

## **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 Improvement Act (IDEA) of 2004 are addressed in Chapter 392-172A WAC. These procedures do not address all of the requirements established in the regulations. Staff members who are not familiar with the regulations need to contact the director of special services if there are questions regarding special education. These procedures describe how the district implements its special education program.

### **Free Appropriate Public Education (FAPE)**

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 students' basic education funding and state special education funding.

The superintendent, in consultation with building staff members, shall annually determine whether to use Early Intervention Services (EIS) funding for students who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

The district shall annually report to the Office of Superintendent of Public Instruction (OSPI) the number of students receiving EIS and the number of students who received EIS and subsequently received special education and related services under Part B of IDEA during the preceding two-year period.

Services to eligible special education students, age three to 21, will be provided without charge to the student. This does not include incidental fees that are normally charged to all students. Special education services will include preschool, elementary and secondary education and are provided in conformance with the student's Individual Education Program (IEP).

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.

### **Definition of Parent**

As used in these procedures, the term "parent" includes biological and adoptive parents, legal guardians, persons acting in the place of a parent, such as relatives and stepparents, foster parents, persons appointed as surrogate parents and adult students.

### **Early Intervention**

The district participates in the provision of early intervention services to eligible children with a disability, birth to three, consistent with the state lead educational agency's policies and procedures

and the regulations implementing Part C of the IDEA.

### **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 FAPE, as permitted by the public insurance program. However, the district shall not:

1. Require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;
2. 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;
3. Use a student's benefits under a public insurance program if that use would:
  - a. Decrease available lifetime coverage or any other insured benefit;
  - b. Result in the family paying for services required after school hours that would otherwise be covered by the public insurance program;
  - c. Increase premiums or result in discontinuation of insurance; or
  - d. 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 to the district. Whenever the district proposes to access the parent's private insurance proceeds, the district shall:

1. Obtain parent consent in accordance with Chapter 392-172A WAC each time the district wishes to access benefits for a new procedure; and
2. Inform the parents that their refusal to permit the district to access their 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:

1. A statement of the parental consent provisions;
2. A statement of the "no cost" provisions;
3. 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
4. A statement that a parent's withdrawal or refusal to consent does not relieve the district of its responsibility to ensure that all required services are provided at no cost to 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:

1. The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to the student;
2. The purpose of the disclosure;
3. The agency to which the disclosure will be made;
4. 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 benefits if the parent would incur a cost such as a deductible or co-pay, the district may use its Part B funds to pay the cost the parents would incur.

The director of special services is responsible for providing the required notices and requests for consent to parents under this section.

### **Parent Participation in Meetings**

The district encourages parental involvement and sharing of information between district and parents to support the provision of appropriate services to its 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 FAPE.

When a meeting is scheduled parents will be:

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

When the meeting is to address the IEP or placement:

1. The parent will be notified that the district or the parent may invite others who have knowledge or special expertise of the student; an
2. Meetings shall be scheduled at a mutually agreeable time and place;

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 whose native language is other than English.

The staff member 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. The district may proceed with the IEP or placement 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. 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. The director of special services or designee shall be responsible

for notification, form use and other arrangements and assuring that documentation is kept in the student's special education file.

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 or other means of conferencing available in the district.

A meeting does not include informal or unscheduled conversations involving staff members, teaching methodology, lesson plans, coordination of service provisions, or preparatory activities that staff members engage in to develop a proposal or a response to a parent proposal to be discussed at a later meeting.

The district will ensure parents have access to their child's classroom and school sponsored activities for purposes of observing class procedure, teaching material and class conduct. Such access must not disrupt the classroom procedure or learning activities.

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

#### **Identification**

The purpose of Child Find is to locate, evaluate and identify children with suspected disabilities in need of special education services including those who are not currently receiving special education and related services and who may be eligible for those services. Activities are to reach:

1. Students residing in the school district boundaries including preschool-aged children;
2. Students attending approved, nonprofit private elementary and secondary schools located within the district boundaries.
3. Highly mobile students (such as homeless, foster care and migrant children);
4. Students who have a disability and may need special education services even though they are advancing from grade to grade; and
5. Students at home or home schooled;

The district will consult with parents and representatives of private school students to ensure its Child Find activities are comparable in private schools located within district boundaries. Consultation meetings will occur at least annually with a follow up letter from the director of special services to confirm services to be provided.

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

1. Notification to parents district-wide through building and district newsletters;
2. Information regarding Child Find on the district's Web site;
3. Notification to OSPI approved private schools located in the district's boundaries;
4. Posting notices regarding screening and referral in school buildings and public

locations including DSHS community service offices, transitional housing sites, Head Start programs, Laundromats, day cares, community preschool sites, and physicians' offices;

5. Early childhood screenings conducted by the district;
6. Coordination with other public and private agencies and practitioners;
7. Training certificated staff members and administrators on referral/evaluation/identification procedures;
8. School Student Assistance Team (SAT) review of student behavior, discipline and absentee information and information gathered from district-wide assessment activities. The SAT is usually comprised of the building principal, school psychologist and or counselor, speech- language pathologist, and up to three (3) general education teachers.

When district staff members have concerns that a student may have a suspected disability which could result in eligibility for special education services, they will notify the building principal for referral to the building SAT.

The district's early childhood special education staff members conduct screenings four times during the school year for children who are not yet school age. When parents or others inquire about screenings, the caller will be referred to the Child Find coordinator.

The screening process involves the following:

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

Parents will be notified at the screening of the results and provided written notice of the results within ten (10) days of the screening. If the screening supports further evaluation, written consent for evaluation may be obtained at the exit interview, or consent forms will be included with the written notice 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 ten (10) days of the screening explaining the basis for the district's decision to not evaluate. Evaluation occurs in accordance with evaluation procedures.

