DEPARTMENT OF SPECIAL EDUCATION

Idaho Special Education Manual 2025

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and the Idaho Legislature

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Idaho Special Education Manual

The policies and procedures contained in this Idaho Special Education Manual have been developed by the Idaho Department of Education and offered to local education agencies (LEAs) for adoption. This Manual has been approved by the State Board of Education, meets the IDEA eligibility requirement of 20
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ACRONYMS AND ABBREVIATIONS

Section 504	Section 504 of the Rehabilitation Act of 1973
AA	Alternate Assessment
AAC	Augmentative and Alternative Communication
ADA	Americans with Disabilities Act
ADHD	Attention Deficit Hyperactivity Disorder
AT	Assistive Technology
BIP	Behavioral Intervention Plan
CAP	Corrective Action Plan
CEIS	Comprehensive Early Intervening Services
C.F.R./CFR	Code of Federal Regulations
CIP	Continuous Improvement Plan
DD	Developmental Delay
DHW	Department of Health and Welfare
DJC	Department of Juvenile Corrections
DR	Dispute Resolution

EBD	Emotional Behavioral Disorder
ECSE	Early Childhood Special Education
EL	English Learner
ESEA	Elementary and Secondary Education Act
ESSA	Every Student Succeeds Act
ESY	Extended School Year
FAPE	Free and Appropriate Public Education
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
IAES	Interim Alternative Educational Setting
IDAPA	Idaho Administrative Procedures Act
IDEA	Individuals with Disabilities Education Act
IEE	Independent Educational Evaluation
IEP	Individual Education Program
IFSP	Individual Family Services Plan
IPUL	Idaho Parents Unlimited, Inc.

IQ	Intelligence Quotient
ISAT	Idaho Standards Achievement Test
ITP	Infant/Toddler Program
JDC	Juvenile Detention Center
LEA	Local Education Agency
LI	Language Impairment
LRE	Least Restrictive Environment
MOU	Memorandum of Understanding
MTSS	Multi-Tiered System of Support
OCR	Office of Civil Rights
OHI	Other Health Impairment
OI	Orthopedic Impairment
OT	Occupational Therapy
PBIS	Positive Behavioral Interventions and Supports
PBS	Positive Behavior Supports
PII	Personally Identifiable Information

PLAAFP	Present Levels of Academic Achievement and Functional Performance
PT	Physical Therapy
RTI	Response to Intervention
SCD	Significant Cognitive Disabilities
SD	Standard Deviation
SEA	State Education Agency
SEAP	Special Education Advisory Panel
SI	Speech Impairment
SLD	Specific Learning Disability
SP	Services Plan
SS	Standard Score
TBI	Traumatic Brain Injury

GLOSSARY

Academic achievement. A student's level of performance in basic school subjects, measured either formally or informally.

Accommodation. Changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations must not invalidate assessment results and do not fundamentally alter grade-level standard requirements.

Adaptation. Changes to curriculum, instruction, or assessments that fundamentally alter grade-level requirements of the Idaho Content Standards but enable a student with a disability that significantly impacts performance an opportunity to participate. Adaptations include strategies such as reading the reading portion of a test, using spelling/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and invalidate assessment results and provide non-comparable results.

Adaptive behavior. Behavior that displays an age-appropriate level of self-sufficiency and social responsibility which includes the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, direction, functional academic skills, work, leisure, health, or safety.

Administrative hearing. A formal legal proceeding conducted by a government agency or an assigned official (called a hearing officer) to resolve disputes involving rules, regulations, or laws overseen by that agency.

Adult student. A student with a disability, age eighteen (18) or older, to whom rights have transferred under the IDEA and Idaho Code, and who has not been deemed legally incompetent by a court or deemed ineligible to give informed consent by the IEP team.

Adverse effect (adverse impact). A determination made by the evaluation team that the student's progress is impeded by the disability to the extent that their educational performance is significantly and consistently below the level of similar-age, grade- level peers, preventing the student from benefitting from general education. See "Educational performance."

Age-appropriate activities. Activities that typically-developing children of the same age would be performing or would have achieved.

Age of majority. The age at which, by law, a child assumes the responsibilities of an adult. In Idaho, the age of majority is eighteen (18).

Alternate assessment. An academic assessment based on alternate academic achievement standards that have been reduced in depth, breadth, and complexity from the general education assessment. The alternate assessment (AA) is intended only for those students with the most significant cognitive disabilities, representing about 1% of the total student

population.

Alternative school. A public-school option that has been established to provide instructional courses and programs designed to serve eligible at-risk youth so they can earn a high school diploma.

Americans with Disabilities Act (ADA) of 1990. A federal law prohibiting discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

Articulation. The ability to speak distinctly and connectedly.

Articulation disorder. Incorrect productions of speech sounds, including omissions, distortions, substitutions and/or additions that may interfere with intelligibility.

Assessment. The formal or informal process of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. It is an integral component of the evaluation process. A test is one method of obtaining valid and reliable information within the assessment process. Assessment data may also include observations; interviews; medical reports; data regarding the effects of general education accommodations, adaptations, and interventions; and other formal or informal data.

Assistive technology device. Any item, piece of equipment, or product system whether acquired commercially, off the shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. Excludes surgically implanted medical devices.

Assistive technology service. Any service that directly assists a student with a disability with the assessment, selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the need of the student; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing devices; coordinating and using other therapies, interventions, or services with existing education and rehabilitation plans and programs; training or technical assistance for a student and/or family; and training or technical assistance for professionals, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student.

Attention deficit hyperactivity disorder (ADHD). A developmental disorder characterized by an ongoing pattern of inattention, hyperactivity, or impulsivity.

Audiologist. A licensed health care professional who diagnoses and supports management of hearing loss, counseling to auditory needs across environments, and fitting of hearing technology.

Audiology. A related service that includes identification of students with hearing loss, determination of the range, nature, and degree of hearing loss, provision of habilitative activities, creation and administration of programs for prevention of hearing loss, counseling and guidance to students, parents and teachers regarding hearing loss, and the determination of student need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating effectiveness of amplification.

Autism. A disability category in which a developmental disability, generally evident before age three (3), significantly affects verbal or nonverbal communication skills and social interactions and adversely affects educational performance. Other characteristics often associated with autism include engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

Augmentative and alternative communication (AAC). Refers to a wide range of strategies, tools, and devices used to enhance or replace speech when someone has difficulty communicating verbally or in writing.

Basic reading skills. For the purpose of specific learning disability eligibility, includes sight word recognition, phonics, and word analysis. Essential skills include identification of individual sounds and the ability to manipulate them, identification of printed letters and sounds associated with letters, and decoding of written language.

Behavioral intervention plan (BIP). A plan comprising practical and specific strategies designed to increase or reduce a definable behavior. These strategies address preventative techniques, teaching to skill deficits by identifying replacement behaviors based on the function of the behavior, and responding effectively to either reinforced desired behavior or re- teach in response to challenging behaviors. An effective BIP also includes a Crisis Plan when needed.

Benchmark. A major milestone which describes the progress the student is expected to marked toward annual goals within a specified period of time. Similar to an objective.

Blindness or low vision. An IDEA disability category characterized by low vision that, even with correction, adversely affects a student's educational performance. The term includes partial sight, which refers to the ability to use vision as one channel of learning if educational materials are adapted, and blindness.

Braille. A tactile system of reading and writing, used by students who are blind or visually impaired, with an official code composed of Braille characters or cells that consist of various patterns of raised dots corresponding to alphabetic letters, punctuation marks and other symbols.

Business day. A workday (Monday through Friday) except for federal and state holidays, unless specifically included.

Calendar day. Used interchangeably with day unless otherwise indicated as a business day or a school day.

Case manager. A member of the evaluation and/or IEP team (usually the special education

teacher) who is designated to perform administrative functions for the team, including: (1) setting up meetings; (2) ensuring appropriate forms are completed; (3) ensuring timelines are met; and (4) includes the responsibility of coordinating and overseeing the implementation of the IEP.

CCEIS. See "Comprehensive coordinated early intervening services."

CEIS. See "Voluntary coordinated early intervening services."

