Washington Office of Superintendent of
PUBLIC INSTRUCTION

Notice of Special Education Procedural Safeguards for Students and Their Families

2023

NOTICE OF SPECIAL EDUCATION PROCEDURAL SAFEGUARDS FOR STUDENTS AND THEIR FAMILIES

Requirements under Part B of the Individuals with Disabilities Education Act, the Federal Regulations, and the State Rules Governing Special Education

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Dr. Tania May
Assistant Superintendent of Special Education

Prepared by:

- **Special Education**
  speced@k12.wa.us | 360-725-6075



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GENERAL INFORMATION

The Individuals with Disabilities Education Act (IDEA) of 2004, concerning the education of students with disabilities, requires schools to provide you, the parents of a student with a disability, or suspected disability, with a notice containing a full explanation of the rights available to you under IDEA and the U.S. Department of Education Code of Federal Regulations (CFR). The Office of Superintendent of Public Instruction (OSPI) oversees state rules governing the provision of special education. These rules are found in Chapter 392-172A Washington Administrative Code (WAC). This document conforms to the U.S. Department of Education's Model *Notice of Special Education Procedural Safeguards*, revised in June 2009.

This notice is for parents, surrogate parents, and adult students. References to "you" or "parent" and "your child" also apply to surrogate parents and adult students. References in this notice to the "school district" or "district" include charter schools, and other public agencies, such as educational service districts and educational service agencies.

Additional information about special education services and these Procedural Safeguards are available by contacting your local school district's special education director, the state's parent training and information center, Partnerships for Action Voices for Empowerment (Washington Pave), or through OSPI. OSPI maintains a web page addressing special education at the Office of Superintendent of Public Instruction – Special Education. OSPI has program supervisors and special education parent and community liaisons to assist you with questions about your child's special education program. You may reach OSPI, Special Education at 360-725-6075, OSPI TTY 360-664-3631, or OSPI Special Education Email.

Procedural Safeguards Notice
34 CFR §300.504; WAC 392-172A-05015

A copy of this notice must be given to you once every school year, and: upon initial referral or your request for evaluation; upon a district's receipt of your first special education community complaint in a school year; upon a district's receipt of your first due process hearing request in a school year; when a decision is made to take a disciplinary action that constitutes a change of placement; and upon your request.

This *Notice of Special Education Procedural Safeguards* includes a full explanation of all of the procedural safeguards related to the unilateral placement of your child at a private school at public expense, special education community complaint procedures, informed consent, the procedural safeguards contained in Subpart E of the Part B IDEA regulations, and confidentiality of information provisions contained in Subpart F of the Part B IDEA regulations. Districts may choose to use this Notice or develop their own *Notice of Special Education Procedural Safeguards* to parents.

Prior Written Notice
34 CFR §300.503; WAC 392-172A-05010

Your school district must provide you with information in writing about important decisions that affect your child's special education program. This is called a prior written notice (PWN) and it is a

document that reflects decisions that were made at a meeting or by the district in response to a request made by you. **The district is required to send you a prior written notice after a decision has been made, but before implementing the decision.** These are decisions that are related to proposals or refusals to initiate or change the identification, evaluation, placement, or provision of a free appropriate public education (FAPE) to your child.

A prior written notice must include:

- What the district is proposing or refusing to do;
- An explanation of why the district is proposing or refusing to take action;
- A description of any other options considered by the individualized education program (IEP) team and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report used as a basis for the action;
- A description of any other factors relevant to the action;
- A description of any evaluation procedure the district proposes to conduct for the initial evaluation and any reevaluations;
- A statement that parents are protected by the Procedural Safeguards described in this booklet;
- How you can get a copy of this *Notice of Special Education Procedural Safeguards* booklet; or include a copy of this *Notice of Special Education Procedural Safeguards* booklet if one has not been provided to you; and
- Sources for you to contact to get help in understanding these Procedural Safeguards.

Examples of when you will receive a prior written notice are:

- The district wants to evaluate or reevaluate your child, or the district is refusing to evaluate or reevaluate your child.
- Your child's IEP or placement is being changed.
- You have asked for a change and the district is refusing to make the change.
- You have given the district written notice that you are revoking consent for your child to receive special education services.

Prior written notice must be written in language understandable to the general public and provided in your native language or other mode of communication that you use, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, the district must take steps to ensure that: (1) the notice is translated orally or by other means in your native language or other mode of communication; (2) you understand the content of the notice; and (3) there is written evidence that requirements under (1) and (2) have been met.

Native Language
34 CFR §300.29; WAC 392-172A-01120

Native language, when used regarding an individual who is an English learner, means:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents.
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with blindness or who is deaf or hard of hearing, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

Electronic Mail
34 CFR §300.505; WAC 392-172A-05020

If your district offers parents the choice of receiving documents by email, you may choose to receive the following by email:

1. Prior written notice;
2. *Notice of Special Education Procedural Safeguards*; and
3. Notices related to a due process hearing request.

Parental Consent – Definition
34 CFR §300.9; WAC 392-172A-01040

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information relevant to the action for which you are giving consent;
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
3. You understand that the consent is voluntary on your part, and you may revoke (withdraw) your consent at any time.

If you wish to revoke consent after your child began receiving special education services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that began after you gave your consent and before you withdrew it. In addition, the school district is not required to amend (change) your child's educational records to remove any reference to your child's receipt of special education services.

Parental Consent – Requirements
34 CFR §300.300; WAC 392-172A-02000; WAC 392-172A-03000

Consent for Initial Evaluation

Your district cannot conduct an initial evaluation of your child to determine eligibility for special education and related services until it provides you with prior written notice describing the proposed evaluation activities and obtains your written, informed consent. Your school district must make reasonable effort to obtain your informed consent for an initial evaluation to decide whether your child is eligible for special education.

