areas of the suspected disability and any special educational needs, whether linked to the disability category or not.



Parents and District staff shall work towards consensus, but the School District has the ultimate responsibility to determine whether the student has a disability or not. The building Evaluation Team will provide the parent with prior written notice of the eligibility decision, as well as a copy of the evaluation report. If the parent disagrees with the eligibility decision, they will be informed of their dispute resolution options described in the procedural safeguards.

### **Evaluation Report**

Each person conducting an assessment of the student will specify the procedures and instruments used and their results and the significance of findings related to the student's instructional program, including a specification of the factors interfering with performance and the special education and related services needed.

The evaluation group will determine who is most appropriate to develop the evaluation report reflecting the evaluation information. This will be completed before the conclusion of the evaluation period and will, at a minimum:

- Identify the disability which requires special education and related services, if a disability exists;
- Discuss assessments and review data supporting conclusions regarding eligibility;
- Describe how the disability or disabilities affect the student's involvement and progress in the general curriculum;
- Make recommendations to the IEP team with respect to special education and related services needed, materials or equipment, instructional and curricular practices, student management strategies, the need for extended school year services beyond 180 school days, and location of services;
- Include other information, as determined through the evaluation process and parent input;
- Include the additional information required for the specific learning disability eligibility category;
- Provide any necessary professional judgments and the facts or reasons in support of the judgments; and
- Be signed and dated by the evaluation group members certifying their agreement. Any group member who disagrees with the conclusions shall prepare a statement presenting his or her conclusion.

The building IEP Evaluation Team is responsible for notifying parents of evaluation meetings.

If at any time after the initial provision of special education and related services, the parent revokes consent, in writing, for the continued provision of special education and related services, the School District will provide notice to the parent in accordance with [WAC 392-172A-05015](#) before ceasing to provide services to the student, and may not continue to provide services after the effective date of the notice. The District may not use mediation or the due process procedure in order to obtain agreement or a ruling to continue providing services for the student. The District will not be considered in violation of the requirement to provide FAPE. It will not be required to convene an IEP team meeting or continue to develop IEP services.

### **Specific Learning Disability**

The District uses a combination of severe discrepancy and a process based on a student's response to scientific, research-based intervention in determining the identification of students with a specific learning disability consistent with the District's RTI policy and procedures, number 2152P and 2152R. Grade levels and content areas are described in the District's RTI general education procedure 2152R.

Student response is only one element of determining whether a child has a specific learning disability. The evaluation will be comprehensive and address all areas of suspected disability and will also include whether the child performs adequately to meet the grade-level standards in the general curriculum and a determination that the failure to make progress is not the result of:

- A physical, mental, emotional, cultural, or environmental factor or limited English proficiency; or
- Inadequate instruction in reading or mathematics.

A student cannot be required to progress through all levels of intervention before being evaluated if evidence exists to suspect a disability.

### **Evaluation of Transfer Students**

If a student transfers into the School District while an evaluation process is pending from the previous district, the building Evaluation Team is responsible for determining the status of evaluations conducted to date and making a determination as to whether the evaluation can be completed within the 35 school day timeline from the date the parent provides consent. The building Evaluation Team will notify the parent and obtain the parent's agreement to establish a new timeline.

### **Eligibility**

The evaluation group and the parent will determine whether or not the student is a special education student.

- A student is not eligible if the determinant factor is lack of instruction in reading or math, based upon the state's grade level expectations or limited English proficiency, and
- Eligibility may be determined by documented professional judgment when:
  - ◊ Properly validated tests are unavailable or;
  - ◊ Corroborating evidence indicates that results were influenced due to measuring a disability.
- The parent will be provided with a copy of the evaluation report and the documentation of determination of eligibility.

Parents will also be provided with prior written notice of the eligibility decision within ten school days of the decision. The building IEP Eligibility Team is responsible for sending the notice.

Students remain eligible for special education services until one of four events occur:

- The student is determined, through a reevaluation, to no longer need special education;
- The student has met the District's high school graduation requirements; or
- The student has reached age twenty-one. A special education student whose twenty-first birthday occurs after August 31 shall continue to be eligible for special education, and any necessary related services, for the remainder of the school year.
- The student no longer receives special education services based upon a parent's written revocation of services.

When a special education student is expected to graduate prior to age 21 or when graduation is part of the transition plan, the IEP team will document a student's progress towards achieving course credits towards graduation on the transition portion of the IEP. The District will provide prior written notice to parents and adult students that the student is expected to graduate and will no longer be eligible for special education services at least six months before graduation. The District will also provide the parents and student with a summary of academic achievement and functional performance and recommendations to assist the student with postsecondary goals.

### **Reevaluation**

Every special education student will be reevaluated at least every three years using the evaluation procedures unless parent and school agree that a reevaluation is unnecessary. An agreement that an evaluation is unnecessary will be confirmed via prior written notice to the parent. The building Evaluation Team will schedule a review of this determination and notify the Director of Special Services or designee. Reevaluations may occur more frequently if academic or functional performance has improved to warrant a reevaluation if the IEP team suspects that the student may no longer be a student with a disability or if the child's parent or teacher requests a reevaluation. A reevaluation shall not occur more than once per year unless parent and school agree otherwise, the student's situation warrants a reevaluation or, if requested by the parent or teacher and the District agrees.

Students under three years of age who were previously determined eligible under the category "developmentally delayed" must be reevaluated before the third birthday.

Students who turn six, who met the eligibility requirements for the disability category of "Developmentally Delayed" under the criteria for ages three to six years, need not be reevaluated at age six under the criteria for six to nine years until three years after their initial evaluation was completed and their eligibility was established in the age three to six category.

Students who were previously eligible under the category "Developmentally Delayed" must be re-evaluated before age nine to determine eligibility within another category.

The reevaluation process shall be completed within 35 school days after the parent's consent or within 35 school days after a parent's refusal to consent is overridden by a due process decision and not later than three years after the previous eligibility determination.

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As part of any reevaluation, the IEP team members, and other professionals the District determines appropriate, will review existing data that includes:

- Evaluations and information provided by the parents,
- Current classroom-based assessment and observations, and
- Observations by other teachers and related services providers data.

Based on this review, the team will determine whether any additional data is necessary to determine:

- Whether the student continues to be eligible for special education and any necessary related services,
- The present levels of performance and educational needs, and
- Whether any additions or modifications to the student's program are needed.

This review will occur at a meeting with the IEP Reevaluation team members. If the IEP team members and any other persons reviewing the data determine that no further testing is necessary, the District will notify the parents of this determination, using prior written notice, and will inform parents that they have the right to request assessments if they disagree with the determination that additional testing is not necessary.