### **Referral**

A student whether or not enrolled in school, may be referred for a special education evaluation by parents, district staff members or other persons knowledgeable about the student. Each building principal will designate a person responsible for ensuring that district staff members understands the referral process.

Referrals are required to be in writing. A person who makes a referral orally should be asked to either make the referral in writing or go to the special services office for assistance in making the referral.

When a referral is made, the district must act within twenty-five (25) school-days to make a

decision about whether or not the student will receive an evaluation for eligibility for special education services.

All certificated staff members will document referrals immediately upon receipt. All other staff members receiving referral shall notify the SAT leader. The SAT leader:

1. records the referral;
2. provides written notice of the referral to the parent; and
3. advises the school SAT to collect and review district data and information provided by the parent to determine whether evaluation is warranted;

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

1. Student's history, including developmental milestones;
2. Report cards and progress reports;
3. Individual teacher's or other provider information regarding the student including observations;
4. Assessment data;
5. Medical information, if provided; or
6. Other information that may be relevant to assist in determining whether the student should be evaluated;

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

Recommendations regarding evaluation are forwarded to the Special Services office.

After the school SAT reviews the request for evaluation and supporting data and does not suspect that the student 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 student 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 district in providing parents prior written notice and will assist the district in selecting appropriate evaluation group members. The SAT leader is responsible for notifying parents of the results using the *prior written notice* form. When the determination is made that the student will be evaluated, parent consent for evaluation and consent for release of appropriate records will be mailed with the notice.

The SAT leader will seek written parental consent to conduct the evaluation. The district is not required to obtain consent from the biological parent if:

1. The student is a ward of the state and does not reside with a parent;

2. The parent cannot be located, or their rights have been terminated; or
3. Consent for an evaluation is given by an individual appointed to represent the student; when the parent provides written consent, the district shall select an evaluation group. The evaluation group is to complete the evaluation with thirty-five (35) school days after parent consent, unless:
  1. The parents and district agree in writing to extending the timeline;
  2. The parent fails or refuses to make the student available for the evaluation; or
  3. The student enrolls in another school district after the evaluation is begun but before completion and the parent and new district have an agreement for completion of the evaluation;

If a parent does not provide consent, the director of special services is notified by the SAT leader. District staff members 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 due process, the evaluation team leader 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 & Reevaluation**

Evaluation of students moving from Part C to Part B and Participation in Transition Planning Conferences.

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 student.

1. The director of Special services will serve as the point of contact with the family resource coordinator for timely execution of transition planning conferences that are arranged at least ninety (90) days before the student's third birthday by the designee in 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 timeline and evaluation requirements for students moving from Part C to Part B except:

1. 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.

**Eligibility – Part C students (Birth to three (3))**

Children turning three (3), who were previously determined eligible for early intervention services under Part C of IDEA, must be evaluated for initial eligibility for special education services. The evaluation must be completed and an initial IEP developed prior to the child's third birthday.

**Evaluation Requirements**

The purpose of the evaluation is to collect information about a student's functional, developmental and academic skills and achievements from a variety of sources, to determine whether a child qualifies 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:

1. Whether the child is eligible for special education and any necessary related services; and,
2. The nature and extent of special education and related services needed by the child, including information related to enabling the child to be involved in and progress in the general education curriculum.

The school's evaluation team (the school psychologist or speech-language pathologist) shall select the members of the evaluation group. Members selected must be knowledgeable about the child 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 evaluation group determines that the student requires 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 the use of the insurance.

There are many legal requirements for conducting evaluations. Evaluation procedures or materials must be free of racial, religion, creed, color, national origin, age, sex, sexual orientation, gender expression or identity, marital status or the use of a trained dog or service animal by a student with a disability 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 should be administered in the primary language 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 to develop an individualized strategy for valid evaluation of the student's skills. The inclusion of parents in this collaboration is desirable and strongly encouraged.

Specific areas to be included in the evaluation are determined by the school's evaluation team and other qualified professionals, as appropriate, as part of a review of existing data concerning the student. The evaluation does not rely on one source or procedure as the sole criterion for determination and should include:

1. Review of existing data, including corresponding Response to Intervention (RTI)



documentation;

2. Relevant functional and developmental information;
3. Information from parents;
4. Information from other providers;
5. 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;
6. Current classroom-based evaluations, using criterion-referenced and curriculum-based methods, anecdotal records and observations;
7. Teacher and related service providers' observations; and
8. 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 evaluation team must be considered. Professional members of the evaluation team need to be familiar with qualifying disability definitions and criteria in federal and state rules.

The IEP team does not have to conduct a full meeting to review the data. Data may include information provided by parents, gathered in general education classrooms, or obtained from state and district level assessments. The data may provide information about the student's physical condition, social or cultural background, and adaptive behavior.

When additional assessments are necessary, the evaluation team 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 staff members 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 education needs, whether linked to the disability category or not. If the IEP team determines that no additional data is needed, the IEP team leader will notify the student's parent of that determination and the reasons for it, and inform them of their right to request additional assessments. The district will follow the evaluation procedures outlined in WAC 392-172A.

Parents and district staff members are encouraged to work towards consensus, but the district has the ultimate responsibility to determine whether or not the student has a disability. The district 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 he/she needs to be informed of his/her dispute resolution options described in the procedural safeguards.

### **Specific Learning Disability (SLD)**

The district continues to use the severe discrepancy approach for identifying students with a SLD. The evaluation team will establish that the learning disability is not a result of a visual, hearing, or

motor disability; intellectual disability, emotional disturbance, or due to environmental, cultural or economic disadvantages. In addition, to ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the evaluation team must consider:

- a. Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified staff members; and
- b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

### **Evaluation of Transfer Students**

If a student transfers into the district while an evaluation process is pending from the other district, the evaluation team leader (psychologist or speech-language pathologist) 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 thirty-five (35) school day timeline from the date the parent provided consent. If the determination is that additional time will be needed, the parent will be provided prior written notice of the timeline needed to complete the evaluation and the reasons for the additional time needed.