Your consent for an initial evaluation does not mean that you have given your consent for the district to start providing special education and related services to your child. The school district

also has to obtain consent from you to provide your child with special education and related services for the first time.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent, or you have failed to respond to a request to provide consent for an initial evaluation, although it is not required, your district **may** try to obtain your consent by using mediation or due process hearing procedures, as described later in this notice. Your district will not violate its obligations to locate, identify, and evaluate your child if it chooses not to pursue an evaluation of your child in this circumstance.

Special Rule for Initial Evaluation of Wards of the State

If your child is a ward of the state and is not living with you, the school district does not need consent from you for an initial evaluation to determine whether your child is eligible for special education if:

1. Despite reasonable efforts to do so, the district cannot find you;
2. Your rights as a parent have been terminated in accordance with state law; or
3. A judge has assigned the right to make educational decisions to an individual other than you and that person has provided consent for an initial evaluation.

A *ward of the state*, as used in IDEA, means a child who is:

1. A foster child who is not placed with a foster parent;
2. Considered a ward of the state under Washington state law; or
3. In the custody of the Department of Children, Youth, and Families or another state's public child welfare agency.

A *ward of the state* does not include a foster child who has a foster parent.

Parental Consent for Initial Services and Revocation of Consent for Continued Services

Your school district must make reasonable efforts to obtain your informed written consent and must obtain your informed written consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, your district may not use mediation procedures in order to try to obtain your agreement or use due process hearing procedures in order to obtain a ruling from an administrative law judge to provide special education and related services to your child.

If you refuse or do not respond to a request to give your consent for your child to receive special education and related services for the first time, the school district may not provide your child with the special education and related services. In this situation, your school district:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child because of the failure to provide those services to your child; and
2. Is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

Once you provide written consent for your child to receive special education and related services and the district begins to provide special education services, your child will remain eligible to receive special education services until:

1. They are reevaluated and found to no longer qualify for special education services;
2. They graduate with a regular high school diploma;
3. They reach the age of 21 (or if your child turns 21 after August 31, they are eligible for services through the end of the school year.); or
4. You provide the district with a written revocation of your consent for the continued provision of special education services.

If you revoke your consent in writing for continued provision of services after the district has initiated special education services, the district must give you *prior written notice* a reasonable time before it stops providing special education services to your child. The prior written notice will include the date that the district will stop providing services to your child and will inform you that the school district:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child because of the failure to provide those services to your child; and
2. Is not required to have an IEP meeting or develop an IEP for your child for further provision of special education services.

A district may not use due process to override your written revocation or use mediation procedures to obtain your agreement to continue to provide special education services to your child. After the district stops providing special education services to your child, your child is no longer considered to be eligible for special education services and is subject to the same requirements that apply to all students. You or others who are familiar with your child, including the school district, may refer the child for an initial evaluation at any time after you revoke consent for your child to receive special education.

Parental Consent for Reevaluations

If new testing is to be conducted as part of your child's reevaluation, your district must obtain your informed consent before it reevaluates your child, unless your district can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; and
2. You did not respond.

If you refuse to consent to new testing as part of your child's reevaluation, the district may, but is not required to, pursue your child's reevaluation by using the mediation procedures to seek agreement from you or use the due process hearing procedures to override your refusal to consent to your child's reevaluation. As with initial evaluations, your district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation using mediation or due process procedures.

Documentation of Reasonable Efforts to Obtain Parental Consent

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, to conduct a reevaluation that involves new testing, and to locate parents of wards of the state for initial

evaluations. The documentation must include a record of the district's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or work and the results of those visits.

Other Consent Information

Your consent is not required before your district may:

1. Review existing data as part of your child's evaluation or reevaluation; or
2. Give your child a test or other evaluation that is given to all students unless, before that test or evaluation is given, consent is required from the parents of all students.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or reevaluation, or you fail to respond to a request to provide your consent, the district may not use mediation procedures to obtain your agreement or use due process hearing procedures to override your refusal. The district is also not required to consider your child as eligible to receive equitable private school services, which are services made available to some parentally-placed private school students eligible for special education.

Independent Educational Evaluations
34 CFR §300.502; WAC 392-172A-05005

You have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation that was conducted by your district. If you request an IEE, the district must provide you with information about where you may obtain an IEE and about the district's criteria that apply to the IEEs.

Definitions

- *Independent educational evaluation* (IEE) means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of your child.
- *Public expense* means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

Parent Right to an IEE at Public Expense

You have the right to an IEE of your child at public expense if you disagree with an evaluation of your child conducted by your district, subject to the following conditions:

1. If you request an IEE of your child at public expense, your school district must, within 15 calendar days of your request, **either:** (a) file a due process hearing request to show that its evaluation of your child is appropriate or that the evaluation of your child that you obtained did not meet the district's criteria; **or** (b) agree to provide an IEE at public expense.
2. If your school district requests a due process hearing and the final decision is that the district's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
3. If you request an IEE of your child, your school district may ask why you object to the evaluation conducted by the district. However, the district may not require an explanation

and may not unreasonably delay either providing the IEE of your child at public expense or filing a request for a due process hearing to defend the district's evaluation of your child.

You are only entitled to request one IEE of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

Parent-Initiated Evaluations

If you obtain an IEE of your child at public expense or you provide the district with an IEE that you obtained at private expense:

1. Your district must consider the results of the IEE in any decision made with respect to the provision of a FAPE to your child, if it meets the district's criteria for IEEs; and
2. You or your district may present the IEE as evidence at a due process hearing regarding your child.

Requests for Evaluations by Administrative Law Judges (ALJ)

If an ALJ requests an IEE of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

District Criteria

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE).

Except as described above, a district may not impose conditions or timelines related to obtaining an IEE at public expense.

Confidentiality of Information Definitions
34 CFR §300.611; WAC 392-172A-05180

IDEA gives you rights regarding your child's special education records. These rights are in addition to rights that you have under the Family Educational Rights and Privacy Act (FERPA), which is a law that provides educational records protections to all students.