- If additional testing is needed, the building Evaluation Team will request written parental consent for reevaluation and provide prior written notice identifying the areas of assessment.
- If the parents do not return the signed consent form, the District will send another letter explaining the need for reevaluation and will enclose another consent form and a copy of the prior written notice. In addition, the District will document its reasonable attempts to obtain consent such as telephone calls, emails, personal contact, and other efforts to obtain consent;
- If the parents do not respond to the request for consent, and the District has documented its reasonable attempts to obtain consent, the District can proceed with the reevaluation; and
- If the parents refuse to consent to the reevaluation, the building Evaluation Team will notify the Director of Special Services so that the District can determine whether it will seek mediation in order to obtain consent or request a due process hearing to ask an administrative judge to override the parents refusal to consent.

After the reevaluation is completed, the building Evaluation Team will both invite parents to the eligibility meeting and will provide prior written notice, after the meeting, of the results of the reevaluation to parents, in their primary language, indicating one or more of the following:

- Whether the student continues to be eligible and in need of special education;
- Present levels of performance and educational needs of the student: and
- Whether any additions or modifications to the special education and related services are needed to enable the student to meet IEP annual goals and to participate, as appropriate, in the general curriculum.

This notice will occur within ten school days of the eligibility decision. The building IEP Reevaluation Team is responsible for sending the Prior Written Notice.

## **Reevaluation and Graduation**

No reevaluation is required when special education eligibility terminates due to graduation from high school with a regular diploma or due to reaching the end of the school year during which the student turned 21. The District shall provide prior written notice to the student and the parent at least 30 days before the student's anticipated last day of school, and the IEP team will provide the student with a summary of academic achievement and functional performance, including recommendations on how to assist the student in meeting post-secondary goals. The IEP case manager is responsible for assuring that the IEP team completes the summary of academic achievement and functional performance.

## **Independent Educational Evaluations**

Parents of special education students, or students who have been referred for special education and determined to not be eligible, or students determined not to need an evaluation, have a right to request an independent educational evaluation (IEE) at public expense without unnecessary delay, each time the District conducts an evaluation of the student.

When parents request an IEE, the District must decide within 15 calendar days whether or not it agrees to provide it. Any parent request for an independent evaluation should be immediately referred to the Director of Special Services. The Director of Special Services will review the request and determine whether or not the request is warranted. If the District agrees to provide an IEE, arrangements will be made promptly. If the District denies the request to pay for an IEE, it must file for a due process hearing within 15 calendar days of the parent's request. The District may request mediation as an option after filing the due process hearing request. If the parents withdraw their request for an IEE, the due process hearing can be dismissed.

When a parent requests an IEE, the District must provide parents a list of District criteria and evaluators. If the School District initiates a hearing and a decision is made that the District's evaluation is appropriate, the parent still has the right to an IEE but not at public expense. A parent is only entitled to one IEE at public expense each time the District conducts an evaluation with which the parent disagrees.

The following criteria for the selection of an individual to conduct an independent educational evaluation at public expense are established for the purpose of identifying the knowledge, experience, and qualifications of individuals selected to conduct the evaluations. Any individual selected to conduct either a District evaluation or an IEE must be:

- Licensed, credentialed or otherwise qualified within the state of Washington or state of residence/practice to perform an evaluation in the specific professional discipline for which an independent evaluation is sought;
- Knowledgeable and experienced in evaluating children with similar disabilities;
- Geographically located within the state of Washington or bordering states;
- Available to the District at a maximum fee which does not exceed by more than 25% the prevailing average for similar evaluations within the state of Washington.

Exceptions to the criteria will be granted only when it can be shown that the unique circumstances of the child or the disability:

- Make it impossible to identify anyone within the state of Washington who holds the appropriate credentials or experience necessary to conduct the evaluation; or
- Require a specialized evaluator whose fee exceeds the prevailing average by more than 25%; or
- Include factors which would warrant an exception in order to obtain an appropriate evaluation.

## **Individualized Education Programs (IEP)**

### **IEP Development**

The IEP is the written statement reflecting the implementation of instructional programs and other services for special education students. It is intended as a practical method of addressing, from the evaluation results, the identified needs of the student, which include special education, any necessary related services, and any other services necessary for the student to progress towards meeting his or her goals in the IEP.

An IEP must be in effect before initiation of special education services. The IEP must be developed no later than thirty calendar days after an initial determination of eligibility for Special Services.

Parent consent is required before the initial provision of special education services. If a parent refused to consent to the provision of special education services, the District may not use mediation or due process to override a parent's refusal. When a parent refused to provide consent, the building IEP Team will notify the parent that the District does not have a FAPE obligation to the student. The notification will be documented in the student's file.

IEPs must be updated annually. IEPs may be revised, as appropriate, and IEP teams must address any lack of expected progress toward the annual goals and in the general education curriculum, the results of reevaluations, information about the student provided to or by parents, the student's other needs or other matters.

The District will maintain a copy of the current IEP in the location(s) serving the special education student. The IEP is accessible to all staff members responsible for providing education, other services, or implementation of the IEP. All staff members will be informed of their responsibilities for its implementation. This includes not only teachers and other service providers but also bus drivers, playground and lunchroom supervisors, nursing staff, and others who may be responsible for the proper implementation. The building principal and special education case manager are responsible for ensuring that staff members are knowledgeable about their responsibilities.

IEPs will be implemented without undue delay following IEP meetings, regardless of the payment source for special education and or related services.

Parents are members of the IEP team and shall have the opportunity to fully participate. The District will make sure that the parents understand the proceedings, including arranging for an interpreter for parents who are deaf or whose native language is other than English. The District will also ensure that meeting locations are accessible. The Special Services department and special education case manager are responsible for coordinating interpreters and making arrangements for the meeting location.

The IEP team includes:

- The parents of the student;
- At least one general education teacher (or preschool teacher) of the student, if the student is or will be participating in the general education environment; The general education teacher (or preschool provider), as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies for the student and the determination of supplementary aids and services, program modification, and supports for school personnel that will be provided to the student.
- At least one special education teacher or, if appropriate, at least one special education provider of the student.
- A representative of the District who is qualified to provide or supervise the provision of special education and related services is knowledgeable about general education curriculum and is knowledgeable about the availability of District resources.
- An individual who can interpret the instructional implications of the evaluation results.
- If the student is an English Language Learner (ELL), an individual with knowledge of language acquisition.
- Any other individuals who have knowledge or special expertise about the student. These individuals may be invited by both the District and the parents at the discretion of the person making the invitation.
- The student, when appropriate or when required, when the purpose of the meeting includes discussion of transition needs or services.
- If another agency is or may be, responsible for payment or provision of transition services, an agency representative will be invited, with the parent's consent. If the agency representative cannot attend the meeting, District personnel will keep the representative informed of the meeting and obtain agency information that will assist in the service provision; and
- Parents will be notified of the participation of the Part C services coordinator or other designated representatives of the Part C system as specified by the State lead educational agency for Part C at the initial IEP meeting for a child previously served under Part C of IDEA.