Change of placement. A change in educational placement relates to whether the student is moved from one type of educational program to another type It may also occur when there is a significant change in the student's educational program even if the student remains in the same setting.

Change of placement for disciplinary reasons. A removal from the current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, the total amount of time the student is removed, and whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals are indicators of a pattern.

Charter school LEA. A publicly funded, nonprofit, nonsectarian public school that operates as its own local education agency (LEA) or district. Charter LEAs may be authorized by the local school district or the Idaho Public Charter School Commission. Charter LEAs are required to provide services in accordance with IDEA and Section 504 of the Rehabilitation Act of 1973 and the ADA.

Charter school within a district. A publicly funded, nonprofit, nonsectarian public school that is created by a formal agreement (charter) between the charter board of directors and the board of trustees of the local school district and operates independently within the district. It is governed by the conditions of its approved charter, performance certificate, and federal and state laws. It is the responsibility of the local district to ensure that students attending such charter schools receive appropriate services as required by IDEA and Section 504 of the Rehabilitation Act of 1973 and the ADA.

Chemical restraint. Using drugs or medication to control behavior; not including those prescribed by and administered in accordance with the directions of a qualified health professional.

Child. An individual who has not attained age eighteen (18).

Child count. For purposes of the annual report required under IDEA, the State must count and report the number of students with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

Child find. A process to locate, identify, and evaluate individuals ages three (3) to twenty-one (21) who are suspected of having a disability and in need of special education.

Civil action. A judicial action that any party who is aggrieved by the final decision of a due

process hearing officer may bring in either a federal district court or a state court of competent jurisdiction (as designated by Idaho law).

Compensatory education or compensatory services. Educational services or remedies which are above and beyond those normally due a student under the State's education law. The principle is acknowledged by most courts that have considered the issue to be an appropriate equitable remedy when a student has been denied free appropriate public education. Educational services that would put the student in the same position had they not been denied a FAPE.

Complaint. (State complaint) A formal, written, and signed statement submitted to the Idaho Department of Education by an individual or organization that contains one or more allegations and the facts on which the statement is based that a district or agency has violated a requirement of IDEA within the last year (365 days).

Comprehensive coordinated early intervening services (CCEIS). Mandated services funded by a portion of IDEA Part B funds and designed to address significant disproportionality in special education by providing early support and interventions to students ages three (3) through grade twelve (12), particularly those who need additional academic or behavioral support, but who are not yet identified as needing special education.

Concurrent deficits. The presence of multiple challenges or limitations that occur simultaneously in both adaptive functioning and intellectual functioning to approximately the same degree. As it relates to the eligibility criteria for Intellectual Disability, concurrent deficits are two (2) standard deviations below the mean plus or minus the standard error of measurement at the ninety-five (95) percent confidence level.

Consensus. Following the opportunity for each member to provide input and gain clarification, the resulting outcome where each member agrees to support the decision of the group. Consensus is both the commitment to support the decision, and the process of reaching such agreement to support the decision.

Consent. Voluntary, written approval of a proposed activity, as indicated by a parent/adult student signature. The parent/adult student must be fully informed of all relevant information in his or her native language or other mode of communication and must understand all information relevant to the activity to make a rational decision.

Controlled substance. Any drug so designated by law whose availability is restricted; i.e., so designated by federal Controlled Substances Acts. Included in such classifications are narcotics, stimulants, depressants, hallucinogens, and marijuana. (See Schedule I, II, III, IV or V in section (c) of the Controlled Substances Act (21 U.S.C. 812(c))

Core academic subjects. These include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the ESEA.

Corporal punishment. Knowingly and purposely inflicting physical pain on a student as a disciplinary measure.

Corrective action plan (CAP). A plan that orders an LEA as a result of an IDEA complaint to

take corrective actions to resolve violations of IDEA as found by the Idaho Department of Education.

Counseling services. A related service which include services provided by qualified social workers, psychologists, guidance counselors, and other qualified personnel, including personnel qualified to provide services exclusively in a school setting.

Critical life skill. Skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance students' integration with individuals without disabilities. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

Dangerous weapon. 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 2 ½ inches in length.

Data-based decision making. The collecting of information that can be charted or graphed to document performance over time followed by an analysis of the information to determine needed changes in instruction, policies, programs, or procedures.

Day. Refers to a calendar day unless otherwise indicated as a business or school day.

Deaf-blindness. An IDEA disability category in which a student demonstrates hearing and low vision, and where the combination of these two disabilities causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.

Deaf or Hard of Hearing. A condition of hearing loss, whether permanent or fluctuating, that impairs the access, comprehension, and/or use of linguistic information through hearing, with or without amplification, and that adversely affects a child's educational performance.

Detained youth. Anyone aged three (3) through twenty-one (21) who is being held for a crime regardless of whether or not that person has appeared before the court.

Developmental delay. An IDEA disability category used only for students ages three (3) through nine (9) for whom a significant delay exists in one or more of the following broad developmental areas: cognitive development, physical development, communication development, social or emotional development, or adaptive development. The use of this category is optional for LEAs.

Disaggregated data. Information that is reported and/or considered separately on the basis of a particular characteristic.

Discipline. Actions taken in response to a student's violation of the student code of conduct.

Disclosure. The access to or the release, transfer, or other communication of education records or personally identifiable information contained in these records by oral, written, electronic,

or other means.

Disproportionality. A disparity or inequality. The term refers to a statistical range of data where students of a specific race or ethnicity are identified in either greater or fewer numbers than expected when compared to the representation of that race or ethnicity within the general school population. The areas addressed in the IDEA are: (1) identification as a student with a disability; (2) identification of a student with a specific category of disability; (3) placement in a particular educational setting; and (4) the incidence, duration of any type of disciplinary actions, including suspensions and expulsions.

District. A local educational agency (LEA) inclusive of the following terms: a local district, a state authorized charter school, a state operated program, and a traditional school. See "LEA."

Drop out. To voluntarily leave an education system before completion of state graduation requirements. A student who has dropped out is not known to be enrolled in any other educational program.

Dual enrollment. Occurs when a child of school age who is enrolled in a private school or public charter school or is homeschooled requests to also enroll in a traditional school district (public non-charter school) or another public charter school in order to participate in public school programs and activities. See "nonpublic school" and "nonpublic student."

Due process hearing. An administrative hearing conducted by an Idaho Department of Education assigned hearing officer to resolve disputes on any matter related to identification, evaluation, educational placement, or the provision of a free appropriate public education under the IDEA.

Dyslexia. A type of disability recognized by the IDEA as a type of SLD. According to the International Dyslexia Association, dyslexia is characterized by "difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction." See "Specific learning disability."

Early Learning Guidelines (eGuidelines). See "Idaho Early Learning Guidelines (eGuidelines)."

Education record. A student's record containing personally identifiable information maintained by an educational agency or institution, or by a party acting for the agency or institution, which may include, but is not limited to print, handwriting, computer media, video or audio tape, film, microfilm, and microfiche, but is not within the exceptions set out in the Family Educational Rights and Privacy Act (FERPA). The documents in the education record used to determine current eligibility and monitor current progress are considered part of the education record and are maintained. After the required retention period, items in the educational record that are no longer used, or have been summarized, may be removed from the educational record after written parental notification.

Educational performance. A student's educational performance in academic achievement, developmental, social, emotional, behavioral, and/or functional skills.

Educational services. Required services provided to a student which includes: the opportunity to continue to participate appropriately in general education instruction and curriculum, services outlined in the student's IEP, and participation with nondisabled peers to the same extent as the student participates with nondisabled peers in the current placement.

Educational services agency, other public institution or agencies. (1) An educational service agency, as defined in 34 CFR §300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

Elementary school. A nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education. An elementary school includes a grade configuration of grades Kindergarten through eight (8) inclusive, or any combination thereof.

Emotional behavioral disorder (EBD). An IDEA disability category in which a student has a condition exhibiting one or more of five behavioral or emotional characteristics over a long period of time, and to a marked degree, that adversely affects educational performance. The term *does not* include students who are socially maladjusted unless it is determined they have an emotional behavioral disorder. The term emotional behavioral disorder *does* include students who are diagnosed with schizophrenia.