As used under the heading *Confidentiality of Information:*

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- *Participating Agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B or IDEA.

Personally Identifiable
34 CFR §300.32; WAC 392-172A-01140

Personally identifiable means information that has:

1. Your child's name, your name as the parent, or the name of another family member;
2. Your child's address;
3. A personal identifier, such as your child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Notice to Parents
34 CFR §300.612; WAC 392-172A-05185

OSPI gives notice, through its regulations, to fully inform you about the confidentiality of personally identifiable information, including:

1. The availability of model state forms, including this *Notice of Special Education Procedural Safeguards*, in multiple languages and alternate formats upon request;
2. A description of the personally identifiable information collected and maintained by OSPI through state complaints, due process hearing requests and decisions, monitoring, safety net applications, mediation agreements, and grant evaluation performance. Personally identifiable information is removed before sharing this information with other agencies or individual s requesting information, unless the parent or adult student provides consent to release information;
3. A summary of the policies and procedures that districts must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
4. A description of all of the rights of parents and students regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major statewide identification, location, or evaluation activity (also known as "child find"), a notice must be published in newspapers or announced in other media, or both, with circulation adequate to notify parents throughout the state of the activity to locate, identify, and evaluate children in need of special education and related services.

Access Rights
34 CFR §300.613-617; WAC 392-172A-05190–05210

You have the right to inspect and review your child's education records that are collected, maintained, or used by your school district under Part B of IDEA. The district must comply with your request to inspect and review any education records regarding your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a resolution meeting or a special education due process hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the district to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the school district provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; and
3. Your right to have your representative inspect and review the records.

A district will assume that you have authority to inspect and review records relating to your child unless it is advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

Record of Access

Each school district must keep a record of parties who obtain access to education records collected, maintained, or used under Part B of IDEA, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. School districts are not required to keep this record of access for parents or authorized employees of the school district.

Records on More Than One Child

If any education record includes information on more than one student, you have the right to inspect and review only the information relating to your child or be informed about that information if the district cannot show that information to you without divulging personally identifiable information about another student.

List of Types and Locations of Information

If you request it, the school district must provide you with a list of the types and locations of education records collected, maintained, or used by the school district.

Fees

The school district may charge a fee for copies of records that are made for you under Part B of IDEA if the fee does not effectively prevent you from exercising your right to inspect and review those records. It may not charge a fee to search or to retrieve information under IDEA.

Amendment of Records at Parent's Request

34 CFR §300.618–§300.621; WAC 392-172A-05215

If you believe that information in the education records regarding your child collected, maintained, or used under IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may ask the district to change the information.

The district must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

Opportunity for a Hearing, Hearing Procedures, and Results of the Hearing

If your school district refuses to change the information in accordance with your request, it must inform you of that decision and advise you of your right to a hearing by the district.

You have the right to request a hearing to challenge the information in your child's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. The hearing to contest the information in education records must be conducted according to the district's hearing procedures under FERPA. This is not a special education due process hearing.

If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must change the information accordingly and inform you of those changes in writing.

If, as a result of the hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you that you have the right to place a statement in your child's educational records commenting on the information or providing any reasons you disagree with the decision of the district.

If you choose to put a statement in your child's records, the statement must:

1. Be maintained by the district as part of the records of your child as long as the record or contested portion is maintained; and
2. If the district discloses the records of your child or the challenged portion to any party, the statement must also be disclosed to that party.

Consent for Disclosure of Personally Identifiable Information

34 CFR §300.622; WAC 392-172A-05225

Your written consent must be obtained before personally identifiable information is disclosed to others unless disclosure of the information contained in your child's education records is allowed without parental consent under FERPA. In general, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA. However, your consent, or the consent of your child if they have reached the age of majority, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. In addition, if your child attends a private school, your consent must be obtained before any personally identifiable information about your child is released between officials in the district where the private school is located and officials in the district where your child resides if you are not planning to enroll your child in your district of residence.

Safeguards for Personally Identifiable Information
34 CFR §300.623; WAC 392-172A-05230

Your school district must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the school district must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding confidentiality under Part B of IDEA and FERPA.

Each school district must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Destruction, Retention, and Storage of Information
34 CFR §300.624; WAC 392-172A-05235

Your school district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.

When it is no longer needed, the information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

State law regarding records retention is contained in Chapter 40.14 Revised Code of Washington (RCW). The procedures for how long a district must retain records are published by the Washington Secretary of State, Division of Archives and Records Management.

Special Education Dispute Resolution Procedures

You are an important participant in all aspects of your child's special education program. This involvement begins at the initial referral of your child. You and your district are encouraged to work together to try to resolve disagreements that affect your child's special education program. When you and your school district are not able to resolve disagreements, there are more formal dispute resolution options available. These options are mediation, community complaints, and impartial due process hearings.

Mediation
34 CFR § 300.506; WAC 392-172A-05060–05075

General

Mediation services are available at no cost to you or the district to help resolve problems involving the identification, evaluation, educational placement, and provision of a FAPE to your child and whenever a due process hearing is requested. Mediation is voluntary and cannot be used to deny or delay your right to a due process hearing or to deny any other rights afforded under Part B of IDEA. The mediation sessions are scheduled in a timely manner at a location that is convenient to

you and the district.

Mediation is available if your primary language is not English or if you use another mode of communication when requested unless it is clearly not feasible to do so.

The school district may develop procedures that offer parents that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state; and
2. Who would explain the benefits and encourage the use of the mediation process to you?

Impartiality of Mediator

Mediation is conducted by an individual who is qualified, impartial, and trained in effective mediation techniques. That individual must also be knowledgeable in the laws and regulations relating to the provision of special education and related services. OSPI contracts with an outside agency to conduct mediations. That agency maintains the list of mediators. Mediators are assigned on a random, rotational, or other impartial basis. The mediator (1) may not be an employee of OSPI, a district, or other state agency that is providing direct services to a child who is the subject of the mediation process, and (2) may not have a personal or professional conflict of interest. The mediation sessions are scheduled in a timely manner at a location that is convenient to you and the district.