The parents and District must agree, in writing, before any of the above team members are excused from all or part of a meeting. If a team member's area of the IEP is being discussed or

modified, then the parent and District must consent to their excusal, and that specific team member must provide advance written input for their part of the IEP prior to the meeting. The IEP Case Manager will complete the IEP Team Member Excusal Form for each required member unable to participate in the meeting, and the parent and the District representative will sign agreement. This form will become part of the IEP.

Existing team members may fill more than one of these roles if they meet the criteria for the role.

Refer to the Parent Participation and Meetings section for the requirements of a parent invitation to IEP meetings.

Sometimes parents do not attend IEP meetings. Additionally, there will be times the parents do not agree with the IEP as proposed, and despite attempts to reach agreement on IEP content, the team does not reach agreement. If a parent attends the IEP meeting and agreement is not reached on the IEP, the team shall determine whether another IEP meeting should be scheduled as soon as mutually possible or whether there is enough information to complete the IEP. When the decision is made that the IEP will be implemented, the District must send prior written notice of the decisions reached to the parent, including the date the IEP will be implemented.

When the parents do not attend despite the District's efforts to ensure participation, or if the team does not reach agreement, it is the District's obligation to offer an appropriate educational program:

- Have IEP members present sign the IEP (or document participation if any member is unwilling to sign).
- Send a copy to the parent, and provide the parent prior written notice that the District intends to implement the IEP.
- Put the documentation of actual or attempted contacts in the special education file of the student for processing when parents do not attend the meeting.

When making changes to an IEP after the annual IEP meeting for a school year, the parent and the District may agree not to convene an IEP meeting for the purpose of making changes. The parent and the District must complete a written document indicating the changes and inform IEP team members and appropriate individuals of the changes. Members of the IEP team are responsible for IEP amendments. If the parent requests that the District revise the IEP to include the amendments, the IEP case manager will revise the IEP.

### **IEP Preparation and Content:**

IEP teams will consider the recommendations in the most recent evaluation to develop the IEP. In developing the IEP, the team should consider:

- The strengths of the student and concerns of the parents for enhancing the education of their child;
- Whether positive behavioral interventions and supports, including a behavior intervention plan, as defined by [WAC 392-172A-01031](#), are needed to address the student's behavior.
- Whether the student with limited English proficiency has language needs;



- Whether Braille instruction is appropriate for a student who is blind or visually impaired;
- Whether a student has other language and communication needs; and
- Whether assistive technology devices or services are needed.

IEP content includes:

- The student's present levels of academic achievement and functional level of performance with a description of how the disability affects the student's involvement and progress in the general education curriculum or preschool activities.
- A statement of measurable annual goals for the student, including academic and functional goals designed to meet the student's needs resulting from the disability(ies) to enable involvement and progress in the general curriculum or in preschool activities, and will meet each of the student's other educational needs that result from the student's disability to enable the student to be involved in, and make progress in, the general education curriculum and to meet each of the student's other educational needs that result from the student's disability.
- A statement of special education services, any necessary related services, and supplementary aids and services to be provided to the student and a statement of the program modifications or supports for personnel so that the student may advance towards annual goals, progress in the general education curriculum and be educated and participate with other special education students and non-disabled students and participate in extracurricular and other nonacademic activities.
- A statement of the extent, if any, that the student will not participate with non-disabled students in general classroom, extra-curricular and non-academic activities.
- A statement of individual special factors surrounding needs related to the individual disability for special transportation, behavior, English proficiency, vision, hearing, communication, extended school year, assistive technology, and other health specific needs.
- A statement of individual appropriate accommodations that are needed to measure the academic achievement and functional performance of the student on state and district-wide assessments. If the team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment, a statement of why a student will not participate in the regular state or district-wide assessment and why the particular alternate assessment selected is appropriate.
- The date for the beginning of services and the anticipated frequency, location, and duration of services and modifications.
- A statement of how the student's progress towards goals will be measured and when the district will provide periodic reports on the progress the student is making toward meeting the annual goals. Measurement of the student's progress will be based on the data collected as designated on the IEP. The individual responsible for implementing the goal is responsible for maintaining the data used to measure progress.
- Information to the parents will be provided at least concurrent with the issuance of report cards or at other agreed times as identified in the IEP
- Beginning no later than the first IEP to be in effect when the student turns 16, or sooner if the IEP team determines it is appropriate, the IEP must include appropriate measurable postsecondary goals based on age appropriate transition assessments related to training,

education, employment, and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals;

- Behavioral Intervention Plan, if determined necessary by the IEP team for the student to receive FAPE. A BIP is a plan incorporated into a student's IEP which describes 1) the pattern of behavior(s) that impedes the student's learning or the learning of others. 2) The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team. 3) The positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others, increases the desired prosocial behaviors, and ensures the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities. 4) The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.
- Emergency response protocols, if determined necessary by the IEP team for the student to receive FAPE and the parent provides consent, as defined in [WAC 392-172A-02105](#).
- Extended School Year (ESY) services. The consideration for extended year services is a team decision, based on information provided in the evaluation report and based on the individual needs of a student. Extended school year services are not limited by categories of disability or limited by type, amount, or duration of the services. If the need for extended school year services is not addressed in the IEP and extended school year services may be appropriate for the student, the IEP team will meet by May 1st to address the need for ESY. Factors for the team to consider when determining the need for ESY may include, but are not limited to:
  - Evidence of regression or difficulty regaining skills during pre and post-school breaks;
  - A documented determination based on the professional judgment of the IEP team, including consideration of the nature and severity of the student's disability, the rate of progress, and emerging skills;
  - A statement regarding transfer of rights at the age of majority appears on the IEP document and is checked on the IEP one year prior to the student turning 18 years of age.
  - Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights that will transfer to the student on reaching the age of majority,
  - The School District's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by law.
  - All students accessing special education transportation will follow individual school bell schedules unless otherwise determined by the IEP team.