English Learner (EL). When used with respect to an individual, this means an individual

A) who is aged three (3) to twenty-one (21);
B) who is enrolled or preparing to enroll in elementary or secondary school;
C) (i) who was not born in the United States or whose native language is a language other than English; or
(ii) who is a Native American or Alaska Native, or a native resident of the outlying areas; and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the him or her:
    a. the ability to meet the State's "proficient" level of achievement on State assessments;
    b. the ability to successfully achieve in classrooms where the language of instruction is English; or
    c. the opportunity to participate fully in society.

Essential components of reading instruction. The term means explicit and systematic instruction in (1) phonemic awareness, (2) phonics, (3) vocabulary development, (4) reading fluency, including oral reading skills, and (5) reading comprehension strategies.

Evaluation. A term that means using all required procedures to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

Evaluation team. A group of people, including the parent/adult student, charged with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the IEP team (although not necessarily the same individuals) and other qualified professionals, as appropriate.

Expedited due process hearing. An administrative hearing with an expedited timeline that is only available to resolve disputes concerning discipline and/or placement related to discipline.

Expulsion. Removal of a student from school for an extended period of time. For general education students, services usually cease during an expulsion.

Extended school year (ESY). A program to provide special education and related services to an eligible student with a disability beyond the conventional number of instructional days in a school year and at no cost to the parents. An ESY program must be based on an IEP team decision and meet Idaho standards.

Extracurricular activities. Programs sponsored by an LEA that are not part of the required curriculum but are offered to further the interests and abilities of students, e.g., athletics, special interest groups, or clubs sponsored by the LEA.

Facilitation. A voluntary process during which a neutral and impartial individual, contracted by the Idaho Department of Education, is appointed to conduct an IEP team or other special education related meeting.

Family Educational Rights and Privacy Act (FERPA). A federal law protecting the privacy of students and parents by mandating that personally identifiable information about a student contained in education records must be kept confidential unless otherwise provided by law. FERPA also contains provisions for access to records by parents, students, staff, and others.

FAPE. See "Free appropriate public education."

Fluency disorder. Stoppages in the flow of speech that are abnormally frequent and/or abnormally long. These interludes take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

FERPA. See "Family Educational Rights and Privacy Act."

Free Appropriate Public Education (FAPE). A basic IDEA requirement which states that special education and related services are provided at public expense (free); in conformity with an appropriately developed IEP (appropriate); under public supervision and direction (public); and include preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the Idaho Department of Education (education).

Functional achievement and performance. Gains made by a student which include programming in community living, reading, communication, self-care, social skills, domestic maintenance, recreation, and employment or vocational skills. Also called independent living skills.

Functional behavioral assessment (FBA). A systematic process for defining problem behavior and gathering medical, environmental, social, and instructional information that can be used to hypothesize about the function of student behavior.

General education curriculum. The curriculum designed for all students, usually consisting of core subjects and curriculum areas adopted by a district, aligned to the Idaho Content Standards or district standards.

General education instruction. Grade-level, standards-aligned instruction in the regular education setting provided by qualified personnel.

General education interventions. Educational interventions designed to address student needs using tiered systems of support in general education and supplemental interventions. Such interventions may include whole-school approaches, scientifically based programs, and positive behavior supports, including accommodations and instructional interventions based on an individual student's skill deficit(s), designed to remedy, improve, or eliminate the skill deficit and conducted in the general education environment.

Goal. A measurable statement of desired progress. In an IEP, annual goals must include academic and functional goals designed to meet a student's needs that result from his or her disability, enable the student to be involved in and make progress in the general curriculum, and meet the student's other educational needs that result from the student's disability.

Graduation. The point in time when a student meets the LEA and State requirements for receipt of an Idaho high school diploma.

Graduation meeting adapted requirements. The point in time when a student meets the graduation requirements outlined in the IEP but does not meet LEA and State requirements for graduation. The student is considered to have graduated by meeting adapted requirements and maintains the right to FAPE through the semester they turn twenty-one (21) as long as other eligibility requirements are met.

Graduation meeting LEA and state requirements. The point in time when a student has met LEA and State requirements that apply to all students with or without accommodations in the classroom.

Guardianship. A judicial determination under which a competent adult has the legal right and duty to deal with problems, make decisions, and give consent for an adult with a disability (at least eighteen (18) years of age) who cannot act on his or her own behalf. The court will specify the nature and scope of the guardian's authority.

Health services. See "School health services."

Hearing officer. An individual appointed to conduct an impartial due process hearing procedures consistent with the IDEA.

High school. A component of the secondary school level, typically encompassing grades nine (9) through twelve (12). See "secondary school."

Homebound student. A student whose IEP team determines the student's home is the least restrictive environment.

Homeless children and youth. Children and youth who lack a fixed, regular, and adequate nighttime residence as defined in the McKinney-Vento Homeless Assistance Act.

Homeschool. An education program delivered by parents who have decided to provide instruction in the home and not in a public or private school. A homeschool is a nonpublic school, but is not considered a private school. A virtual public school is not a homeschool.

Homeschool student. A student whose parents have decided to provide an educational program in the home with instruction provided by the parents. A homeschool student is considered a nonpublic school student but is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

Honig Injunction. A court order to remove a special education student from school or the current educational placement due to factors of dangerousness. LEAs are required to continue with the provision of FAPE.

Idaho Content Standards. Educational standards in math and English language arts detailing what K-12 students should know at the end of each grade and establishing consistent standards across the state, as well as ensuring that students graduating from high school are prepared to enter credit-bearing courses at two- or four-year college programs or enter the workforce.

Idaho Early Learning Guidelines (eGuidelines). Educational standards for young children designed to assist in guiding development and learning. These standards provide age-appropriate guidelines for children aged three (3) through the third (3rd) grade.

IEP. See "Individualized education program."

Illegal drug. 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.

Illegal use of drugs. The unlawful use, possession, or distribution of substances identified under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional.

Independent educational evaluation (IEE). One or more assessment(s) conducted by a qualified examiner(s) who is not employed by or contracted by the public agency or LEA

responsible for the education of the student in question.

Independent living skills. See "Functional achievement and performance."

Individualized education program (IEP). A written document (developed collaboratively by an IEP team made up of parents and school personnel) that outlines the special education program for a student with a disability. This document is developed, reviewed, and revised by an IEP team at least annually.

Individualized education program (IEP) team. A team established by the IDEA and comprised of but not limited to the student's general education teacher, a special education teacher, a district representative, parents, the student when appropriate, and other knowledgeable persons. The team is responsible for developing an IEP, determining placement, and reviewing and revising the student's IEP and placement at least annually.

Individualized family service plan (IFSP). A written individualized plan for an infant or toddler (birth to three (3) years of age) with a disability that is developed by a multidisciplinary team, including the parents, under Part C of the IDEA.

Individuals with Disabilities Education Act (IDEA). A federal law ensuring services to children with disabilities. The IDEA governs how states and public agencies provide early intervention, special education, and related services to individuals with disabilities. Infants and toddlers with disabilities (birth to two) and their families receive services under IDEA Part C. Children and youth (ages three (3) to twenty-one (21)) receive special education and related services under IDEA Part B.

Informal Removal. Informal removal includes action taken outside of IDEA's discipline provisions by school personnel in response to student behavior which results in the student being excluded for all or part of a school day or for an indefinite period of time. This includes: removal for a portion of a school day that a student has been suspended; removal of the student from class; removal from LEA-provided transportation; sending the student home early; repeated reliance on law enforcement or school resource officer (SRO) intervention to manage behavior; or calling a parent/guardian to pick up a student. Informal removals are considered disciplinary removals and must be counted in the ten (10) consecutive or cumulative removals leading to change in placement.

Initial provision of service. The first time that a child with a disability is provided special education and related services. This is also referred to as the "initial placement" and means the first time a parent is offered special education and related services for their child after an initial evaluation and eligibility determination.

In-lieu of transportation. In place of, or instead of, providing transportation. It generally refers to a situation where an LEA offers payment or another form of compensation instead of traditionally-provided transportation.