Agreements Reached in Mediation

If you and the district reach an agreement, it must be documented in a written mediation agreement that is signed by you and a representative of the district authorized to enter into legally binding agreements. Discussions during the mediation sessions are confidential and may not be used as evidence in any due process hearings or civil proceedings of any federal court or Washington state court. This must be stated in the written agreement. However, the mediation agreement itself may be used as evidence. Mediation agreements are legally binding and enforceable in any state court of competent jurisdiction or in a district court of the United States.

Differences Between Special Education Community Complaint Investigations and Due Process Hearings

The regulations for Part B of IDEA have different procedures for state complaints (community complaints) and due process hearings. A community complaint may be filed with OSPI by any individual or organization alleging that a school district, OSPI, or any other public agency has violated a Part B requirement, federal rules contained in 34 CFR Part 300, or state regulations implementing Part B of the IDEA. Community complaints are investigated by OSPI, based on information about the violations provided by the person filing the complaint, and the school district, or other agency responding to the complaint. Community complaints must be filed within one year of the alleged violation.

Due process hearing requests may only be filed by you or your school district on any matter relating to the identification, evaluation, or educational placement of your child, or the provision of

a free appropriate public education (FAPE) to your child. The due process hearings are conducted by an administrative law judge (ALJ), employed by the Office of Administrative Hearings, which is an independent state agency. Due process hearings generally involve testimony of witnesses and introduction of evidence. Due process hearing requests must be filed within two years of the alleged violation (with some exceptions for misrepresentation or withholding information.)

The timelines and procedures for community complaints and due process hearings are explained below.

Community Complaint Procedures
34 CFR §§300.151–300.153; WAC 392-172A-05025–05045

OSPI has procedures for resolving state complaints. The procedures are contained in the state regulations and information regarding state complaints is maintained on the website.

If you, any individual, or organization believes a district, OSPI, or any other educational entity governed by IDEA has violated Part B of IDEA, the regulations implementing Part B, or corresponding state regulations, you may file a written complaint with the Office of Superintendent of Public Instruction (OSPI), Special Education, PO Box 47200, Olympia, WA 98504-7200. You must provide a copy of the complaint to the district or other agency against whom you are complaining.

Filing a Complaint

The written complaint must be signed by you, or the person or organization filing the complaint and must include the following information:

- A statement that a district or other agency has violated a requirement of Part B of IDEA, the regulations implementing Part B, corresponding state law or regulations, or a statement that the district or other agency is not implementing a mediation or resolution agreement;
- The name and address of the district or other agency;
- The name of the student, if the complaint is specific to a student, and contact information if the student is homeless;
- The name of the school the student attends;
- A description of the problem with specific facts;
- A proposed resolution of the problem to the extent this information is known and available to you at the time you file the complaint; and
- Your name, address, and telephone number.

The violation must not have occurred more than **one year** prior to the date that a complaint, meeting the above requirements, is received by OSPI.

OSPI has developed a model form that you may use to file a complaint. This form is available on the OSPI – Special Education – File a Community Complaint – Frequently asked questions and request forms web page. You are not required to use this form.

Complaint Investigations

OSPI must investigate and issue a written decision 60 calendar days after it receives a complaint unless an extension of time is warranted. During the 60 days, OSPI (1) requires the district to provide a response to the complaint; (2) gives you or the complainant the opportunity to submit additional information about the allegations in the complaint; (3) may carry out an independent on-site investigation, if OSPI determines it is necessary; and, (4) reviews all relevant information and makes an independent determination as to whether the district or other agency is violating a requirement related to Part B of IDEA.

Investigation, Extension, Written Decision

The 60 calendar-day time limit may be extended only if: (1) exceptional circumstances exist with respect to a particular complaint; **or** (2) you and the school district voluntarily agree in writing to extend the time to resolve the complaint through mediation or an alternative dispute resolution method to resolve the dispute.

A written decision is sent to you or the person filing the complaint and to the school district. The written decision will address each allegation. For each allegation, the written decision will state findings of fact, conclusions, the reasons for the decision, and any reasonable corrective measures deemed necessary to resolve the complaint if a violation has occurred.

Complaint Remedies

When OSPI finds a violation or a failure to provide appropriate services through its complaint process, the decision addresses:

1. How to remediate the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student(s); and
2. Appropriate future provision of special education services for all students.

Special Education Community Complaints and Due Process Hearings

If a community complaint is received that is also the subject of a due process hearing or the complaint contains multiple issues, and one or more of those issues are part of a due process hearing, OSPI must set aside (not investigate) any part of the complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process hearing must be resolved within the complaint timelines.

If an issue raised in a complaint has been previously decided in a due process hearing involving the same parties, the hearing decision is binding and OSPI must inform the complainant that it may not investigate that issue.

OSPI must resolve a complaint alleging that a district has failed to implement a due process decision.

Due Process Hearing Procedures
34 CFR §§300.507-300.513; WAC 392-172A-05080–05125

General

You or the school district may file a due process hearing request on any matter relating to the identification, evaluation, or educational placement of your child or the provision of a FAPE to your child. The district must inform you of any free or low-cost legal and other relevant services available in the area when a due process hearing request is filed or when you request this information. For due process hearing procedures, "you" includes your attorney if you have retained one, and "district" includes the district's attorney if the district is represented by an attorney.

Filing

To request a hearing, you or the district must submit a due process hearing request to the other party. That request must contain all of the content listed below and must be kept confidential.

You or the district, whichever one filed the request, must also provide OSPI's designee, the Office of Administrative Hearings (OAH), a copy of the hearing request at the following address:

Office of Administrative Hearings
600 University Street, Suite 1500
Seattle, WA 98101-3126
Fax: 206-587-5135

The due process hearing request must include:

1. The name of the student;
2. The address of the student's residence;
3. The name of the student's school;
4. If the student is a homeless child or youth, the student's contact information;
5. A description of the nature of the problem, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to you or the district at the time.