### **Eligibility**

The evaluation team and the parent will determine whether or not the student is eligible for special education services. A student is not eligible if the determinant factor is lack of appropriate instruction in reading or math, based upon the state's grade level expectations or limited English proficiency. Eligibility may be determined by documented professional judgment when:

1. Properly validated tests are unavailable; or
2. 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 (10) school days of the decision. The evaluation team leader is responsible for providing the notice.

Students remain eligible for special education services until one of four (4) events occur:

1. The student is determined through a reevaluation to no longer be eligible for special education;
2. The student has met the district's high school graduation requirements;
3. The student has reached age 21. A special education student whose 21st 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; or

4. 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 toward achieving course credits toward graduation on the transition portion of the IEP. The district will provide prior written notice to the parent and adult student stating that the student is expected to graduate and will no longer be eligible for special education services. The district will provide the parents and student with a summary of academic achievement and functional performance and recommendations to assist the student with postsecondary goals.

District graduation procedure 2410P identifies procedures for granting high school graduation credits for students with disabilities.

### **Evaluation Report**

Each district staff member conducting an assessment of the student will specify the procedures and instruments used, their results, 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 team leader 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:

1. Identify the disability which requires special education and related services, if a disability exists;
2. Discuss assessments and review data supporting conclusions regarding eligibility;
3. Include the additional information required for the specific learning disability eligibility category;
4. Describe how the disability or disabilities affect the student's involvement and progress in the general curriculum;
5. 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 one hundred-eighty (180) school days, and location of services;
6. Include other information, as determined through the evaluation process and parent input;
7. Include the additional information required for the specific learning disability eligibility category;
8. Provide any necessary professional judgments and the facts or reasons in support of the judgments; and

9. Be signed and dated by the evaluation team members certifying their agreement. Any team member who disagrees with the conclusions shall prepare a statement presenting the conclusion.

10. The evaluation team leader is responsible for notifying parents of the date, time, and location of evaluation meetings by following the procedures in the parent participation section for inviting the parent to meetings.

### **Reevaluations**

A reevaluation of a student receiving special education or related services is conducted if academic achievement and functional performance has improved to warrant a reevaluation, if the IEP team suspects that the student's disability may no longer exist, or if the student's parent or teacher requests a reevaluation. A reevaluation does not occur more than once per year, unless the parent and IEP team agree otherwise. A reevaluation must occur at least once every three years, unless parent and staff members agree that a reevaluation is unnecessary. An agreement that a re-evaluation is unnecessary shall be confirmed in writing to the parent. The evaluation team leader will schedule a review of this determination and notify the special services office.

When a student turns six (6) and previously met the eligibility requirements for the disability category of "Developmentally Delayed" (DD) under the criteria for ages three (3) to six (6) years need not be reevaluated at age six under the criteria for six (6) to nine (9) years until three (3) years after their initial evaluation was completed. Students who were previously eligible under the category "Developmentally Delayed" must be reevaluated before age nine (9) to determine eligibility within another category.

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

1. Evaluations and information provided by the parent;
2. Current classroom-based assessment, local or state assessments, and classroom based observations; and
3. Observations by other teachers and related services providers data.

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

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

This review can occur with or without a meeting or through individual review. 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 the prior written notice form 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 the reevaluation does not require additional testing parent consent is not required:

- a. If additional testing is needed, the district will request written parental consent for reevaluation and provide prior written notice identifying the areas of assessment;
- b. If the parent does not return the signed consent form, the district shall send another letter explaining the need for reevaluation and parent consent and will enclose another consent form along with 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;
- c. If the parent does 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
- d. If the parent refuses to consent to the reevaluation, the evaluation group 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 parent refusal to consent;

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

1. Whether the student continues to be eligible and in need of special education;
2. Present levels of performance and educational needs of the student; and
3. 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 (10) school days of the eligibility decision. The special education office is responsible for sending the 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 twenty-one (21). Instead, the IEP case manager will provide Prior Written Notice to the student and the parent one (1) month before the student's anticipated last day of school. 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 for academic achievement and functional performance.

### **Independent Educational Evaluations (IEE)**

The parent of students eligible for special education, students referred for special education and determined to not be eligible, or students determined to not need an evaluation have a right to obtain an IEE at public expense each time the district conducts an evaluation of the student.

Any parent request for an independent evaluation should be immediately referred to the director of special services. The director of special services shall review the request within fifteen (15) calendar days and determine whether or not the request is warranted. If the district agrees to provide an IEE, arrangements will be made promptly. If the director of special services denies the request to pay for an IEE, he or she must file for a due process hearing within fifteen (15) calendar days of the parent's request. The director of special services may request mediation as an option after filing the due process hearing. If the parent withdraw their request for an IEE the due process hearing can be dismissed.

When a parent requests an IEE, the director of special services must provide parents a list of district criteria and qualified independent evaluators. If the director of special services 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. The parent is only entitled to one IEE at public expense each time the district conducts an evaluation with which the parent disagrees.

If the parent obtains an IEE at either public or private expense, any results of the IEE must be considered by the district if providing FAPE. The IEE may also be presented as evidence at a hearing regarding the student.

The following criteria are established for the selection of an individual to conduct an IEE at public expense. These criteria are established in order to identify 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:

1. Licensed, credentialed, or otherwise qualified within the state of Washington or state of residence or practice to perform an evaluation in the specific professional discipline for which an independent evaluation is sought;
2. Knowledgeable and experienced in evaluating students with similar disabilities;
3. Geographically located within the state of Washington; and
4. 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 student or the disability:

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

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

### **IEP Development**

The term IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through WAC 392-172A-03100. The IEP reflects the implementation of instructional programs and other services for students who are eligible for special education services, based on the evaluation and student needs.