In-school suspension (ISS). Removal from the IEP-determined placement within the school setting. ISS is considered a disciplinary removal unless all three components of educational services are provided to the student: participation in general education instruction and curriculum, access to services outlined in the student's IEP, and

participation with nondisabled peers to the same extent as the student participates with nondisabled peers in the current placement.

Instructional intervention. An action or strategy based on an individual student's skill deficit(s) that is designed to remedy, improve, or eliminate the skill deficit.

Intellectual disability. An IDEA disability category in which significantly below-average general intellectual functioning exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period and adversely affect the student's educational performance.

Intelligence quotient (IQ). A number used to express the apparent relative intelligence of an individual. This is most referenced in this Manual as it relates to Intellectual Disability.

Interagency agreement. A written document that defines the coordination between the state and/or public/private agencies and/or LEAs with respect to the responsibilities of each party for providing and funding special education programs and special education and related services.

Interim alternative educational setting (IAES). The educational setting in which an LEA may place a student with a disability, for not more than forty-five (45) school days, if the student while at school, on school premises or at a school function carries a weapon or possesses a weapon; knowingly possesses, uses, sells or solicits the sale of illegal drugs or controlled substances; or has inflicted serious bodily injury upon another person. An IAES may also be ordered by a due process hearing officer based upon evidence that maintaining the current placement is substantially likely to result in injury to the student or others.

Interim IEP. A short-term IEP with all the components of a standard IEP developed by the IEP team. It may be used for students transferring from other districts pending the development of the standard IEP or other purposes as needed.

Interpreting services. A related service for students who are deaf or hard of hearing that includes oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services. Students who are deaf-blind may require special interpreting services.

Itinerant specialist or itinerant teacher. A teacher who typically travels and provides services to students in different schools or in the home or consults with teachers and administrators.

Joint custody. A court order awarding custody of a minor child to both parents and providing that physical and/or legal custody shall be shared by the parents.

Joint legal custody. A court order providing that the parents of a child are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of the child.

Joint physical custody. A court order awarding each parent significant periods of time in which a child resides with or is under the care and supervision of each parent. The actual

amount of time is determined by the court.

Junior high. See "Middle school."

Language impairment. An IDEA disability category in which a delay or disorder exists in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems and which adversely affects the student's educational performance. A language impairment may involve any one or a combination of the following: the form of language (morphological and syntactic systems); the content of language (semantic systems); and/or the function of language in communication (pragmatic systems).

Language therapy. A related service which includes identification of students with language impairments, diagnosis and appraisal of specific language impairments, referral for professional habilitation of language impairments when necessary, and provision of language services for the habilitation or prevention of communicative impairments.

Learning disability. See "specific learning disability."

Least restrictive environment (LRE). The IDEA requirement that students with disabilities, including those in public or private institutions or other care facilities, be educated with students who are nondisabled to the maximum extent appropriate.

Limited English Proficiency (LEP). The condition of having restricted ability to read, write, speak, or understand English, often requiring language assistance for effective communication, most often because English is not the primary language.

Listening comprehension. For the purpose of specific learning disability eligibility, refers to the understanding of the implications and explicit meanings of words and sentences of spoken language. This includes following directions, comprehending questions, and listening and comprehending in order to learn (e.g., auditory attention, auditory memory, and auditory perception). Listening comprehension also includes the ability to make connections to previous learning.

Local educational agency (LEA). A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. See "district."

Low vision or blindness. See "Blindness or low vision."

Manifestation determination. A determination by the parent and relevant members of the IEP team of whether or not the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the LEA's failure to implement the IEP.

Mathematics calculation. For the purpose of specific learning disability eligibility, this refers to the knowledge and retrieval of mathematical facts and the application of procedural knowledge in computation.

Mathematics problem solving. For the purpose of specific learning disability eligibility, refers to the ability to apply mathematical concepts and understandings to real-world situations, often through word problems. It is the functional combination of computation knowledge and application knowledge and involves the use of mathematical computation skills and fluency, language, reasoning, reading, and visual-spatial skills in solving problems. Essentially, it is applying mathematical knowledge at the conceptual level.

McKinney-Vento Homeless Assistance Act. This law is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this law, state educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth.

Mechanical restraint. The use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel or utilized by a student that have been prescribed by an appropriate medical or related services professional and that are used for the specific and approved purposes for which such devices were designed, such as: adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

Mediation. A voluntary, confidential, and structured process during which an Idaho Department of Education-contracted individual is appointed to serve as an impartial and neutral third party to helps parents and LEA or agency personnel resolve an IDEA-related conflict. Mediation usually results in a written, legally-binding agreement that is mutually acceptable to both parties and enforceable in court.

Medicaid services (school-based). Those services, assessments, and plan development for students receiving Medicaid which LEAs may bill for reimbursement with the consent of the parent.

Memorandum of Understanding (MOU). A formal, non-binding agreement outlining the intentions of two or more parties to collaborate or work together.

Medical services. Services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

Middle school. Generally refers to grades six (6) through eight (8), which is the educational stage between elementary and high school. The term "middle school" is often interchangeable with the term "junior high."

Migrant student. A student who has not graduated from high school or completed a high school equivalency diploma and resides within a family that includes one or more migrant fishing or agricultural workers. The student has moved within the preceding thirty-six (36) months in order for the family to obtain or seek this type of temporary or seasonal employment that is a principal means of livelihood.

Monitoring. An activity conducted by the Idaho Department of Education to review an LEA's compliance with federal laws, regulations, and state rules.

Multiple disabilities. An IDEA disability category in which a student has two or more co-existing, severe impairments, one of which usually includes an intellectual disability or another lifelong, developmental disability. Students with multiple disabilities exhibit impairments that are lifelong, significantly interfere with independent functioning, and necessitate environmental accommodations or adaptations to enable the student to participate in school and society.

Multi-tiered system of support (MTSS). See "Tiered interventions."

Native language. The language or mode of communication normally used by an individual or, in the case of a student, the language normally used by the student's parents. In all direct contact with a student, the native language would be the language or mode of communication normally used by the student in the home or learning environment.

New teacher. A teacher in the first one to two years in their current role. An LEA may choose to expand this definition to encompass teachers new to the State, LEA, building, or teaching assignment.

Nonprofit. A school, agency, organization, or institution owned and operated by one (1) or more nonprofit corporations or associations, no part of the net earnings of which benefits, or may lawfully benefit, any private shareholder or individual.

Nonpublic school. An educational institution or program providing instruction outside a public school, including but not limited to a private school or homeschool.

Nonpublic student. Any student who receives educational instruction outside of a public school, including but not limited to a private school or homeschool student.

Nursing services. See "School health services."

Objectives. Measurable, intermediate steps that describe the progress the student is expected to make toward an annual goal in a specified amount of time. Objectives are required in every IEP goal area when a student qualifies to take the Alternate Assessment.

Occupational therapist. A professional licensed by the Occupational Therapy Licensure Board of Idaho who, in a school setting, is responsible for assessing fine motor skills, including students' use of hands and fingers, and developing and implementing plans for improving related motor skills. The occupational therapist focuses on daily living skills such as eating, dressing, schoolwork, play, and leisure.

Occupational therapy. A related service provided by a qualified occupational therapist for improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation, improving the ability to perform tasks for independent living.

Office of Special Education Programs (OSEP). The branch of the Office of Special Education and Rehabilitative Services (OSERS) within the U.S. Department of Education which is responsible for administering programs relating to the free appropriate public education to

all eligible beneficiaries under the IDEA.

Oral expression. For the purpose of specific learning disability eligibility, the ability to convey wants, needs, thoughts, and ideas in a meaningful way using appropriate syntactic, pragmatic, semantic, and phonological language structures. It relates to a student's ability to express ideas, explain thinking, retell stories, categorize, compare and contrast concepts or ideas, make references, and problem solve verbally.

Orientation and mobility (O&M) services. Services provided by qualified personnel to students with blindness or low vision to enable these students to attain systematic orientation to and safe movement within the home, school, and community, including teaching (1) spatial and environmental concepts and use of information received by the senses to establish, maintain, or regain orientation and line of travel; (2) use of the long white cane, or a service animal, as appropriate to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; (3) understanding and use of remaining vision and distance low vision aids; and (4) other concepts, techniques, and tools.