### **Transfer Students**

Students who transfer from one District to another within the State continue to be eligible for special education and any necessary related services. When an eligible student transfers into the District, the building principal, school psychologist, or school counselor will notify the appropriate building IEP team members. The building IEP team, in consultation with the parents,

will review the student's IEP to ensure the District provides services comparable to those in the previous IEP until the District adopts the previous IEP or develops, adopts, and implements a new IEP.

When a student who was identified as eligible for special education transfers from out of state into the District, the building principal, school psychologist, or school counselor will notify the building IEP team as soon as possible. The building IEP team will review the evaluation, eligibility documentation, and IEP to determine whether or not the student meets state eligibility criteria. If the student meets the state eligibility criteria, the District will follow the procedures described in the previous paragraph to provide comparable services until the District develops an IEP for the student. If the student needs to be evaluated to determine eligibility in this state, the building IEP team member will notify the parents, obtain consent and evaluate the student for eligibility within 35 school days of the receipt of the parent's consent. The District, in consultation with the parents, will continue to provide special education services comparable to the services on the student's IEP, pending the results of the initial evaluation.

The District must take reasonable steps to promptly obtain records, including IEP supporting documents and any other records related to special education or related services from the previous school. The building school psychologist is responsible for obtaining records and ensuring follow-up if the records are not provided.

### **Placement**

No student may receive special education and related services without being determined eligible for services, and thus, the evaluation process precedes the determination of the special education placement. When a student has been evaluated, and the evaluation team and parent have determined student eligibility and the need for special education and related services, programming decisions must occur. These decisions are made on the basis of information generated through the evaluation and IEP processes, and the actual program is considered within the context of least restrictive environment (LRE) and the continuum of placement alternatives. When determining initial eligibility for special education, including determination of the appropriate placement, the parent or adult student must provide written consent to services before the student receives special education services. If the parents do not consent to the provision of special education and related services, the District will not provide special education services to the student. The District will notify the parents that the student is eligible for services and that the District is willing to provide the services when the parent provides written consent. The notification will also inform parents that the District has no FAPE obligation to the student when parents refuse to provide consent.

When programming decisions are addressed by the IEP team, proper consideration must be given to the least restrictive environment. Within the educational setting, the disabled student should be placed, whenever possible:

- In the school, the disabled student would normally attend and,
- With nondisabled students in the general educational setting, to the maximum extent possible.

Special classes, separate schools, or removal of students with disabilities from the general education environment occurs only when the nature or severity of the disability is such that education in the general education classroom with use of supplementary aids and services cannot be satisfactorily achieved.

If the IEP team believes that the student will not be successful within the general education classroom, the team will consider:

- The educational benefits of placement full-time in a regular classroom;
- The non-academic benefits of such a placement;
- The effect the student will have on the teacher and other students in the regular classroom;
- The costs of placing the student in the regular classroom.

The degree to which the student is to be integrated into the general classroom setting is dependent upon the evaluation-identified needs of the student. This placement is to occur unless the nature of the needs are so severe that this cannot be satisfactorily achieved, even with supplementary aids and services. If the placement is in another building, the appropriate educational placement will be as close to the student's home as reasonably possible.

Disabled students will have access to all nonacademic and extracurricular activities available to nondisabled students.

- Counseling Services
- Athletics
- Transportation
- Health Services
- Recreational Activities
- Interest Groups or Clubs.

Limits on nonparticipation or conditions of participation must be designated in the IEP.

The District will also make opportunities available for special education students to participate with non-disabled students in the District's electives or special course offerings.

Within the District, a range of placement options exist spanning within-class, resource room, inclusion Autism and Behavior, Structured Learning, Life Skills, Work Experience, Home-Bound, Alternative Schools, Self-Contained, and out-of-District provisions. These options are intended to address the individual needs of students, and they are considered according to the following process:

The placement of each student with disability will be determined annually, or sooner if appropriate, by the IEP team.

The appropriateness of placement options will be based upon various decisions, including:

- Data-based judgments in IEP development;

- Judgments (data-based) in determining LRE;
- The reasonable probability of the placement option(s) assisting the student to attain annual goals and objectives and the quality of services needed;
- The consideration of potentially harmful effects upon the student or on the quality of services needed.

Placement options along the continuum must include alternative placement options identified in the definition of special education and make provisions for supplementary services such as resource room or itinerant instruction to be provided in concert with the general education placement.

### **Emergency Response Protocols**

If the parent and the School District determine that a student requires advanced educational planning, the parent and the District may develop emergency response protocols to be used in the case of emergencies that pose an imminent likelihood of serious harm. Emergency response protocols must be incorporated into a student's IEP and shall not be used as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows:

- The student's parent provides consent, in advance, to the emergency response protocols to be adopted.
- The emergency response protocols specify the emergency conditions under which isolation, restraint, and /or restraint device may be used.
- The protocol will specify the staff members or contracted positions permitted to use isolation, restraint, or restraint devices with the student, updated annually, and identify any required training associated with the use of isolation, restraint, or restraint device for each staff member or contracted position.
- The protocol will specify any other special precautions that must be taken.
- Use of isolation, restraint, or restraint device must be discontinued as soon as the likelihood of serious harm has dissipated.
- Staff members or other adults using isolation, restraint, or restraint devices must be trained and certified by a qualified provider in the use of such techniques.
- Documentation and reporting requirements must be followed regardless of whether the use of isolation, restraint, or restraint device is included in the student's emergency response protocol.

### **Students Unilaterally Enrolled in Private Nonprofit Schools by Parents**

On December 1st each year, the District shall conduct an annual count of the number of private school special education students residing in the School District boundaries who are unilaterally enrolled by their parents in a private school located within District boundaries. The Director of Special Services and/or designee shall consult with appropriate representatives of private schools and representative of parents of private school students and will make determinations about who will receive services and what services will be provided. The purpose of the child count is to

determine the proportionate amount that the District must spend on providing special education and related services, including transportation, to private school or preschool students in the next fiscal year.

The District is required to spend a proportionate amount of Federal Special Education Part B and Section 619 funds to provide special education and related services to private school students. In order to determine which students will receive services, what services will be provided, how and where the services will be provided, and how services provided will be evaluated, the District shall consult with appropriate representatives of private school students. The District shall make the final decision with respect to services to be provided to eligible private school students.

The Special Services office will notify each approved nonprofit private school or preschool operating in the District, seeking recommendations of persons to serve as representatives of special education private school students in consultations with the District. An initial meeting will be called by the District to establish a work plan and schedule with the private school representatives, and representatives of private school parents, to discuss how to identify students, the amount of proportionate share, how the proportionate share was calculated, which students will receive services, what services will be provided, how and where services will be provided, and how services will be evaluated.