Notice Required Before a Hearing on a Due Process Hearing Request

You or the district may not have a due process hearing until you or the district serves a due process hearing request with the other party and provides OAH with a copy of the request that includes the information listed above.

Sufficiency of a Hearing Request

In order for a due process hearing request to go forward, it must be considered sufficient. *Sufficient* means that the request meets the content requirements noted above under *Filing*. The due process hearing request will be considered sufficient unless the party who received the due process hearing request notifies the ALJ and the other party in writing, within 15 calendar days, that the receiving party believes the due process hearing request is not sufficient.

Within five calendar days of receiving the notification of insufficiency, the ALJ must decide if the due process hearing request meets the requirements listed above, and notify you and the district in writing immediately.

Amendment of a Hearing Request

You or the district may make changes to the hearing request only if:

1. The other party approves of the changes in writing and is given the chance to resolve the hearing request through a resolution meeting (if you, the parent has requested the due process hearing), described below; or
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If you are the party requesting the hearing and you make changes to the due process hearing request, the timelines for the resolution meeting and the time period for resolution (See: *Resolution Process*) start again on the date the amended request is filed, or the date the ALJ grants the request.

District Response to a Due Process Hearing Request

If the district has not sent a prior written notice to you, as described under the heading *Prior Written Notice*, regarding the subject matter contained in your due process hearing request, the district must, within 10 calendar days of receiving the due process hearing request, send to you a response that includes:

1. An explanation of why the district proposed or refused to take the action raised in the due process hearing request;
2. A description of other options that your child's IEP team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the district's proposed or refused action.

A district may still assert that your due process hearing request is insufficient even though it provides you with the information in items 1–4 above.

Other Party's Response to a Due Process Hearing Request

Except for expedited due process hearings for discipline, discussed under the section, *Due Process Hearing Procedures for Discipline,* the party receiving a due process hearing request must, within 10 calendar days of receiving the request, send the other party a response that specifically addresses the issues in the request. Either party may still assert that the due process hearing request is insufficient.

Model Forms

34 CFR §300.509; WAC 392-172A-05085

OSPI has developed a model due process hearing request form to assist you in filing a request for a due process hearing. The form is available on the OSPI – Special Education – Request a Due

Process Hearing – Frequently asked questions and request forms web page.

You are not required to use this form. However, your right to a due process hearing can be denied or delayed if the due process hearing request does not include all of the required information. You may also obtain a copy of the hearing request form from your district's special education department.

Student Placement While the Due Process Hearing is Pending

34 CFR §300.518; WAC 392-172A-05125

Except as provided below under the heading *Discipline Procedures for Students Eligible for Special Education,* once a due process hearing request is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or a court proceeding involving an appeal of an ALJ's decision, your child must remain in his or her current educational placement unless you and the district agree otherwise.

The student's status during the due process proceedings does not prohibit the IEP team from meeting, as needed or as required. The IEP team can update and implement the student's IEP unless those changes are in dispute.

If the due process hearing request involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process hearing request involves the provision of initial services under Part B of IDEA, for your child, who is transitioning from being served under Part C of IDEA to Part B of IDEA, and who is no longer eligible for Part C services because your child has turned three, the district is not required to provide the Part C services that he or she has been receiving. If your child is found eligible under Part B of IDEA and you give consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the district must provide those special education and related services that are not in dispute between you and the district.

If the ALJ reaches a decision that a change of placement is appropriate, that decision regarding placement must be treated as an agreement between you and the school district for purposes of placement during any court appeal of the due process decision.

Resolution Process

34 CFR §300.510; WAC 392-172A-05090

Resolution Meeting

Within 15 calendar days after you have filed your due process hearing request with the district and OAH, the district must convene a meeting with you and the relevant member or members of the IEP team who have specific knowledge of the facts identified in your due process hearing request.

This meeting must occur before the due process hearing timeline begins unless you and the district agree to mediation or agree to waive the resolution meeting. The meeting:

1. Must include a representative of the district who has decision-making authority on behalf of the district; and
2. May not include an attorney of the district unless you are accompanied by an attorney.

The purpose of the meeting is for you to discuss your due process hearing request and the facts that form the basis of the request, so that the district has the opportunity to resolve the dispute. You and the district determine the relevant members of the IEP team to attend the resolution meeting.

The resolution meeting is not necessary if:

1. You and the district agree in writing to waive the meeting; or
2. You and the district agree to use the mediation process, as described under the heading *Mediation.*

Resolution Period

If the district has not resolved the due process hearing request to your satisfaction within 30 calendar days of you providing the due process hearing request to the district and OAH, the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the end of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Unless you and the district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If the district is not able to obtain your participation in the resolution meeting after making reasonable efforts and documenting those efforts, the district may, at the end of the 30-calendar-day resolution period, request that the ALJ dismiss your due process hearing request. The school district must document its attempts to arrange a mutually agreed upon time and place for the resolution meeting. The record of documentation includes attempts, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or work and the results of those visits.

If the district fails to hold the resolution meeting within 15 calendar days of you providing your due process hearing request to the district and OAH, **or** the district fails to participate in the resolution meeting, you may ask an ALJ to order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-Calendar-Day Resolution Period

If you and the district agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day

resolution period, if you and the district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the district agree to use the mediation process, but have not yet reached agreement, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the district withdraw from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written Settlement Agreement

If you and the district resolve your dispute at the resolution meeting, you and the district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the district who has the authority to bind the district; and
2. Enforceable in any Washington State Superior Court of competent jurisdiction or in a district court of the United States.

Agreement Review Period

If you and the district enter into an agreement following a resolution meeting, either you or the district may void the agreement within three business days of the time that both you and the district signed the agreement.