Orthopedic impairment. An IDEA disability category that includes severe orthopedic impairments that adversely affect a student's educational performance and are caused by congenital anomaly (e.g., clubfoot, absence of an appendage, etc.); disease (e.g., poliomyelitis, bone tuberculosis, etc.); or from other causes (e.g., cerebral palsy, amputations, fractures or burns that cause contracture, etc.).

Other health impairment (OHI). An IDEA disability category in which a student exhibits limited strength, vitality or alertness, including heightened alertness to environmental stimuli that results in limited alertness with the respect to the educational environment that is due to chronic or acute health problems such as asthma, ADHD, cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and/or Tourette syndrome and stroke.

Out-of-school suspension (OSS). OSS means removal from the school and the IEP-determined placement for all or part of a school day. OSS is always considered a disciplinary removal as it, by definition, ceases one or more of the required components of educational services (participation in general education instruction and curriculum, access to services outlined in the student's IEP, and participation with nondisabled peers to the same extent as the student participates with nondisabled peers in the current placement). OSS must be counted in the ten (10) consecutive or cumulative removals constituting a change in placement.

Paraprofessional. A non-certified, non-licensed individual who is employed by an LEA and who is appropriately qualified, trained, and supervised in accordance with state standards to assist in the provision of special education and related services.

Parent. As defined by IDEA, a parent is: (1) a biological or adoptive parent of a child; (2) a foster parent if the parent's authority to make educational decisions for the student has been terminated by law; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) an individual acting in the place of a biological or adoptive parent

(including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) a surrogate parent who has been appointed by the LEA. If the child is a ward of the state, the judge overseeing the child's case may appoint the surrogate. The surrogate may not be an employee of the state or LEA or any other agency that is involved in the education or care of the child, must have no personal or professional interest which conflicts with the interest of the child, and must have knowledge and skills that ensure adequate representation of the child.

Parent counseling and training. A related service which includes helping a parent understand child development and the special needs of the student and acquire skills to support the implementation of the student's IEP.

Part B. Part of the IDEA that relates to the assistance to states for the education of students with disabilities who are ages three (3) through the semester in which a student turns twenty-one (21). Part B is administered by the Idaho Department of Education and carried out by LEAs and other public agencies.

Part C. Part of the IDEA that relates to the assistance to states for the education of children with disabilities and the early intervention programs for infants and toddlers, ages birth through two (2), with disabilities. In Idaho, Part C is administered by the Department of Health and Welfare.

Personally identifiable information (PII). Includes but is not limited to: student's name, name of parent or other family member, address of student or family, social security number, student number, list of personal characteristics, or other information that would make it possible to identify the student with reasonable certainty.

Phonology. The sound system of a language and the rules that govern the combination of these sounds.

Phonology disorders. Errors affecting the understanding and use of phonemes, and sound patterns and the rules governing their combinations.

Physical escort. Temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of directing a student to a safe location. Physical escorting that involves methods used to immobilize a student's movement should be considered a physical restraint.

Physical restraint. Personal restriction that immobilizes or reduces the ability of a student to move the student's torso, arms, legs, or head freely. The term physical restraint does not include a physical escort.

Physical therapist. A professional licensed by the Idaho Physical Therapy Licensure Board who, in the school setting, assesses students' needs and provides interventions related to gross motor skills. In working with students with disabilities, the physical therapist provides treatment to increase muscle strength, mobility, endurance, physical movement, and range of motion; improve posture, gait, and body awareness; and monitor function, fit, and proper use of mobility aids and devices.

Physical therapy. A related service provided by a qualified physical therapist for improving

gross motor skills, including treatment to increase muscle strength, mobility, endurance, physical movement, and range of motion; improve posture, gait, and body awareness; and monitor function, fit, and proper use of mobility aids and devices.

Positive behavior supports. Positive reinforcement, rewards, or consequences provided to a student for specific instances of behavior that impedes learning or the learning of others as appropriate for the purpose of allowing the student to meet his or her behavioral goals/benchmarks.

Positive behavioral intervention and supports (PBIS). An evidence-based, multi-tiered framework that schools use to improve student outcomes and school climate by focusing on preventing problem behaviors and promoting positive behaviors and social-emotional skills for all students. See "Tiered interventions."

Power of attorney. The designation, in writing, by a competent person of another to act in place of or on behalf of another person.

Present levels of academic achievement and functional performance (PLAAFP). A statement of the student's current level of achievement or development in an area of need and how the student's disability affects his or her involvement and progress in the general education curriculum offered to students without disabilities. For preschool students, as appropriate, how the disability affects the child's participation in age-appropriate activities.

Private school. A nonpublic school that is not funded by or under federal or state control or supervision. A homeschool is not a private school.

Private school student. Any student who receives educational instruction in a school not funded by or under federal or state control or supervision is considered a nonpublic private school student. A homeschool student is not a private school student.

Problem-solving team. A required general education team, the name of which may vary, which shall be established at the local level with the purpose of establishing a process to plan accommodations and tiered interventions in general education and to ensure that referrals to consider a special education evaluation are appropriate. Procedures, meeting schedules, and team membership are established locally. The team shall include general educators and administrators and could include counselors, specialists, and special education personnel. Parent participation is valuable but not required.

Procedural safeguards. The requirements of Part B of the IDEA that are designed to allow a parent/adult student to participate meaningfully in decisions concerning an appropriate educational program for a student with a disability and, if necessary, dispute such decisions. Also referred to as special education rights. The written notification of these rights, titled *Procedural Safeguards Notice,* shall be offered to parents at least annually.

Professional development. High-quality comprehensive programs that are essential to ensure that persons responsible for the education or transition of students with disabilities possess the skills necessary to address the educational and related needs of these students.

Professional staff. An individual who holds certification from the Idaho Department of

Education and/or professional licensure.

Psychological services. A related service which includes administering and interpreting assessments related to the student's educational performance and conditions related to learning; consulting with other staff members in planning school programs to meet the student's special educational needs; planning and managing a program of psychological services, including psychological counseling for students and parents; and assisting in developing positive behavioral intervention strategies.

Public agency. The SEA and LEAs, including Idaho school districts and public charter schools, and any other public subdivisions of Idaho that are responsible for providing education to children with disabilities.

Public expense. When an LEA or public agency either pays for the full cost of an evaluation or special education services or ensures that it is otherwise provided at no cost to the parent; for example, through joint agreements with other state agencies.

Qualified personnel. An individual who holds the appropriate certification, qualifications, and/or professional licensure to perform the assigned duties.

Reading components. The term "reading" means a complex system of deriving meaning from print that requires all of the following skills, which are the essential components of reading instruction: (1) Phonemic awareness: The skills and knowledge to understand how phonemes, or speech sounds, are connected to print; (2) Phonics: The ability to decode unfamiliar words; (3) Reading fluency: The ability to read fluently; (4) Vocabulary development: Sufficient background information and vocabulary to foster reading comprehension; and (5) Reading comprehension: The development of appropriate active strategies to construct meaning from print.

Reading comprehension. For the purpose of specific learning disability eligibility, refers to the ability to understand and make meaning of written text and includes a multifaceted set of skills. Reading comprehension is influenced by oral language development including new vocabulary acquisition, listening comprehension, working memory, application of comprehension-monitoring strategies, and understanding of text structure including titles, paragraphing, illustrations, and other details. Reading comprehension is significantly affected by basic reading skills.

Reading fluency. For the purpose of specific learning disability eligibility, refer to the ability to read words and text accurately, using age-appropriate chunking strategies and a repertoire of sight words, and with appropriate rate, phrasing, and expression (prosody). Reading fluency facilitates reading comprehension.

Reasonable measures (Reasonable efforts). A combination of written and/or oral efforts with documentation to meet notification requirements of the LEA to parents/adult students.

Reasonable time. A period of ten (10) calendar days unless there are exceptional circumstances that warrant a shortened period of time such as an emergency or disciplinary meeting.