The Director of Special Services and/or designee is responsible for private school involvement and service plan development. A private school student has no individual entitlement to any service or amount of service (s)he would have received if enrolled in a public school to receive FAPE. However, for each private school student receiving special education or related services, the District shall initiate and conduct meetings to develop, review and revise a services plan describing the special education and related services that the District will provide. The services plan must (1) meet IEP content requirements, as appropriate, and (2) be developed, reviewed, implemented, and revised annually. The District shall make every effort to include a representative from the private school at each meeting. If the private school representative is not able to attend, the District shall use other methods, including individual or conference telephone calls, to assure the representative's participation.

Private school students may receive a different amount of services than special education students in public schools. However, the services provided to special education private school students will be provided by personnel meeting the same standards as personnel providing the services in the District.

Services to students in private schools, including private sectarian schools, may be provided on-site. District personnel may be made available to private schools only to the extent necessary to provide the services required if those services are not normally provided by the private school. Services shall not include payment of private school teachers' or other employees' salaries, except for services performed outside regular private school hours and under public supervision and control.

Equipment and/or supplies may be placed on private school premises for the period of time necessary for the services plan program, but the District shall retain and exercise title and

administrative control of said equipment/supplies. The District shall keep records and make an accounting assuring that said equipment/supplies is/are used solely for the services plan program. Said equipment/supplies shall be removed, if necessary, to avoid its/their use for other purposes or if no longer needed for the services provided to the student. No District funds shall be used for repairs, minor remodeling, or construction of private school facilities.

The District shall provide services to students in private schools or influence in a manner that 1) maintains physical and administrative separation between the private and public school programs and 2) does not benefit the private school at public expense.

### **Certificate of Attendance - Special Education (Participating in Graduation Ceremonies)**

As per Washington State Law, the District shall allow special education students who have completed four (4) years of high school but have not met, due to their disability, all of the graduation requirements of the state and District to participate in a graduation ceremony with their peers. A student's IEP team, including parents and school administrators, must have determined that the student will continue to attend high school, following the participation in the ceremony, to work on his/her IEP goals. The student will receive a Certificate of Attendance in lieu of a diploma.

Each high school IEP team will inform the principal of the decision to have the student participate in the ceremony by March 1st to include this student in all graduation practices, ordering of cap and gown, and other graduation activities.

A Special Services student who is not making progress towards graduation and who isn't requesting, through the IEP team, to return to school after four (4) years for additional schooling shall not be eligible to participate in the graduation ceremony. For example, a student who only achieved a partial amount of the necessary credits to graduate and has no intentions of continuing in school to work towards graduation would not be eligible.

A special services student whose disability has not impacted their progress towards graduation, as determined by the IEP team, shall not be eligible to participate in the graduation ceremony. For example, a student may qualify to receive special education services because of hearing impairment, yet the school and IEP team have determined that the reason that this student has very few credits is because of a lack of attendance rather than because of his hearing impairment. This student would not be eligible.

Once a student has participated in the graduation ceremony, he/she will not be eligible to participate in future graduation ceremonies.

### **Procedural Safeguards**

#### **Consent**

The District will obtain informed, written parental consent before:

- Conducting an initial evaluation;
- Providing initial special education and related services to a special education student; and
- Conducting a reevaluation, if the reevaluation includes administration of additional assessments.

Parental consent is not required to review existing data as part of an evaluation or reevaluation or to administer a test or other evaluation that is administered to all students unless consent is required of all students' parents.

Informed consent means that the parent or adult student:

- Has been fully informed of all information that is relevant to the activity for which the District is asking consent and that the information is provided in his or her native language or other mode of communication;
- Understands and agrees, in writing, to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and
- Understands that the granting of consent is voluntary and may be revoked at any time. If consent is revoked, the revocation does not negate an action that has occurred after the consent was given and before the consent was revoked.

The District may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the District.

If the District is unable to obtain a parent's consent, the District may use mediation procedures to obtain a parent's consent or request a due process hearing asking the administrative law judge to override the parent's refusal to consent to an evaluation or reevaluation. The District may not request a due process hearing to override a parent's refusal to consent to initial special education services. The District may not use mediation or due process procedures to override a parent's refusal to consent to an evaluation or reevaluation if the student is homeschooled or enrolled in a private school.

### **Revocation of Consent**

Parents may revoke consent for the continued receipt of special education and related services. If parents revoke consent, the staff member receiving the revocation will forward the revocation to the office of Special Services.

Upon receipt of the parent's written notice of revocation, the Director of Special Services or a designee will provide prior written notice for a reasonable time before the District stops providing services. The notice will include information about the effect of revocation and will inform the parent of the date the District will stop providing special education and related services.

Discontinuation of special education and related services in response to the parent's written revocation will not be in violation of FAPE and eliminates the District's requirements to convene



an IEP meeting or to develop an IEP. However, the District does have a continuing Child Find duty, and staff will follow referral procedures if they believe the student should be referred for special education. In addition, parents may request that the District conduct an initial evaluation for eligibility for special education services after they have revoked consent for continued services.

### **Notice of Procedural Safeguards**

In addition to protections provided to parents or eligible students, parents also have procedural safeguard protections when a student's identification, evaluation, or placement is at issue. The School District shall provide a copy of procedural safeguards to the parents and adult students one time a year and:

- Upon initial referral or parent request for evaluation;
- Upon each notification of an IEP meeting;
- Upon reevaluation of the student;
- Upon receipt of request for due process;
- Upon a change of placement for disciplinary action; and
- Upon request of the parent.

The procedural safeguard notice used by the District includes a full explanation of all the procedural safeguards relating to independent educational evaluation, prior written notice, parental consent, access to educational records, opportunity to present complaints, procedures for students who are subject to placement in an interim alternative educational setting, requirements for unilateral placement by parents of children in private schools at public expense, state complaint procedures, the child's placement during pendency of due process proceedings, including requirements for disclosure of evidence, mediation, due process hearings, civil actions, and attorney's fees. Copies of the District's special education procedural safeguards are available at the individual buildings and at the Special Services office. Special education staff are responsible for distributing procedural safeguards.

### **Prior Written Notice**

Prior written notices are provided to parents or the adult student whenever the District makes a decision relating to a student's identification, evaluation, educational placement, or provision of a free appropriate public education. Prior written notice documents the decisions made by the IEP teams and evaluation groups.

The District will provide prior written notice to the parent or adult student whenever the District proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the student.