An IEP must be in effect before initiation of special education services. The IEP must be developed within thirty (30) calendar days after the student's initial determination of eligibility for special services. IEPs must be updated annually, or revised more frequently if needed to adjust the program and services.

Parent consent is required before the initial provision of special education services. If a parent refuses 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 refuses to provide consent the director of special services 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.

The district will maintain a copy of the current IEP which is accessible to all district staff members responsible for providing education, other services, or implementation of the IEP. All district 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 is 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.

The parent is a member of the IEP team and shall have the opportunity to fully participate. The district will make sure that the parent understand the proceedings; including arranging for an interpreter for the parent who are deaf or whose primary language is other than English. The district will also ensure that meeting locations are accessible. The special education department is responsible for coordinating interpreters and making arrangements for the meeting location.

The district will provide the parent with a copy of the district's Restraint, Isolation and Other Uses of Reasonable Force (*Policy 3246*) with each initial and annual IEP.

## IEP Team

The IEP team includes:

1. The parent of the student;
2. Not less than 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 teachers will, to the extent appropriate, participate in development of the student's IEP, including determinations of: 1) appropriate positive behavioral interventions and supports for the student; and 2) supplementary aids and services, program modifications, and support for district staff members consistent with WAC 392-172A-01185 and WAC 392-172A-03110(2)(b);
3. Not less than one special education teacher, or if appropriate, not less than one special education provider of the student;
4. 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;
5. An individual who can interpret the instructional implications of the evaluation results;
6. Any other individuals who have knowledge or special expertise about the student. These individuals may be invited by the district or the parent at the discretion of the person making the invitation;
7. The student, when appropriate, or when required (the student *must* be invited when the purpose of the meeting includes discussion of transition needs or services);
8. 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 staff members shall keep the representative informed of the meeting and obtain agency information that will assist in the service provision;
9. The parent will be notified of the participation of the Part C service coordinator or 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 parent and district must agree in writing before any of the above IEP 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.

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



Sometimes the parent do not attend IEP meetings. There will also be times when the parent 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 IEP team will 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 parent does not attend the IEP meeting, 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. The IEP team leader will:

1. Have IEP members present sign the IEP (or document participation if any member is unwilling to sign);
2. Send a copy to the parent, and provide the parent prior written notice that the district intends to implement the IEP; and
3. Forward the documentation of actual or attempted contacts to the special services office for processing.

When making changes to an IEP after the annual IEP meeting for a school year, the parent and the IEP team leader may agree not to convene an IEP meeting for the purpose of making changes. The parent and the IEP team leader must complete a written document indicating the changes and inform other IEP team members and appropriate individuals of the changes. If the parent requests that the district revise the IEP to include the amendments, the IEP team leader 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:

1. The strengths of the student including the academic, developmental and functional needs of the student and the concerns of the parent for enhancing the education of the student;
2. Whether positive behavioral interventions and supports, including a behavioral intervention plan, as defined by WAC 392-172A-01031, are needed to address the student's behavior;
3. The language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;
4. Whether Braille instruction is appropriate for a student who is blind or visually impaired;
5. The communication needs of the student (and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs), opportunities for direct communications with peers and professional in the student's language and communication mode; academic level; and full range of needs, including opportunity for direct instruction in the student's language and communication mode; and
6. Whether assistive technology devices or services are needed.

IEP content includes:

1. The student's present levels of academic and functional performance with a description of how the disability(ies) affect the student's involvement and progress in the general curriculum or preschool activities;
2. Measurable academic and functional annual goals for the student (including benchmarks or short term objectives if the student is participating in alternate assessments) that will 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 the student's other educational needs;
3. A statement of special education services, any necessary related services, and supplementary aids and services based on peer-reviewed research to the extent practicable to be provided;
4. A statement of program modifications or supports for district personnel so that the student may advance towards annual goals, progress in the general curriculum, and be educated and participate with other special education and non-disabled students in extracurricular and other non-academic activities;
5. 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;
6. A statement of any individual appropriate accommodations in the administration of state or district-wide assessments of student achievement that are needed to measure academic achievement and functional performance of the student. If the team determines that the student will not participate in a particular assessment, the IEP will address why the student cannot participate in the regular assessment(s) and why the particular alternative assessment is appropriate for the student;
7. The date for the beginning of special education and related services and the anticipated frequency, location and duration of services, and modifications;
8. A statement of how the student's progress towards goals will be measured, how the student's parent will be regularly informed of their student's progress towards the annual goals and whether the progress is sufficient to enable the student to achieve the goal by the end of the year. Measurement of the student's progress will be based on data. Information to the parent can be provided through the use of progress reports or report cards or other agreed means, but the information must be provided at least as often as information is provided to students without disabilities;
9. With an IEP that is in effect when the student turns sixteen (16), or sooner if the IEP team determines it is appropriate, a statement of needed transition services and any interagency responsibilities or needed linkages. Transition services description must include appropriate measurable postsecondary goals based on age appropriate transition and assessments related to training, education, employment, independent living skills where

appropriate, and transition services (including course of study) needed to assist the student in reaching those goals;

10. Emergency response protocols, if determined necessary by the IEP team for the student to receive FAPE and the parent provide consent. Emergency response protocols must meet the requirements stated in WAC 392-172A-02105;

11. A behavioral intervention plan (BIP), if determined necessary by the IEP team for a student to receive FAPE. The BIP must meet the requirements stated in WAC 392-172A-01301;

12. The procedures by which the parent will be notified of the use of isolation or restraint or a restraint device on their student (see procedure 3246).