Recreation, including therapeutic recreation. A related service which includes assessment of leisure function, therapeutic recreation services, recreation programs in schools and

community agencies, and leisure education.

Reevaluation. A periodic evaluation conducted at least every three years, or more frequently if conditions warrant or if the student's parent or teacher requests an evaluation of a student already identified as eligible for services under the IDEA. Reevaluations may not occur more than once a year, unless the parent and the LEA agree otherwise.

Regular due process hearing. An administrative hearing provided on a regular timeline that is available to resolve issues related to the identification, evaluation, educational placement, or the provision of FAPE to a student.

Rehabilitation counseling services. A related service provided by qualified personnel in individual or group sessions that focus specifically on career development, employment, preparation, achieving independence, and integration in the workplace and community of a student with a disability. This also includes vocational rehabilitation services provided through vocational rehabilitation programs.

Related services. Refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education and includes the following: speech therapy, language therapy, audiology services, psychological services, physical therapy, occupational therapy, recreation, therapeutic recreation, early identification and assessment of disabilities in children, counseling services, rehabilitation counseling, orientation and mobility services, interpreting services, medical services for diagnostic or evaluation purposes, school health/nursing services (excluding surgically implanted medical devices), social work services in schools, and parent counseling and training.

Resolution session. A meeting involving the parents, relevant members of the IEP team, and a representative of the district who has decision-making authority, required prior to a due process hearing if the parent has requested the due process hearing.

Response to intervention (RTI). A formal process within a tiered system of support for evaluating student response to scientifically research-based interventions, consisting of the core components of: (1) problem identification, (2) problem analysis, (3) applying research-based, tiered interventions, and (4) progress monitoring/decisions rules. As used in the IDEA, RTI is only mentioned as an alternative to the severe discrepancy criteria in determining whether a student has a Specific Learning Disability. See "Tiered interventions."

School-age. Includes all persons between the ages of five (5) [i.e., turns five (5) on or before September 1] and twenty-one (21) years who reside in Idaho. For students with disabilities who qualify for special education and related services under the IDEA, school-age begins at age three (3) and continues through the semester of school in which the student attains the age of twenty-one (21).

School day. Any day, including a partial day, when all students are in attendance at school for instructional purposes.

School health services. A related service which includes health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School

nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

School psychologist. A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Psychology and is charged with the responsibility to conduct assessments and determine a student's cognitive, academic, social, emotional, and/or behavioral functioning. This professional also provides direct services to students, consults with LEA staff, and may be a member of the evaluation and/or IEP team.

Scientifically-based research (SBR). As defined in the ESEA, research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.

Screening. An informal, although organized, process, of gathering information related to student performance.

Seclusion. The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

Secondary school. A nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education. A secondary school includes a grade configuration of grades nine (9) through twelve (12) inclusive, or any combination thereof.

Section 504 of the Rehabilitation Act of 1973. A federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."

Secular. An adjective used to describe a private, non-religious educational entity.

Serious bodily injury (SBI). Bodily injury which involves (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of bodily member, organ, or mental faculty. To warrant an IAES on this basis, the injury must be severe. Minor injuries are not sufficient.

Services plan (SP). A written statement that describes the special education and related services the district will provide to a parentally-placed child with a disability enrolled in a private school who is eligible to receive services, including the location of the services and any transportation necessary.

Setting. The location, generally either a special education environment or a general education environment, where special education services occur. The setting does not necessarily

refer to a physical location.

Significant cognitive disabilities. A designation given to a small number of students with disabilities for the purposes of their participation in alternate assessments. Having significant cognitive disabilities is not solely determined by an IQ test score, nor based on a specific disability category, but rather a complete understanding of the complex needs of a student. Students with significant cognitive disabilities have a disability or multiple disabilities that significantly impact their adaptive skills and intellectual functioning. These students have adaptive skills well below average in two or more skill areas and intellectual functioning well below average (typically associated with an IQ below 55).

Social work services in school. A related service which may include preparing a social or developmental history on a student with a disability, group and individual counseling with the student and family, working in partnership with parents and others on those problems in the student's living situation that affect the student's adjustment in school, mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program, and/or assisting in developing positive behavioral intervention strategies

Social maladjustment. A persistent pattern of violating societal norms characterized by behaviors such as truancy, substance abuse, and/or a perpetual struggle with authority. This can exist concurrently with an emotional behavioral disorder.

Social worker. A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Social Work and helps students and teachers address social and emotional issues. This professional may be a member of the evaluation and/or IEP team.

Special education. Specially designed instruction, at no cost to the parent, to meet the unique needs of a student with a disability.

Special educational placement. Refers to the provision of special education services along the continuum of placements under the least restrictive environment requirements, rather than a specific place or location, such as a specific classroom or school. The balance of setting and services to meet an individual student's needs.

Specially designed instruction. Adapting the content, methodology, or delivery of instruction to address the unique needs of an eligible student that result from the student's disability and to ensure access to the general education curriculum so that the student can meet the Idaho Content Standards that apply to all students.

Specific learning disability (SLD). A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional behavioral disorder, environmental, cultural, or economic disadvantage.

Speech impairment. A disorder such as a speech fluency disorder, impaired

articulation/phonology, or a voice impairment that adversely affects a student's educational performance.

Speech-language pathologist. A professional holding an Idaho Pupil Personnel Services Certificate who can assess and treat students with speech, language, voice, and fluency disorders. This professional coordinates with and may be a member of the evaluation and IEP teams.

Speech therapy. A related service which includes identification of students with speech impairments, diagnosis and appraisal of speech impairments, referral for professional habilitation of speech impairments when necessary, and provision of speech services for the habilitation or prevention of communicative impairments.

Standard deviation. A number that indicates how spread out or how varied the scores are in a group of students.

Standard score. A number that shows how a student's performance compares to that of other students of the same age or grade. Typically, standard scores are reported based on a mean (or average) of one hundred (100) and standard deviation of fifteen (15).

State educational agency (SEA). The Idaho Department of Education is the SEA and is primarily responsible for the State supervision of public elementary and secondary schools.

Stay-put. A requirement that a district or agency maintains a student with a disability in his or her present educational placement while a due process hearing or subsequent judicial proceeding is pending, unless the parties agree otherwise.

Student (school-age). For resident children with disabilities who qualify for special education and related services under the IDEA and subsequent amendments thereto, and applicable state and federal regulations, "school-age" shall begin at the attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.

Substantial evidence. A legal term that means "beyond a preponderance of the evidence" or "beyond more likely than not."

Summary of performance (SOP). A document given to secondary students when a student exits special education as a result of earning a diploma or aging out. This document describes the student's academic achievement and functional performance along with recommendations to assist the student in meeting post-secondary goals.

Supplementary aids and services. Aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

Supports for school staff. A related service which includes training, equipment, assistive technology, or other supports required to ensure staff have the skills and tools necessary to address the needs of a student with a disability

Surrogate parent. An individual assigned and trained by an LEA or an agency to assume the rights and responsibilities of a parent under the IDEA when no parent can be identified or located for a particular student or when the child is a ward of the state.

Suspension. A temporary stop, delay, interruption, or cessation of educational service due to a violation of the student conduct code. This may include in-school suspension. See "Informal removal," "In-school suspension," "Out of school suspension," and "Transportation suspension."

T-Score. A number that shows how a student's performance compares to that of other students of the same age or grade. Typically, T-scores are reported based on a mean (or average) of fifty (50) and standard deviation of ten (10).

Tiered interventions (Tiered systems of support). A comprehensive prevention framework designed to improve developmental, social, emotional, academic, and behavioral outcomes using a continuum of evidence-based strategies and supports. Within a tiered framework, educators implement universal strategies and supports designed for all children; targeted strategies and supports for children with additional needs; and intensive strategies and supports to meet the specific needs of individual children. See "Response to intervention," "Multi-tiered systems of support," and "Positive behavioral interventions and support."

Traditional public school. Any school existing or to be built that is operated and controlled by a school district in this state as per Idaho Statute, Chapter 33--5202A.

Transition age student. A student whose upcoming IEP will be in effect for any part of the time that the student is sixteen (16) to twenty-one (21) years of age.