The prior written notice will include:

- A statement that the parents have procedural safeguard protections and, if a copy of the procedural safeguards do not accompany the notice, a statement that describes how a copy of the statement of procedural safeguards may be obtained;

- A description of the action proposed or refused by the District;
- An explanation of why the district proposes or refuses to take the action and a description of other options that the District considered and the reasons why the options were rejected;
- A description of any other factors which are relevant to the District's proposal or refusal;
- A description of each evaluation procedure, test, record, or report the District used as a basis for the proposal or refusal;
- A description of any evaluation procedures the District proposes to conduct and sources for parents to contact to obtain assistance in understanding the procedural safeguards provision of this chapter.

Prior written notice and the notice of procedural safeguards must be 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 District will take steps to ensure that the notice is translated orally or by other means to the parent. This may involve:

- Arranging for an interpreter, if English is not the native language of the parent or if the parent has a hearing impairment; or
- Providing notice orally if the written language is not a native language.

The District will document, in writing, the attempts to explain this information so that the parent understands the content of the notice. The building IEP team or case manager will be responsible for sending prior written notices after evaluation, eligibility, IEP team, and placement decisions.

### **Transfer of Educational Rights to an Adult Student**

When a special education student reaches the age of 18, all educational rights under Part B of the IDEA previously exercised by the parent, transfer to the student, unless the student is determined incapacitated as to the person in a guardianship proceeding or the District has appointed an educational representative for the student. When the student turns 18, the District will notify the parent and the student that the educational rights have transferred to the student, and the building IEP team or case manager will send any required notices to both the parent and the adult student.

At the IEP meeting occurring one year before the student turns 18, the District will inform the parents and the student that educational rights will transfer to the student, and the District will inform the student about those educational rights. This information will be documented on the IEP.

### **Appointment of an Educational Representative**

A student over the age of eighteen is presumed to be capable of making educational decisions and able to provide informed consent unless he or she is determined to be "incapacitated" through a legal guardianship proceeding. If a parent, another interested party, or the District believes that a student over the age of eighteen is unable to provide informed consent or to make educational decisions, and the student does not have a legal guardian, the parent or other

interested party may ask the District to appoint an educational representative. This determination will only be made if two separate professionals state that they conducted an examination and interviewed the student, and concluded the student is incapable of providing informed consent. The District will inform the student of the decision and appoint either the spouse, the student's parents, another adult, or a surrogate educational representative to represent the student. The appointment of the educational representative will continue for one year.

The student or other adult may challenge the certification at any time. If a challenge occurs, the District will not rely on the educational representative until the representative is recertified.

### **Confidentiality and Records Management**

The Director of Special Services and/or designee is responsible for maintaining the confidentiality of personally identifiable information pertaining to special education and all other students. The Director of Special Services and/or designee will maintain, for public inspection, a current list of the names and positions of District employees who have access to personally identifiable information of special education students. The District will provide parent and adult students, upon request, a list of the types and locations of educational records collected, maintained, or used by the District.

The District will provide instruction annually to employees collecting or using personally identifiable information on the procedures to protect the confidentiality of personally identifiable information. The training will address the protections outlined in [WAC 392-172A](#), state law, and federal regulations implementing the Family Educational Rights and Privacy Act, FERPA, ([34 CFR Part 99](#)).

Upon request, the parent(s) of a special education student or adult student will be afforded an opportunity to inspect, review and challenge all educational records, which shall include, but not be limited to, the identification, evaluation, and delivery of educational services, and provision of free, appropriate public education (FAPE) to the student. The District shall comply with the request promptly and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, educational placement of the student, or provision of FAPE to the student, including disciplinary proceedings. In any case, the District shall respond no more than 45 calendar days after the date the District received the request. If an educational record includes information on more than one student, the parents (and/or adult student) may only inspect and review information relating to their child. School personnel receiving requests for educational records will immediately forward the request to the Special Services office.

If parents believe that information in an education record is inaccurate or misleading or violates the privacy or rights of the student, they may request that the District amend the information. Policy and Procedure 3600, Student Records, describes the process and timelines for challenges to and hearings regarding student records.

The District follows the guidelines for records retention outlined in the Secretary of State's General Records Retention Schedule and Records Management Manual. The District shall

inform parents or adult students when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student. The information shall be destroyed at the request of the parent(s) or adult student or will be provided to the parent or adult student upon their request. However, a permanent record of the student's name, address, and phone number, his or her grades, attendance, record, classes attended, grade level completed, and year completed will be maintained without time limitation.

Records management is also governed by Policy and Procedure 4340, Public Access to District Records.

### **Surrogate Parents**

A surrogate parent is a person appointed by the School District to act on behalf of a student to help ensure the rights of the student to a Free and Appropriate Public Education when a parent cannot be identified, the whereabouts of the parent are unknown, or the student is a ward of the state.

The Director of Special Services and/or designee is responsible for determining the need for appointment of a surrogate parent.

Natural or adoptive parents, foster parents, persons acting in the place of a parent such as stepparents or relatives, and persons with legal custody or guardianship are considered parents.

The following is guidance for the District to follow to assist in determining the status of the parent's rights to make educational decisions.

In cases where the student is in foster care, the District must determine the legal custodial status of the child:

- Parents who have voluntarily placed their child in foster care still retain legal custody of the child and retain the right to make educational decisions.
- Parents whose children are placed in foster care, pending a determination of "dependency," still retain rights to make educational decisions unless otherwise ordered by the court.
- When a disposition order and order of dependency is issued, the state becomes the legal as well as physical custodian of the child. Parents may no longer have the right to make educational decisions during this stage of dependency.
- Parent's whose parental rights are terminated no longer have the right to make educational decisions on behalf their child.

When a student is placed in foster care, the foster parent may act as the parent. When the student is placed in group care, the District will work with the parents, case-worker(s), foster parents, and others who have knowledge of the student's legal status in order to determine the need for appointment of a surrogate.

When selecting a surrogate parent, the District will select a person willing to participate in making decisions regarding the student's educational program, including participation in the identification, evaluation, placement of, and provisions of FAPE to the student.

If a student is referred for special education or a special education student transfers into the District who may require a surrogate parent, the District Special Services office will be notified of the potential need. The Director of Special Services and/or designee will then select a trained individual who can adequately represent the student to ensure that all student rights are observed.

The person selected as a surrogate:

1. Must have no interest that conflicts with the interests of the student he or she represents;
2. Must have knowledge and skills that assure adequate representation of the student; and
3. May not be an employee of a school district and/or other public agency which is involved in the education or care of the student. Public agencies include OSPI and DSHS, in addition to District employees.