13. A statement regarding transfer of rights at the age of majority. The IEP team leader will provide prior written notice to the student one year prior to student turning eighteen (18) years of age;

14. Extended School Year (ESY) services. The consideration for ESY services is a team decision, based on information provided in the evaluation report and based on the individual needs of a student. ESY services are not limited by categories or types of disability, or amount of or duration of the services. If the need for ESY services is not addressed in the IEP and ESY services may be appropriate for the student, the IEP team will meet by April 15 each year 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:

- a) Evidence of regression or recoupment time based on documented evidence; or
- b) 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.

#### **Use of isolation, restraint and restraint devices:**

##### **A. Definitions**

1. **Imminent:** The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.
2. **Isolation:** Restricting a student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan.
3. **Likelihood of serious harm:** A substantial risk that physical harm will be inflicted by a student:

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- a. upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;
  - b. upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm;
  - c. upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or
  - d. after the student has threatened the physical safety of another and has history of one or more violent acts.
4. **Positive behavioral intervention:** Strategies and instruction that can be implemented in a strategic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior.
5. **Restraint:** Physical intervention or force used to control a student, including the use of a restraint device. It does not include appropriate use of a prescribed medical, orthopedic or therapeutic device when used as intended, such as to achieve proper body position, balance or alignment or to permit a student to safely participate in activities.
6. **Restraint device:** A device used to assist in controlling a student, including, but not limited to, metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. Restraint device does not mean a seat harness used to safely transport students. This definition is consistent with RCW 28A.600.485 (1) (c), and is not intended to endorse or encourage the use of such devices or techniques with district students.

**B. Practices presumed to be unreasonable when correcting or restraining any student under the age of eighteen (18):**

Under RCW 9A.16.100, the following is a non-exclusive list of acts that are presumed unreasonable when correcting or restraining a student:

1. throwing, kicking, burning, or cutting a student;
2. striking a student with a closed fist;
3. shaking a student under the age of three (3);
4. interfering with a student's breathing;
5. threatening a student with a deadly weapon; or
6. doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

This non-exclusive list should not be read so as to imply that another, unlisted form of correction or restraint is permissible. Whether or not an unlisted use of force or restraint is presumptively

permissible depends upon a balanced consideration of all relevant state laws and regulations, and whether the use is reasonable under the totality of the circumstances.

**C. Conditions specific to use of isolation:**

1. The isolation must be discontinued as soon as the likelihood of serious harm has dissipated;
2. The enclosure will be ventilated, lighted and temperature controlled from inside or outside for purposes of human occupancy.
3. The isolation enclosure will permit continuous visual monitoring of the student from outside the enclosure.
4. District staff member is responsible for supervising the student will remain in visual or auditory range of the student at all times.
5. Either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of a district staff member responsible for supervising the student.
6. Any district staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, unless trained district staff members are not immediately available due to the unforeseeable nature of the emergency.

**D. Conditions specific to use of restraint and restraint devices:**

1. The use of restraint or a restraint device must be discontinued as soon as the likelihood of serious harm has dissipated;
2. The restraint or restraint device will not interfere with the student's breathing;
3. Any district staff member or other adults using restraint or restraint devices must be trained and certified by a qualified provider in the use of such restraint or restraint devices, unless trained are not immediately available due to the unforeseeable nature of the emergency.
4. In the case of a restraint device, either the student will be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of a staff member responsible for supervising the student.

**E. Prohibited practices involving restraint, use of force, and discipline:**

The following practices are prohibited with students eligible for special education services:

1. The district is prohibited from using aversive interventions;
2. The district is prohibited from physically restraining or isolating a student, except when the student's behavior poses an imminent likelihood of serious harm as

defined above;

3. No student may be stimulated by contact with electric current, including, but not limited to tasers;
4. A student may not be denied or subjected to an unreasonable delay in the provision of food or liquid as a form of punishment;
5. A student may not be the recipient of force or restraint that is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law (see above, for example, for a list of practices presumed to be unreasonable when used in correcting or restraining a student);
6. A student must not be denied or subjected to an unreasonable delay in the provision of common hygiene care;
7. A student must not be denied or subjected to an unreasonable delay in the provision of medication;
8. A student may not be excluded from his or her regular instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-02110;
9. A student must not be forced to listen to noise or sound that the student finds painful;
10. A student must not be forced to smell or be sprayed in the face with a noxious or potentially harmful substance;
11. A student must not be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration;
12. A student's head must not be partially or wholly submerged in water or any other liquid.
13. A student must not be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392-172A.02110.

**F. Documentation and Reporting Requirements**

Districts must follow the documentation and reporting requirements for any use of isolation, restraint, or a restraint device consistent with RCW 28A.600.485 and the parental notification requirement of RCW 28A.155.210. See Policy and Procedure 3246. Following an incident of isolation, restraint, or restraint device:

1. The building principal will be contacted immediately. The parent will be contacted within twenty-four (24) hours.
2. The district office will be notified in writing within two (2) days. The parents will be notified in writing within five days.

3. The IEP team will review the student progress every three (3) months.
4. OSPI will be notified annually regarding these incidents.

### **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 secretary or registrar will notify the special services department and the school psychologist as soon as possible. The evaluation team, IEP Team, and the parent will review the student's IEP to ensure alignment with eligibility areas in the evaluation report. 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 secretary or registrar will notify the special services office and the school psychologist as soon as possible. The 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 procedures described in the previous paragraph will be followed. If the student needs to be evaluated to determine eligibility in this state, the evaluation team leader will notify the parent, obtain consent and evaluate of the student for eligibility within thirty-five (35) school days of the receipt of the parent's consent. The district, in consultation with the parent, 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 special services department is responsible for obtaining records and ensuring follow-up if the records are not provided.