Transition services. A coordinated set of activities for a student with a disability designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post-school activities. Services are based on individual student needs addressing instruction, related services, community experiences, employment, post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

Transportation suspension. Suspension or removal from LEA-provided transportation as a disciplinary measure. When a student's IEP lists transportation as a related service, removal or suspension of transportation services is considered a disciplinary removal and must be counted in the ten (10) consecutive or cumulative days of removal leading to a change in placement.

Traumatic brain injury (TBI). An IDEA disability category that refers to an injury to the brain caused by an external physical force and resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perception and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

Travel training. Instruction to students with significant cognitive disabilities and any other students with disabilities who require instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within the home, school, and community.

Twice exceptional. Twice exceptional students are identified as gifted/talented in one or more areas of exceptionality (specific academics, general intellectual ability, creativity, leadership, visual or performing arts) and also identified with a disability defined by State eligibility criteria (SLD, EBD, Autism, Orthopedic Impairment, etc.) that qualifies the student for special education and related services.

Unilateral action. An action that was taken outside of the special education process and the action was not the result of an IEP team decision.

Unilateral placement in private school by a parent. A decision by a parent, at his or her own discretion, to remove his or her child with a disability from a public school and enroll the student in a private facility because the parent believes that the LEA did not provide FAPE in a timely manner.

Unilateral removal by the LEA. When the LEA, without the agreement or participation of the IEP team, specifically the parent, denies the provision of educational services to a student. This typically happens through some type of exclusionary discipline.

Universal design. A concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.

Voice disorder. Refers to the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition. See "Speech impairment."

Voluntary coordinated early intervening services (CEIS).Voluntary services funded by a portion of IDEA Part B funds and provided to students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral supports to succeed in a general education environment.

Voluntary enrollment in a private placement. Enrollment by a parent of a student with a disability in a private facility or homeschool for religious, philosophical, curricular, or other personal reasons.

Ward of the state. A child who, as determined by the State where the child resides, is a foster child (unless the foster parent meets the definition of a "parent" in Section 34 CFR §300.30), a ward of the State, or in the custody of a public child welfare agency.

Weapon. (See "dangerous weapon.")

Workplace Readiness Standards. Standards designed to ensure students graduate from high

school properly prepared with skills employers prioritize as the most important. The standards provide a means through which students may acquire and exhibit leadership qualities, as leadership development principles are embedded in most, if not all, of the standards.

Written expression. For the purpose of specific learning disability eligibility, the processes related to the transcription of ideas and thoughts into a written product, such as handwriting and spelling. It also involves generative processes such as the communication of ideas, thoughts, and feelings. Required skills include using oral language, thought, grammar, text fluency, sentence construction, and planning to produce a written product.

Written notice. A written statement provided by the LEA to a parent/adult student within a reasonable amount of time before proposing or refusing to initiate or change the identification, evaluation, educational placement, or the provision of FAPE.

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LEGAL CITATIONS

Introduction

The legal citations and topical reference for this Manual follow the chapter outlines and present references to federal and state statutes, regulations and rules for the enforcement of IDEA. The citations listed are the primary references for each chapter and section, not an all-inclusive reference list.

The entire IDEA and regulations are posted on the U.S. Department of Education website.

Idaho statutes and rules.

Some of the policies/procedures stated in this Manual are based upon case law and letters of clarification from the U.S. Office of Special Education Programs (OSEP).

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Chapter 1: Legal Citations

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Purpose of IDEA Child Find	300.1 300.111	
2.	Procedural Safeguards	300.121 300.504	
3.	Student Eligibility under the IDEA	300.8 300.122 300.306-311	Idaho Code § 33-2001(3) Idaho Code § 33-2001(5)
4.	Free Appropriate Public Education (FAPE)	300.17 300.39 300.101-300.102 300.148	Idaho Code § 33-201 Idaho Code § 33-2002 Idaho Code § 33-2010 Idaho Code § 20-504(a)(3)
5.	LEA Programs and Services	300.107-300.110 300.117	Idaho Code § 33-2002
6.	Individualized Education Program (IEP)	300.22 300.320-300.328	
7.	Least Restrictive Environment (LRE)	300.114-300.120	
8.	Summary of Activities that May Lead to Special Education Services	300.102(a) 300.112 300.116 300.124 300.300-300.307 300.309-300.311 300.320-300.324 300.503-300.504 300.622	Idaho Code § 33-2002

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Chapter 2: Free Appropriate Public Education (FAPE)

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definition of Free Appropriate Public Education (FAPE)	300.17	
2.	Provision of FAPE	300.101-300.111 300.132 300.209	Idaho Code § 33-201 Idaho Code § 33-2002 Idaho Code § 33-2009 Idaho Code § 33-2010 Idaho Code § 20-504a
3.	FAPE Considerations Procedural Safeguards	300.101-300.111 300.154 300.209 300.504	

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Chapter 3: Child Find

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	LEA Responsibility	300.111 300.131	
2.	Locating Students	300.111 300.124 300.154	
3.	Identification	300.302 300.226	
4.	Referral to Consider a Special Education Evaluation	300.174 300.301 300.302 300.305 300.306 300.308 300.309 300.504	

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Chapter 4: Eligibility

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Evaluation Team	300.306(a)(1) 300.304(c)(1)(iv) 300.308	
2.	Purpose of an Evaluation	300.15 300.305	
3.	Written Notice and Consent for Assessment	300.9 300.29 300.300 300.301 300.503	
4.	Information from Other Agencies or LEAs	300.622	
5.	Evaluation and Eligibility Determination Procedures	300.8 300.39 300.300-300.301 300.304-300.311	
6.	Reevaluation and Continuing Eligibility	300.300 300.303 300.305-300.306 300.308	
7.	State Eligibility Criteria	300.8 300.307-300.311	

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Chapter 5: Individualized Education Programs

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	IEP Initiation	300.320-300.328 300.22 300.39 300.501 300.306(c)(2) 300.321	
2.	IEP Development

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Chapter 6: Least Restrictive Environment

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Least Restrictive Environment Considerations	300.114-300.120	
2.	LEA Responsibility for Continuum of Settings and Services	300.115-300.116	

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Chapter 7: Discontinuation of Services, Graduation, and Grading

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Discontinuation of Services	300.9 300.305 300.306 300.102 (a)(3) 300.503	Idaho Code § 33-201 Idaho Code § 33-209
2.	Graduation	300.102. (a)(3) (i-iii) 300.320 (b)(2)	
3.	Transcripts and Diplomas		*Letter to Runkel,* 25 IDELR 387 (OCR 1996) 20 U.S. Code § 1412
4.	Grades, Class Ranking, and Honor Roll		*Letter to Runkel,* 25 IDELR 387 (OCR 1996)

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Chapter 8: Charter Schools

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definition and Parent/Student Rights	300.7 300.209(a)	Idaho Code § 33-5205 Idaho Code § 33-5206
2.	Responsibility for Services	300.2 300.209(b-c)	Idaho Code § 33-5205
3.	Essential Components of a Special Education Program	300.209	Idaho Code § 33-5205
4.	Charter Schools and Dual Enrollment		Idaho Code § 33-203 Idaho Code § 33-2002
5.	Funding	300.704(b)(4)(ix) 300.705 300.209	Idaho Code § 33-5208 Idaho Code § 33-1002B Idaho Code § 33-2004 Idaho Code § 33-2005 Idaho Code § 33-5208 (9)

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Chapter 9: Private School Students

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definitions Private School Placements	300.13 300.36 300.130 300.145-300.148	Idaho Code § 33-203
2.	Students Voluntarily Enrolled by Parents	300.37 300.131-300.133 300.111 (1)(i-ii) 300.320 300.323 (b) 300.139 (b) (1-2) 300.140 (a-c) 300.144	
3.	Students Placed by the LEA	300.145-300.146 300.320-300.325	
4.	Dual Enrollment by Parents	300.137(a)	Idaho Code § 33.203
5.	Students Unilaterally Placed by their Parents when FAPE is Issued	300.148 300.101	
6.	Out of State Students Residing in Residential Facilities	300.131	