Impartial Due Process Hearing
34 CFR §300.511; WAC 392-172A-05080; WAC 192-172A-05090–05100; WAC 392-172A-05160

General

Whenever a due process hearing request is filed, you or the district involved in the dispute must have an opportunity for an impartial due process hearing.

Administrative Law Judge (ALJ)

The hearing will be conducted by a qualified independent ALJ, who is employed by the Office of Administrative Hearings (OAH).

At a minimum, an ALJ:

1. Must not be an employee of OSPI or the district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ;
2. Must not have a personal or professional interest that conflicts with the ALJ's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, and federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts; and

4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

OSPI maintains a list of the people who serve as ALJs, which includes a statement of the qualifications for each person.

Subject Matter of Due Process Hearing

The party that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process hearing request, unless the other party agrees.

Timeline for Requesting a Hearing

You or the district must file your due process hearing request within two years of the date you or the district knew, or should have known, about the issues addressed in the hearing request.

Exceptions to the Timeline

The above timeline does not apply if you could not file a due process hearing request because:

1. The district specifically misrepresented that it had resolved the problem or issue that you are raising in your hearing request; or
2. The district withheld information from you that it was required to provide to you under Part B of IDEA.

Hearing Rights
34 CFR §300.512; WAC 392-172A-05100

General

You have the right to represent yourself at a due process hearing (including a hearing related to disciplinary procedures). You and the school district, as parties to a due process hearing (including a hearing relating to disciplinary procedures), have the right to:

1. Be represented by a lawyer, and accompanied and advised by persons with special knowledge or training regarding the problems of students with disabilities;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
5. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional Disclosure of Information

At least five business days prior to a due process hearing, you and the district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the district intend to use at the hearing.

An ALJ may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental Rights at Hearings

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; and
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Timelines and Convenience of Hearings
34 CFR §300.515; WAC 392-172-05110

Not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings **or,** not later than 45 calendar days after the expiration of the adjusted resolution time period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

An ALJ may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

Hearing Decisions
34 CFR § 300.513; WAC 392-172-05100–05105

Decision of ALJ

An ALJ's decision about whether your child received a free appropriate public education (FAPE) must be based on substantive grounds.

In hearings where you allege that the district has made a procedural violation, an ALJ may find that your child did not receive FAPE only if the procedural inadequacies:

1. Interfered with your child's right to a FAPE;
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a FAPE to your child; or
3. Caused a deprivation of an educational benefit.

Construction Clause

Even if an ALJ does not find a FAPE violation, the ALJ may still order the district to comply with the requirements in the Procedural Safeguards section of the federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536).

Separate Request for a Due Process Hearing

You may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

Findings and Decision to Advisory Panel and General Public

OSPI deletes any personally identifiable information, and:

1. Provides the findings and decisions in due process hearings to Washington's Special Education Advisory Committee (SEAC); and
2. Makes those findings and decisions available to the public.

Finality of Decision; Appeal
34 CFR §300.514; WAC 392-172A-05115

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, unless either party (you or the district) involved in the hearing appeals the decision by bringing a civil action, as described below.

Civil Actions, Including the Time Period in Which to File Those Actions
34 CFR §300.516; WAC 392-172A-05115

General

If either party does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures), that party has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a state court of competent jurisdiction (a state court that has authority to hear this type of case) or in a district court of the United States. The district courts of the United States have authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

Time Limitation

The party bringing the action will have **90** calendar days from the date of the decision of the ALJ to file a civil action.

Additional Procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the district's request; and
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Rule of Construction

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other federal laws protecting the rights of students with disabilities. However, if you are filing a civil action under these laws and you are seeking relief that is also available under Part B of IDEA, the due process hearing procedures described above must be exhausted to the same extent as would be required if you filed the action under Part B of IDEA. This

means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws; you must first use the impartial due process hearing procedures to obtain remedies available under IDEA before going directly into court.

Attorneys' Fees
34 CFR §300.517; WAC 392-172A-05120

General

If you prevail (win) in the civil action and are represented by an attorney, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing school district or OSPI, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing school district or OSPI, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

Award of Fees

Attorneys' fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

Attorneys' fees may not be awarded, and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement to you if:

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or state-level review, at any time more than 10 calendar days before the proceeding begins;
2. The offer is not accepted within 10 calendar days; and
3. The court or ALJ finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, the court may award of attorneys' fees and related costs to you if you prevail and you were substantially justified in rejecting the settlement offer.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting required under due process hearing procedures is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an

administrative hearing or court action for purposes of these attorneys' fees provisions.

The court may reduce, as appropriate, the amount of the attorneys' fees awarded under Part B of IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the district the appropriate information in the due process request notice as described under the heading *Due Process Hearing Request.*

However, the court may not reduce fees if the court finds that the state or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the Procedural Safeguards provisions of Part B of IDEA.

Discipline Procedures for Students Eligible for Special Education

There are special education protections afforded to your child when he or she is disciplined. These protections are in addition to discipline procedures that apply to all students. These protections also apply to students who have not yet been found eligible for special education if the district should have known that the student would be eligible.

Authority of School Personnel
34 CFR §300.530; WAC 392-172A-05145

Case-By-Case Determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement (see the definition for *Change of Placement Because of Disciplinary Removals*, below), made in accordance with the following requirements related to discipline, is appropriate for your child who violates a school code of student conduct.

General

To the extent that they also take such action for students not receiving special education services, school personnel may, for not more than **10 school days** in a row, remove your child from their current placement to an appropriate interim alternative educational setting, another setting, or suspend your child, when they violate a code of student conduct. School personnel may also impose additional removals of your child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct; as long as those removals do not constitute a change of placement (see *Change of Placement Because of Disciplinary Removals* for the definition, below).