### **A. Placement**

No student may receive special education and related services without being determined eligible for services, and thus the evaluation process and IEP development precedes the determination of the special education placement. When a student has been evaluated and the evaluation team and parent have determined that the student is eligible 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. The actual program is considered within the context of least restrictive environment (LRE) and the continuum of placement alternatives (reviewed below). When determining initial eligibility for special education, including determination of the appropriate placement, the parent or adult student must provide written consent for services before the student receives special education services. If the parent 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 parent 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 the parent that the district has no FAPE obligation to the student when a parent refuses to provide consent.

When program decisions are addressed by the IEP team, proper consideration must be given to the LRE. Within the educational setting, the student should be placed, whenever possible:

1. In the school the disabled student would normally attend; and,
2. with non-disabled 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:

1. The educational benefits of full-time or part-time placement in a regular classroom;
2. The non-academic benefits of such a placement;
3. The effect the student will have on the teacher and other students in the regular classroom;  
and
4. 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 identified needs of the student. This placement is to occur unless the nature of the need is so severe that it 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.

Within the nonacademic setting, students will be provided nonacademic and extracurricular activities including but not limited to athletics, transportation, health services, clubs, and recreational activities such as after school intramural sports with non-disabled students. Limits on non-participation or conditions of participation must be designated in the IEP.

The district will also make opportunities available for students eligible for special education to participate with non-disabled students in the district's art, music, and career and technical education classes.

Within the district, a continuum of alternative placement options exist spanning within a class, resource room, self-contained, home-bound, and out-of-district provisions. These options are intended to address the individual needs of students and are considered according to the following process:

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



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

1. Data-based judgments in IEP development;
2. Data-based judgments in determining LRE;
3. Reasonable probability of the placement option(s) assisting the student to attain annual goals and objectives and the quality of services needed; and
4. 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.

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

On the first student count date in December, the special services Office shall conduct an annual count of the number of private elementary and secondary school students eligible for special education who are unilaterally enrolled by their parent in a private school located within district boundaries and who do not wish to enroll in a public school to receive special education and related services. The director of special services and designated district staff members shall have timely and meaningful consultation with appropriate representatives and the parent of private school students and make determinations about who will receive services and what services will be provided. The purpose of the student count is to determine the proportionate amount that the district must spend on providing special education and related services, including transportation, to private elementary or secondary school 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 will consult with appropriate representatives and parents of private school students. The district shall make the final decision with respect to services to be provided to eligible private school students. The director of special services or designee will contact the principal of each OSPI approved private school or preschool operating in the district to obtain the name of the contact who will serve as a representative of special education private school students in consultations with the district. An initial consultation will be arranged by the director of special services by September 15 of each year with the private school student representatives.

At the consultation the director of special services, in collaboration with a designated school psychologist, special education teacher, and related district staff member(s), will determine referral processes, selection, evaluation, and services under an ISP (Individual Service Plan) for eligible students. A private school student has no individual entitlement to any service or amount of service (s) he or she 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 specific special education and related services that the district will provide. The services plan must:

1. Meet IEP content requirements with respect to the services to be provided; and

2. Be developed, reviewed, implemented and revised annually consistent with the requirements for IEP review.

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 special education qualified 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 district staff members meeting the same standards as the district staff members providing the services in the district.

Services to students in private schools including private sectarian schools, may be provided on-site. District staff members 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 district staff members' 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 or supplies. The district shall keep records and make an accounting assuring that said equipment supplies or are used solely for the services plan program. Said equipment or supplies shall be removed if necessary to avoid their use for other purposes or if no longer needed for the services plan program. 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 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.

### **Procedural Safeguards**

#### **A. Notice of Procedural Safeguards**

In addition to protections provided to the parent of eligible students, the parent also have procedural safeguard protections when a student's identification, evaluation or placement is at issue. The district special services office will provide a copy of the procedural safeguards notice to the parent and adult students one time a year and:

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the parent's first state complaint and first request for due process hearing in a school year;

3. Upon a disciplinary action that will result in a disciplinary change of placement; and
4. Upon request by 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, discipline procedures for students who are subject to placement in an interim alternative educational setting, requirements for unilateral placement by the parent of student in private schools at public expense, state complaint procedures, mediation, the student's placement during pendency of due process proceedings including requirements for disclosure of evidence, due process hearings, civil actions and attorney's fees. Copies of the district's special education procedural safeguards are available at the district office and each of the schools. The IEP case manager will be responsible to ensure that the procedural safeguards are provided when they are required.

#### B. Consent

The Special Services Office will obtain informed, written parental consent before:

1. Conducting an initial evaluation;
2. Providing initial special education and related services to a student; and
3. 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' parent.

Informed consent means that the parent or adult student:

1. Has been informed fully 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;
2. 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
3. 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 student any other service, benefit or activity of the district.

If the special services office is unable to obtain a parent's consent, the special services office 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 special services office may not request a due process hearing to override a parent's refusal to consent to initial special education services. The special services office 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.

### **C. Revocation of Consent**

The parent may revoke consent for the continued receipt of special education and related services. If the parent revoke consent, the district staff member receiving the revocation will forward the revocation to the special services office.

Upon receipt of the parent's written notice of revocation, the district:

1. Will provide prior written notice before ceasing services;
2. Stop providing special education and related services after the effective date contained in the district's prior written notice;
3. Will not use mediation or the due process procedure to obtain agreement. 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 requirement to convene an IEP meeting or develop an IEP. However, the district does have a continuing Child Find duty, and district staff members will follow referral procedures if they believe the student should be referred for special education. In addition, the parent may request that the district conduct an initial evaluation for eligibility for special education services after they have revoked consent for continued services.

### **D. Prior Written Notice**

Prior written notices are provided to the parent when an evaluation or IEP team makes a decision relating to a student's identification, evaluation, placement or provision of a FAPE. Prior written notices document the decisions made by the IEP teams and evaluation group.