The District may appoint, as surrogate parents, non-public agency employees involved in the care of the student and other persons who meet the standards described above.

The District will, at a minimum, review with the surrogate parent procedural safeguards, parent involvement in the special education process, parent education publications, and special education regulations. The District will also cooperate with other districts, the ESD or OSPI, in training surrogate parents and in establishing a list of persons willing and able to serve as surrogate parents.

## **Mediation**

The purpose of mediation is to offer both the parent and the School District an alternative to a formal due process hearing. Mediation is voluntary and requires the consent and agreement of both parties. Mediation cannot be used to deny or delay access by a parent to a due process hearing. Mediation is used to resolve disagreements concerning the identification, evaluation, and delivery of educational services or provision of a FAPE to a special education student. Mediation may be terminated by either party at any time during the process.

The primary participants are the parent(s), School District representative(s), and mediator. The process is voluntary, confidential, and informal. It is a collaborative process conducted in a non-adversarial manner. Mediation services will be provided by the Office of Superintendent of Public Instruction (OSPI) at no cost to either party.

A request for mediation services from the School District will be made in writing to OSPI's contracted agent by the District's Special Services Director. If a parent requests mediation, notify the Director, and the Director will respond to the parent and file appropriate requests with OSPI's contracted agent. Staff members are reminded that discussions that occur during the mediation process shall be confidential.

One person designated by the District to attend the mediation must have authority to bind the District in any agreement reached through mediation.

The District requests that parents meet with the Director of Special Services to discuss the benefits of mediation.

### **Due Process Hearing**

Each school will have due process hearing forms (available from OSPI) available for parents' use to request a due process hearing. Parents will be informed of the need to notify the School District of requests for due process hearings and informed that the request for hearing should include:

1) The name of the student; 2) address of the residence of the student; 3) the name of the school the student is attending; 4) a description of the nature of the problem, including facts relating to the problem; and 5) a proposed resolution of the problem to the extent known based on the information available to the parent. The due process hearing request must be made within two (2) years of, and allege a violation that occurred not more than two (2) years before the hearing request is filed. The District will inform parents that failure to provide the notice will hamper the District's availability to assist the student and could ultimately result in a reduction of attorney fees.

Parent requests for hearing should immediately be forwarded to the Director of Special Services. If the parent has not filed the request for hearing with OSPI legal services, the District will forward the parent request to OSPI Legal Services. The District may not delay or deny a parent's due process hearing request.

When a parent files a due process hearing, the student remains in the placement he or she was in at the time of the request for hearing unless the parents and District agree to a different placement. See the Discipline section below for placements when a disciplinary action is challenged.

When parents file a request for a due process hearing, the Director of Special Services will immediately schedule a resolution meeting. The meeting must occur within 15 days after a parent files a due process request with the District and provides a copy of the request to OSPI or within seven days if the hearing request involves an expedited hearing regarding discipline. The Director of Special Services or designee will determine the appropriate District staff that will attend the resolution meeting. The District will ensure that one of the representatives attending the meeting has the authority to bind the District in any resolution agreement. The District will not bring District counsel to the resolution meeting unless the parent is bringing an attorney to the meeting.

Any resolution agreement reached will be documented in writing and binding on the parties. The document will inform the parent of their right to void the agreement within three business days of signing the agreement.

## **Discipline**

Students eligible for special education may be disciplined consistent with the disciplinary rules that apply to all students. The District will determine, on a case by case basis, whether discipline that is permitted under [WAC 392-400](#) should occur. However, students eligible for special education must not be improperly excluded from school for disciplinary reasons that are related to their disability or related to the District's failure to implement a student's IEP. The District shall take steps to ensure that each employee, contractor, and other agent of the District responsible for education or care of a special education student is knowledgeable of special education disciplinary rules, [WAC 392-172A-05140](#) through [392-172A-05175](#). The District shall not authorize, permit or condone the use of disciplinary procedures that violate the rules and chapter [180-40 WAC](#) by any employee, contractor, or agent of the District responsible for the education or care of a special education student.

## **Removal Up to Ten Days**

Authorized school personnel may order the removal of a special education student from his/her current placement. The District need not provide services to a student who is removed from current placement for ten school days or less in any school year if services are not provided to a student without disabilities.

## **Removal for More than Ten Days**

Once a student has been removed from placement for a total of ten school days in the same year, and if the District determines that the removal is not a change of placement, the District must, during subsequent days of removal, provide appropriate services to the extent necessary to enable the student to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The building administrator and/or Director of Special Services, in consultation with the student's special education teacher, shall make the determination of such necessary services.

## **Change of Placement**

A change of placement occurs when an eligible student is:

- removed from his/her current placement for more than ten consecutive school days in a school year, or
- subjected to a series of removals in a school year and which constitute a pattern of removal because:
  - ◊ the series of removals total more than ten days in a year;
  - ◊ the student behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - ◊ of factors such as the length of each removal, the total amount of time a student is removed, and the proximity of the removals to one another.

Whether a pattern of removal constitutes a change in placement is determined on a case-by-case basis by the building principal and Director of Special Services and is subject to review through due process and judicial proceedings. The building principal will notify the special education Department of disciplinary removals at the time of the removal.

### **Manifestation Determination**

Within ten school days after the date on which the District makes a decision to change the student's placement, the District will schedule a "manifestation determination" meeting to determine the relationship between the student's disability and the behavior subject to the disciplinary action. The review of the relationship between the student's disability and the behavior, subject to the disciplinary action, will occur at a meeting that includes the parent and relevant members of the IEP team who are selected by the parent and the District. The IEP case manager will contact the parent in order to determine relevant IEP team members and to provide notice of the meeting. The team will review all relevant information in the student's file, including the IEP, teacher observations, and information provided by the parent to determine:

- If the conduct in question was caused by or had a direct and substantial relationship to, the student's disability; or
- If the conduct in question was the direct result of the School District's failure to implement the IEP.

If the team determines that the behavior resulted from any of the above, the behavior must be considered a manifestation of the student's disability. The District shall take immediate action to remedy the deficiencies and will:

- 1) Conduct a functional behavioral assessment (unless already completed) and implement a behavioral intervention plan if one is not already in place; or
- 2) Review the existing behavioral intervention plan and modify it to address the behavior; and
- 3) Return the child to the placement from which he or she was removed, unless the parents and the District agree a change of placement is necessary as part of the behavioral intervention plan or unless the infraction involves drugs, weapons, or serious bodily harm.