Change of Placement Because of Disciplinary Removals 34 CFR §300.536; WAC 392-172A-05146–05155

Your child's removal from their current educational placement is a **Change of Placement** if:

1. The removal is for more than 10 school days in a row; or
2. Your child has been subjected to a series of removals that constitute a pattern because:
    a. The series of removals total more than 10 school days in a school year;
    b. Your child's behavior is substantially similar to their behavior in previous incidents that resulted in the series of removals; and
    c. There are additional factors considered such as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

The school district determines whether a pattern of removals constitutes a change of placement on a case-by-case basis, and if challenged by you, is subject to review through due process and judicial proceedings.

Notification

On the date the district makes the decision to make a removal that is a change of placement for your child because of a violation of a code of student conduct, it must notify you of that decision, and provide you with a *Notice of Special Education Procedural Safeguards*.

Services

A district is required to provide services to your child if they have been removed from their current placement for **10 school days or less** in that school year in the same manner it provides services to students not receiving special education services who have been similarly removed. General education discipline regulations provide that during a suspension, expulsion, or emergency removal, the school district must provide your student an opportunity to receive educational services to enable your child to continue participating in the general education curriculum, meet district educational standards, and complete subject, grade-level, and graduation requirements (WAC 392-400-610).

The services that must be provided to your child, when they have been removed from their current placement, may be provided in an interim alternative educational setting.

If your child has been removed from his or her current placement for **more than 10 school days,** your child must:

1. Continue to receive educational services, so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in their IEP; and
2. If your child's behavior was a manifestation of their disability, they must receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After your child has been removed from his or her current placement for **10 school days** in that

same school year, and **if** the current removal is for **10 school days** in a row or less, **and** if the removal is not determined to be a change of placement (see definition above), **then** school personnel, in consultation with at least one of your child's teachers, will determine the extent to which services are needed to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP.

If the removal is a change of placement (see definition above), your child's IEP team determines the appropriate services to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in their IEP.

Manifestation Determination

Within **10 school days** of any decision to change the placement (see *Change of Placement Because of Disciplinary Removals*) of your child because of a violation of a code of student conduct, the district, and relevant members of the IEP team, determined by you and the district, must review all relevant information in your child's file, including their IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, your child's disability; or
2. If the conduct in question was the direct result of the district's failure to implement your child's IEP.

If the relevant members of your child's IEP team, including you, determine that either of those conditions was met, the conduct must be determined to be a manifestation of your child's disability.

If the group described above determines that the conduct in question was the direct result of the district's failure to implement the IEP, the district must take immediate action to remedy those deficiencies.

Determination that Behavior Was a Manifestation of the Student's Disability

When this group, that includes you, determines that the conduct was a manifestation of your child's disability, the IEP team must either:

1. Conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for your child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address your child's behavior.

Except as described below under the sub-heading *Special Circumstances,* the district must return your child to the placement from which they were removed, unless you and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of your child's disability (see *Manifestation Determination,* above) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to your child in the same manner and for the same duration as it would to students not receiving special education services , except that the school must provide services to your child as described above under *Services.* Your child's IEP team determines the interim alternative educational setting for the services to your child in this situation.

Special Circumstances

School personnel may remove your child to an interim alternative educational setting (determined by the student's IEP team), regardless of whether or not your child's behavior was a manifestation of their disability, for up to 45 school days, if they:

1. Carried a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of a district;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of a district; or
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of a district.

Definitions

- *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.
- *Serious bodily injury* means a bodily injury that involves: 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 faculty.
- *Weapon* means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than two and one-half inches in length.

Determination of Setting

34 CFR § 300.531; WAC 392-172A-05145; WAC 392-172A-05149

The IEP team must determine the interim alternative educational setting for removals that are **Changes of Placement**, and removals under the headings ***Additional Authority*** and ***Special Circumstances***, above.

Appeal of Placement Decisions and Manifestation Determinations (Due Process Hearing Procedures for Discipline)
34 CFR § 300.532; WAC 392-172A-05160

You may file a due process hearing request if you disagree with:

1. Any decision regarding placement made under these discipline provisions; or
2. The manifestation determination described above.

The district may file a due process hearing request if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

See the **Due Process Hearing Procedures** section for more information on filing a due process hearing request.

Authority of Administrative Law Judge (ALJ)

An ALJ must conduct the due process hearing and make a decision. The ALJ may:

1. Return your child to the placement from which he or she was removed if the ALJ determines that the removal was a violation of the requirements described under the heading *Authority of School Personnel,* or that your child's behavior was a manifestation of his or her disability; or
2. Order a change of placement of your child to an appropriate interim alternative educational setting, for not more than 45 school days if the ALJ determines that maintaining your child's current placement is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated, if the district believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever you or the district requests a due process hearing, the request must meet the requirements described under the headings *Due Process Hearing Request Procedures and Due Process Hearings,* except as follows:

1. The due process hearing is expedited and must occur within **20** school days of the date the hearing is requested. The ALJ must issue a decision within **10** school days after the hearing.
2. Unless you and the district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of the date you filed the due process hearing request with OAH and the district. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process hearing request.

You or the school district may initiate a civil action, contesting the decision in an expedited due process hearing the same way as they contest decisions in non-disciplinary special education due process hearings (see *Finality of Decision; Appeals,* above).

Placement During Due Process Expedited Hearings
34 CFR §300.533; WAC 392-172A-05165

When you or the district has filed a due process hearing request related to disciplinary matters, unless you and the district agree to a different arrangement, your child must remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal, described under the heading *Authority of School Personnel,* whichever occurs first.

Protections for Students Not Yet Eligible for Special Education and Related Services
34 CFR §300.534; WAC 392-172A-05170

General

If your child has not been determined eligible for special education and related services, and violates a code of student conduct, you may assert your child's procedural protections if it is determined that the district had knowledge that your child should have been evaluated and determined eligible for special education services before the behavior that brought about the disciplinary action occurred.