The special services office will provide prior written notice to the parent of an eligible student or of a student referred for a special education evaluation whenever the special services office proposes or refuses to initiate or change the identification, evaluation, educational placement or provision of a FAPE to the student.

The prior written notice will include:

1. A statement that the parent of a special education student has 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;
2. A description of the action proposed or refused by the district;
3. An explanation of why the special services office proposes or refuses to take the action and a description of other options that the special services office considered and the reasons why the options were rejected;
4. A description of any other factors which are relevant to the special services office proposal or refusal

5. A description of each evaluation procedure, test, record or report the special services office used as a basis for the proposal or refusal;
6. A description of any evaluation procedures the special services office proposes to conduct and sources for the parent 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 primary language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the primary 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:

1. Arranging for an interpreter if English is not the primary language of the parent or if the parent has a hearing impairment; or
2. Providing notice orally if the written language is not a primary language.

The district will document in writing how this information was provided and that the parent understands the content of the notice. The evaluation team leader is responsible for providing a prior written notice to the parent upon completion of evaluation and prior to eligibility notification. The IEP Team leader is responsible for providing a prior written notice to the parent prior to IEP team meetings and placement decisions.

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

When a student eligible for special education reaches the age of eighteen (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 in a guardianship proceeding or the district has appointed an educational representative for the student. When the student turns eighteen (18), the director of special services or designee will notify the parent and student that the educational rights have transferred to the student and will send any required notices to both the parent and the adult student.

At an IEP meeting occurring one year before the student turns eighteen (18), the IEP case manager will inform the parent and the student that educational rights will transfer to the student. The IEP case manager 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(18) 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 (18) 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 as defined by WAC 392-172A-05135(5) (a), state that they conducted an examination and interviewed the student, and concluded that 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 parent, 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 education representative, until the representative is recertified.

### **Confidentiality and Records Management**

The director of special services, in collaboration with building principals, is responsible for maintaining the confidentiality of personally identifiable information pertaining to special education and all other students. The director of special services will maintain, for public inspection, a current list of the names and positions of district staff members who have access to personally identifiable information of special education students. The director of special services 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 director of special services will provide instruction annually to district staff members 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( 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, delivery of educational services, and provision of FAPE to the student. The special services office shall comply with the request promptly and before any meeting regarding an IEP 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 special services office shall respond no more than forty-five (45) calendar days after the date the special services office received the request. If an educational record includes information on more than one student, the parent and/or adult student may only inspect and review information relating to their child. District staff members receiving requests for educational records will immediately forward the request to the special services office.

If the parent believe that information in an education record is inaccurate or misleading or violates the privacy or rights of their student, they may request that the special services office amend the information. Policy and Procedure 3231, Student Records, describes the process and timelines for challenges 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*. A designee of the district shall inform the parent 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 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 4040, Public Access to District Records.

### **Surrogate Parents**

A surrogate parent is a person appointed by the district to act on behalf of a student to help ensure the rights of the student to a FAPE when a parent cannot be identified, the whereabouts of the parent are unknown or the student is a ward of the state and does not have a foster parent. The director of special services is responsible for determining the need for appointment of a surrogate parent.

A natural or adoptive parent, foster parent, person acting in the place of a parent such as step- parent or relative and person with legal custody or guardianship are considered parents. Students who are homeless and not living with a parent may need a surrogate parent.

In cases where the student is in out-of-home-care the district must determine the legal custodial status of the student. The following is guidance for the district to follow to assist in determining the status of the parent's rights to make educational decisions:

1. The parent who have voluntarily placed their student in state placement still retain legal custody of the student and retain the right to make educational decisions. In this situation the student is not a ward of the state.
2. The parent whose student is placed in group care, pending a determination of "dependency" may still retain rights to make educational decisions unless otherwise ordered by the court.
3. When a disposition order and order of dependency is issued, the state becomes the legal as well as physical custodian of the child. The parent may no longer have the right to make educational decisions during this stage of dependency.
4. Parents whose parental rights are terminated no longer have the right to make educational decisions on behalf their student.

When a student is placed in foster care the foster parent may act as the parent. When a student is placed in group care, the district will work with the parent case-worker, foster parent 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 director of special services or designee 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 director of special services will be notified of the potential need. The director of special services 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 a district staff member of the district and/or other agency which is involved

in the education or care of the student. This includes OSPI, DSHS, district staff members and group care providers.

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 parent and in establishing a list of persons willing and able to serve as surrogate parent.

### **Mediation**

The purpose of mediation is to offer both the parent and the district an alternative to a formal due process hearing. Mediation is voluntary, confidential, informal, 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, district representatives and mediator. 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.

The district's director of special services is responsible for coordinating requests for mediation. If a parent requests mediation, the director will be notified and the director will respond to the parent and coordinate with OSPI's contracted agent. District staff members are reminded that discussions that occur during the mediation process are confidential.

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

### **Due Process Hearing**

The parent or district may file due process hearings involving the identification, evaluation, placement, or provision of FAPE to a student. IDEA requires that specific information be provided as part of a due process hearing request. The requirements are identified in the notice of procedural safeguards. If a parent requests information about how to file a due process hearing, the director of special services will provide the parent with a due process hearing request that contains the required information. Due process hearing request forms are available in the special services office and on the OSPI Special Education and Administrative Resources web site.

If any district staff member receives a request for a due process hearing, a copy of the request should be immediately forwarded to the director of special services. If the parent has not filed the request for hearing with OSPI, the director of special services will forward the parent request to OSPI Administrative Resources section. The district may not delay or deny a parent's due process hearing request. The parent is entitled to a copy of the Notice of Procedural Safeguards if this is the first due process hearing in a school year. The director of special services is responsible for providing the parent a copy of the procedural safeguards in this situation and documenting that the safeguards were provided to the parent.