### **Special Circumstances**

School personnel may order a change in placement to an appropriate interim alternative educational setting for the same amount of time that a student without disabilities would be subject to discipline, but for not more than 45 school days, if a special education student:

- Possesses a "dangerous weapon," as defined in [WAC 392-172-371\(3\)](#), or carries such a weapon to school or to a school function; or
- Knowingly possesses or uses "illegal drugs," as defined in [WAC 392-172-371\(2\)](#), while at school or a school function; or
- Sells or solicits the sale of a "controlled substance," as defined in [WAC 392-172-371\(1\)](#), while at school or a school function; or



- Inflicts serious bodily injury upon another person while at school or a school function. Serious bodily injury means a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Any interim alternative educational setting in which the student is placed is determined by the student's IEP team and will:

- Be selected so as to enable the student to continue to progress in the general curriculum and to continue to receive services and modifications, including those specified in the student's IEP that will enable the student to meet the goals in the IEP; and
- Include services and modifications designed to address the behavior to prevent the behavior from recurring.

The District may ask an administrative law judge, or seek injunctive relief through a court having jurisdiction of the parties, to order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days, or seek injunctive relief through a court having jurisdiction of the parties, when the District believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. If the student's IEP team believes that the student may not be maintained in his or her current placement, the IEP team should work with the District's Director of Special Services.

Unless the parent and the District agree otherwise, if a parent requests a hearing to challenge either the manifestation determination or the interim alternative educational setting, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five day period, whichever occurs first.

### **Basis of Knowledge**

A student who has not been determined eligible for special education services may assert the protections under [WAC 392-172A-05145](#) through 05170 if the District had knowledge that the student was a special education student before the behavior that precipitated disciplinary action occurred.

The District is deemed to have knowledge if:

- The parent expressed concern in writing (or orally, if the parent does not know how to write or has a disability that prevents a written statement) to personnel that the student is in need of special education;
- The parent requested that the student be evaluated for special education services; or
- The teacher or other school personnel has expressed concern about the behavior or performance of the student to the director of the special education department or to other special education personnel responsible for the District's Child Find system.

If instituting disciplinary action that would exceed ten days, and the principal believes that one or more of these events applies to the student, he or she will notify the special education department to determine the appropriate disciplinary procedures.

The District is not deemed to have knowledge if, as a result of receiving the information described above, the District either:

- Conducted a special education evaluation of the student and determined that the student was not eligible for services; or
- The parent of the student has not allowed an evaluation of the child or has refused services.

If the District is not deemed to have knowledge that a student is a special education student, (s)he may be disciplined as a student without disabilities who engages in comparable behaviors. The District shall conduct an evaluation, which is requested during the time period such a student is subjected to disciplinary measures in an expedited manner. Until the evaluation is completed, such a student shall remain in the educational placement determined by the District, which can include suspension or expulsion without educational services.

Notwithstanding the foregoing, the District may report a crime committed by a special education student to appropriate authorities. In the event of such a report, the District shall ensure that copies of the student's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the crime is reported, to the extent transmission of the records is permitted by the Family Educational Rights and Privacy Act (FERPA).

### **Staff Qualifications**

All employees of the District, funded in whole or part with State or Federal excess special education funds, will meet the standards established by the State Board of Education and defined in [WAC 392-172A-02090](#). (The School District will make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs funded with state and federal funds).

All employees will hold such credentials, certificates, or permits as are now or hereafter required by the State Board of Education for the particular position of employment.

All special education teachers providing, designing, supervising, evaluating, or monitoring the provision of special education shall possess "substantial professional training." This shall be shown by the issuance of an appropriate special education endorsement on an individual teaching certificate issued by the Superintendent of Public Instruction.

In the event a special education teacher does not have a certificate endorsed in special education, a District may apply for a pre-endorsement waiver through the special education section of the OSPI. A teacher must hold a valid general teaching certificate and have completed twenty-four credit hours or sixteen semester credit hours of required special education course work, and complete the remaining credit and endorsement requirements within three years of service as a special education teacher.

If the District must temporarily assign a classroom teacher without a special education endorsement to a special education position, the Director of Personnel and Director of Special Services will document in writing that:

The District is unable to recruit a teacher with the proper endorsement who was qualified for the position; and/or

- The need for a teacher with such an endorsement could not have been reasonably anticipated; and
- The recruitment of such a classroom teacher at the time of assignment was not reasonably practical; and/or
- The reassignment of another teacher within the District would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned to the other teacher.

If one or more of these criteria can be documented, the District determines that a teacher has the competencies to be an effective special education teacher, and the teacher has completed six semester hours or nine quarter hours of course work which are applicable to the special education endorsement, the District can assign the teacher to special education in compliance with the process for making out-of-endorsement assignments and reporting them to the state.

Classified staff will present evidence of skills and knowledge necessary to meet the needs of students with disabilities. The District will provide training to classified staff to meet the state recommended core competencies.

### **Personnel Development**

In order to provide a staff development program to improve the quality of instructional programs, the following procedures will be employed:

Special education concerns will be identified through a staff needs assessment completed by administrators, teachers, educational staff associates, program assistants, parents, and volunteers.

- All personnel who use restraint, restraint devices, and/or isolation must be certified and annually trained in the use of such restraint devices and/or isolation.
- In-service training schedules will be developed based upon the results of the District assessment and in support of needs identified and;
- Training activities will be conducted for regular general and special education staff, and staff of other agencies and organizations, and private school staff providing services for special education students.
- Training for classified staff in the state recommended core competencies will occur through regularly scheduled workshops conducted by special services staff trained in the core competencies.

## **Public Participation**

The District will:

- Invite teachers to participate in planning, at least annually, at the school or District level.
- Parents, families, and other interested parties may be invited to participate in planning, at least annually, through the District's special education advisory group, school site councils, or other meetings at the school or District level.
- Teachers, parents, families, and other interested parties may be invited to participate in planning, at least annually, through Special Services Department meetings.
- Other locally determined strategies for providing opportunities for participation in planning may include the use of surveys, questionnaires, community forums, interagency planning meetings, and/or other civic meetings.
- Provide reasonable opportunities for the participation by teachers, parents of special education students, families, and other interested agencies, organizations, and individuals in the planning for and operation of the special education program. Any application and any required evaluations, plans, and reports relating to the program will be made readily available to parents and other members of the general public.
- Make policies and procedures and any required evaluations, plans, and reports relating to the Part B program available to the public, upon request, through the District's special education office and the Superintendent's office. A notice regarding the availability of such documents may be placed in the District's and/or schools' newsletters or other District publications or website.

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