Basis of Knowledge for Disciplinary Matters

A district must be deemed to have knowledge that your child is eligible for special education if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing that your child is in need of special education and related services to supervisory or administrative personnel of the school district, or to a teacher of your child;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
3. Your child's teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by your child directly to the district's director of special education, or to other supervisory personnel of the district.

Exception

A district would not be deemed to have such knowledge if:

1. You did not allow an evaluation of your child or you refused special education services; or
2. Your child has been evaluated and determined to not be eligible for special education services.

Conditions That Apply if There is No Basis of Knowledge

If a district does not have knowledge that your child is eligible for special education, prior to taking disciplinary measures against your child, as described above under the sub-headings *Basis of Knowledge for Disciplinary Matters* and *Exception,* your child may be subjected to the disciplinary measures that are applied to students not receiving special education services who engaged in the

same types of behaviors.

However, if you or the district requests an evaluation of your child during the time period in which he or she is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the district, and information provided by you, the district must provide special education and related services to your child and follow the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities

34 CFR §300.535; WAC 392-172A-05175

Part B of IDEA does not:

1. Prohibit a school district from reporting a crime committed by your child who is eligible for special education to appropriate authorities; or
2. Prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by your child.

Transmittal of Records

If a district reports a crime committed by your child, the district:

1. Must ensure that copies of your child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
2. May transmit copies of your child's special education and disciplinary records only to the extent permitted by FERPA.

Requirements for Unilateral Placement by Parents of Students in Private Schools at Public Expense When FAPE is at Issue

CFR § 300.148; WAC 392-172A-04115

If you believe your school district cannot provide a FAPE for your child and you choose to enroll your child in a private school without the district's agreement, there are specific steps that you must follow in order to request reimbursement from the district for the private school.

Reimbursement for Private School Placement

If your child previously received special education and related services from a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the district, a court or an ALJ may require the district to

reimburse you for the cost of that enrollment if the court or ALJ finds that the school district had not made a FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. The court or an ALJ may find your placement to be appropriate, even if the placement does not meet the state standards that apply to education provided by districts.

Limitation on Reimbursement

The cost of reimbursement as described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the district of that information;
2. If, prior to your removal of your child from the public school, the district provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make your child available for the evaluation; or
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) the school prevented you from providing the notice; or (b) you had not received notice of your responsibility to provide the notice described above; and
2. May, in the discretion of the court or an ALJ, not be reduced or denied for your failure to provide the required notice if: (a) you are not literate or cannot write in English; or (b) compliance with the above requirement would likely result in serious emotional harm to your child.

RESOURCES

If you have questions about the Procedural Safeguards, please contact your school district or OSPI for additional information:

OSPI
PO Box 47200
Olympia, WA 98504
360-725-6075
speced@k12.wa.us
OSPI - Special Education web page
OSPI - Special Education - Families web page

The publicly funded organization below may be able to provide additional information about special education services in Washington state:

Partnerships for Action Voices for Empowerment (PAVE)
6316 South 12th Street
Tacoma, WA 98465
(800) 5-PARENT (v/tty)
e-mail: pave@wapave.org
Website: Partnerships for Action Voices for Empowerment (PAVE)

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All students prepared for post-secondary pathways, careers, and civic engagement.

Washington Office of Superintendent of
PUBLIC INSTRUCTION

Chris Reykdal | State Superintendent
Office of Superintendent of Public Instruction
Old Capitol Building | P.O. Box 47200
Olympia, WA 98504-7200

RESTRAINT, ISOLATION AND OTHER USES OF REASONABLE FORCE

It is the policy of the Quincy School District Board of Directors that the district maintains a safe learning environment while treating all students with dignity and respect. All students in the district, including those who have an individualized education program (IEP) or plan developed under section 504 of the Rehabilitation Act of 1973, will remain free from unreasonable restraint, restraint devices, isolation, and other uses of physical force. Under no circumstances will these techniques be used as a form of discipline or punishment.

This policy is intended to address district students. It is not intended to prevent or limit the use of restraint or other reasonable force as necessary with adults or other youth from outside the district as allowed by law.

Use of restraint, isolation, and other forms of reasonable force may be used on any student when reasonably necessary to control spontaneous behavior that poses an "imminent likelihood of serious harm" as defined by RCW 71.05.020 and Chapter 392-172A WAC and explained in the procedure accompanying this policy. Serious harm includes physical harm to self, another, or district property. Staff will closely monitor such actions to prevent harm to the student and will use the minimum amount of restraint and isolation appropriate to protect the safety of students and staff. The restraint, isolation, and other forms of reasonable force will be discontinued when the likelihood of serious harm has dissipated.

The superintendent or a designee will develop procedures to implement this policy, including review, reporting and parent/guardian notification of incidents involving restraint or isolation as required by law. Additionally, the superintendent will annually report to the board on incidents involving the use of force.

Cross References:

2161 - Special Education and Related Services for Eligible Students
2162 - Education of Students With Disabilities Under Section 504 of the Rehabilitation Act of 1973

Legal References:

RCW 9A.16.020 Use of force — When lawful
RCW 9A.16.100 Use of force on children — Policy — Actions presumed unreasonable
RCW 28A.150.300 Corporal Punishment Prohibited - Adoption of policy

RCW 28A.155.210 Use of restraint or isolation — Requirement for procedures to notify parent or guardian.

RCW 28A.600.485 - Restraint of students with individualized education programs or plans developed under section 504 of the rehabilitation act of 1973—Procedures—Definitions. [as amended by SHB 1240]

RCW 70.96B.010 - Definitions

Chapter 392-172A WAC – Rules for the provision of special education

WAC 392-400-235 Discipline — Conditions and limitations

Management Resources:

2021 – December Issue

2016 – March Issue

2015 - July Policy Alert

2013 - December Issue

2013 - July Issue

Policy News, December 2008 Use of Reasonable Force Policy

Adoption Date: September 10, 2013
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Quincy School District