When a parent files a due process hearing, the student remains in the placement at the time of the request for hearing, unless the parent and district agree to a different placement.

When the parent file a request for a due process hearing, the director of special services will immediately schedule a resolution meeting. The meeting must occur within fifteen (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 (7) days if the hearing request involves an expedited hearing regarding discipline. The director of special services will determine the appropriate district staff members that will attend the resolution meeting. The district will ensure that one (1) of the district representatives attending the resolution meeting has authority to bind the district in any resolution agreement. The district will not bring district counsel to a resolution meeting unless the parent is bringing an attorney to the meeting.

Any resolution agreement reached will be documented in writing and is binding on the parties. The document will inform the parent of his or her right to void the agreement within three (3) 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 director of special services and school administrator shall 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 director of special services shall take steps to ensure that each staff member, contractor, and other agents of the district responsible for education or care of a student is knowledgeable of special education disciplinary rules.

### **Removal Up to Ten (10) Days**

The building principal may order the removal of a special education student from a current placement. The district need not provide services to a special education student removed from the current placement for ten (10) school days or less in any school year, if services are not provided to a student without disabilities.

### **Removal for More than Ten (10) Days**

Once a student has been removed from placement for a total of ten (10) school days in the same school year, and if the district determines that the removal is not a change of placement, the special services office 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 IEP case manager, in consultation with one or more of the student's teachers, shall make the determination of such necessary services.

### **Change in Placement**

A change of placement occurs when a special education student is:

1. Removed from current placement for more than ten (10) consecutive school days in a school year; or
2. Subjected to a series of removals in a school year and which constitute a pattern of removal because:
  - a. the series of removals total more than ten (10) school days in a year;
  - b. the student behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - c. because 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 or not a pattern of removal constitutes a change in placement is determined on a case-by-case basis by the building principal, IEP case manager, and the director of special services and is subject to review through due process and judicial proceedings. The building principal and/or the IEP case manager is responsible for notifying the special services office when a student has been removed for more than ten (10) days.

### **Manifestation Determination**

Within ten (10) school days after the date on which the district makes a decision to change the 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 a student's disability and the behavior subject to the disciplinary action shall be done in a meeting with the parent and relevant members of the IEP team who are selected by the parent and the district. The IEP leader is responsible for contacting the parent in order to determine relevant IEP team members and for providing 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:

1. If the conduct was caused by or had a direct and substantial relationship to the student's disability; or
2. If the conduct in question was the direct result of the district's failure to implement the student's 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 will 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 student to the placement from which he or she was removed from unless the parent and the district agree a change is necessary as part of the behavioral intervention plan, or unless the infraction involves drugs, weapons, or serious bodily injury.

### **Special Circumstances**

District staff members 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 disciplinary consequences, but for not more than forty-five (45) school days, if a special education student:

1. Possesses a "dangerous weapon" or carries such a weapon to school or to a school function; or

2. Knowingly possesses or uses “illegal drugs” while at school or a school function; or
3. Sells or solicits the sale of a “controlled substance” while at school or a school function; or
4. 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:

1. Be selected so as 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; and
2. Include services and modifications designed to address the behavior or 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 forty-five (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 sixty ( 60) day period, whichever occurs first.

### **Basis of Knowledge**

A student who has not been determined eligible for special education services may assert the protections if the district had knowledge that the student was eligible for special education before the behavior that precipitated disciplinary action occurred.

The district is deemed to have knowledge if:

1. 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 district supervisory or administration or a teacher that the student is in need of special education and related services;
2. The parent requested that the student be evaluated for special education services; or

3. The teacher or other school staff members has expressed specific concern about a pattern of behavior demonstrated by the student to the director of the special services or to other supervisory district staff members.

When instituting disciplinary action that would exceed ten (10) days and when the building principal believes that one or more of these events applies to the student, the building principal will notify the special education office 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:

1. Conducted a special education evaluation of the student and determined that the student was not eligible for services; or
2. The parent of the student has not allowed an evaluation of the student or has refused services. If the school is not deemed to have knowledge that a student is a special education student, the student 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 must 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 Member Qualifications**

All district staff members funded in whole or part with state or federal excess special education funds will meet the standards established by the State Board of Education (SBE) and defined in WAC 392-172-A-02090.

All district staff members will hold such credentials, certificates or permits as are now or hereafter required by the SBE for the particular position of employment and shall meet such supplemental standards established by the district.

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. To qualify for the special education pre-endorsement waiver, the teacher must meet SBE criteria.

If the district must temporarily assign a classroom teacher without a special education endorsement to a special education position, the district human resources director, in collaboration with the director of special services, will document in writing that:

1. The district is unable to recruit a teacher with the proper endorsement who was qualified for the position; and/or
2. 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
3. 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 and 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.

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

### **Development**

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

1. Special education concerns will be identified through a staff needs assessment completed by administrators, teachers, educational staff associates, program assistants, parents, and volunteers;
2. All staff members who use restraint, restraint devices and/or isolation must be certified and annually trained in the use of such restraint, restraint devices and/or isolation;
3. In-service training schedules will be developed based upon the results of the district assessment and in support of needs identified;
4. Training activities will be conducted for general and special education staff members, staff of other agencies and organizations and private school staff providing services for special education student; and
5. Training for district classified staff members in the state recommended core competencies may occur through district-sponsored activities or through arrangement with the director of special services.

**Public Participation**

Any application and any required policies, procedures, evaluations, plans, and reports are readily available to parents and other members of the public through the district's special services office and the office of the superintendent. A notice regarding the availability of such documents will be placed on the district's web site and be made available annually in the district newsletter as well as each building newsletter.

**Date: 8/08/2005, 3/24/2008, 6/14/2010, 6/25/2012, 5/28/2015, 7/14/2016**