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Chapter 10: Homeschool

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definitions		Idaho Code 33-203 Idaho Code 33-202
2.	LEA Responsibilities	300.101-102 300.111 300.504	
3.	Dual Enrollment		Idaho Code 33-203

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Chapter 11: Discipline

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Supporting Challenging Behavior		
2.	Educational Services and Types of Removal	300.530	
3.	Change of Placement	300.530-300.532 300.536	
4.	Manifestation Determination	300.530	
5.	Actions Following a Manifestation Determination	300.530-533	
6.	FAPE Considerations	300.530 U.S. Department of Education. (n.d.). *Positive, proactive approaches to supporting children with disabilities: A guide for stakeholders*. Retrieved from https://www2.ed.gov/policy/speced/guid/idea/positive-proactive-approaches.pdf U.S. Department of Education. (n.d.). *Questions and answers: Addressing the*	

		needs of children with disabilities and IDEA's discipline provisions (p. 26). Retrieved from https://www2.ed.gov/policy/speced/guid/idea/discipline-q-a.pdf U.S. Department of Education. (n.d.). *Supporting students with disabilities and avoiding the discriminatory use of student discipline under Section 504 of the Rehabilitation Act of 1973*. Retrieved from https://www2.ed.gov/policy/rights/guid/ocr/504-student-discipline.pdf	
7.	Restraint and Seclusion	U.S. Department of Education. (n.d.). *Students with disabilities and the use of restraint and seclusion in K-12 public schools*. Retrieved from https://www2.ed.gov/policy/seclusion/restraint-and-seclusion.pdf	Idaho Code 33-1224
8.	Other Considerations	300.532-534 Honig, 484 US 305; Light v. Parkway C-2 Sch. Dist., 41 F3d 1223 (8th Cir 1994). OSEP Memorandum 97-7, 26 IDELR 981 (OSEP 1997); 43 Fed Reg at 12,621 (1999).	

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Chapter 12: Procedural Safeguards

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Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Procedural Safeguards Notice	300.504	
2.	Domestic Considerations	300.30 300.519 300.320 300.520 300.530	Idaho Code § 32-717A Idaho Code § 32-717B *Letter to Cox* 54 IDLER 60 (110 LRP 10357)
3.	Informed Consent	300.9 300.300	
4.	Written Notice	300.508(e) 300.503 300.300	
5.	Confidentiality and Access to Records	300.32 300.611 300.622 300.614 300.613 300.616 300.623-300.625 300.618-300.621	Idaho Code § 32-717A Idaho Code § 33-133 (6)
6.	Independent Educational Evaluations	300.502	

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Chapter 13: Dispute Resolution

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Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Facilitation		
2.	Mediation	300.506 300.151-300.152	
3.	State Complaints	300.151-300.153	
4.	Due Process Hearings	300.507-300.518	
5.	Expedited Due Process Hearings	300.516 300.532	
6.	Appeals and Civil Action	300.516	
7.	Attorney Fees	300.517	

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Chapter 14: Idaho Department of Education's General Supervision System Requirements

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Department's General Supervision Requirements	300.149 300.146 300.167-168	
2.	Integrated Monitoring Activities	300.149	
3.	Coordinated Early Intervening Services (CEIS) and Comprehensive Coordinated Early Intervening Services (CCEIS)	300.226 300.205 (d) 300.208 (a) (2) 300.646 300.711	
4.	Comprehensive Coordinated Early Intervening Services (CCEIS)	300.646	
5.	Personnel	300.156 300.704 (b) (4) (vii)	IDAPA 16.03.09

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CHAPTER 1: OVERVIEW

Three (3) federal laws have been passed to ensure educational opportunities for individuals with disabilities:

1. the Individuals with Disabilities Education Act (IDEA)

2. Section 504 of the Rehabilitation Act of 1973 (Section 504)

3. the Americans with Disabilities Act of 1990 (ADA)

The most recent reauthorization of the IDEA was in 2004 and aligned the law with the Elementary and Secondary Education Act of 2001. In 2015, the Every Student Succeeds Act (ESSA) was passed. Revisions to the IDEA regulations were issued in 2007, 2008, 2013, 2014, 2015, 2016, and 2017. The IDEA preserves the basic structure and civil rights of previous reauthorizations and emphasizes both *access* to education and *improved results* for students with disabilities based on data and public accountability.

This Manual represents Idaho's interpretation of IDEA and, in combination with guidance issued by the Department, outlines procedural requirements for the implementation of the IDEA in Idaho. This Manual provides information regarding LEA and charter responsibilities under the IDEA and relevant Idaho legal requirements.

Section 1. Child Find

Each district or charter is a local education agency (LEA) and is required to establish and implement an ongoing Child Find system. Child Find activities are conducted to create public awareness of special education programs; to advise the public of the rights of students; and to alert community residents of the need for identifying and serving students with disabilities from the age of three (3) through the semester in which they turn twenty-one (21).

The LEA is also responsible for coordinating with the Department of Health and Welfare regarding the Child Find system for children ages birth through two (2) years. The Child Find system includes children with disabilities who are homeless, as defined by the McKinney-Vento Homeless Assistance Act (see Glossary), wards of the state, or attending private schools, regardless of the severity of the disability.

See Chapter 3 for more information on Child Find.

Section 2. Procedural Safeguards

A parent/adult student has specific procedural safeguards assured by the IDEA and state law. The LEA provides a document titled *Procedural Safeguards Notice* to parents/adult students. The *Procedural Safeguards Notice* contains a full explanation of special education rights.

See Chapter 12 for more information on procedural safeguards.

Section 3. Student Eligibility under the IDEA

To be eligible for services under the IDEA, a student must have a disability that:

1. meets the State eligibility criteria as established in this manual;
2. adversely affects educational performance; and
3. results in the need for specially designed instruction.

The process used to make this decision is an evaluation to determine special education eligibility. During this process, an evaluation team (which includes educators and the parent/adult student) reviews information from multiple sources including, but not limited to, general education interventions, formal and informal assessments, and progress in the general education curriculum.

See Chapter 4 for more information on eligibility and evaluation.

Section 4. Free Appropriate Public Education (FAPE)

The LEA is required to ensure that a free appropriate public education (FAPE) is available to students who reside within the LEA's boundaries and are eligible for special education. FAPE is individually determined for each student that qualifies for special education. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

See Chapter 2 for more information on FAPE.

Section 5. LEA Programs and Services

The LEA shall ensure that the same array of academic, nonacademic, and extracurricular activities and services is available to students with disabilities as is available to students without disabilities.

A. Educational Programs and Services

The LEA shall take steps to ensure that students with disabilities have access to the variety of educational programs and services that are available to all other students served by the LEA. These may include art, music, industrial arts, career technical education, and any other programs in which students without disabilities participate.

B. Physical Education

Physical education services, specially designed if necessary, shall be made available to every student with a disability receiving FAPE, unless the LEA enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades.

C. Nonacademic and Extracurricular Services and Activities

The LEA shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's Individualized Education Program (IEP) team, to provide nonacademic and extracurricular services and activities in a manner that affords students with disabilities equal opportunity to participate in those services and activities. This includes

counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to persons with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

Section 6. Individualized Education Program (IEP)

The IEP is a document that outlines how a particular student with a disability will receive a FAPE in the LRE. It is a working document that can be amended as the student's needs change. The IEP is created collaboratively by required IEP team members, including parents, the student, if appropriate, and other LEA personnel.

See Chapter 5 for more information on IEP development.

Section 7. Least Restrictive Environment (LRE)

The IDEA states that, to the maximum extent appropriate, students with disabilities are to be educated with students who are not disabled. The IEP team determines what constitutes LRE for the individual student. LRE requirements include ensuring that a continuum of alternative placements is available to meet the needs of students with disabilities and for special education and related services.

See Chapter 6 for more information on LRE.

Section 8. Summary of Activities That May Lead to Special Education Services

This section describes the steps that may lead to special education services. The activities within each step are often sequential, but may occur simultaneously. The process might occur in a different sequence for emergency or interim placements.

A. General Education Interventions

A general education problem-solving team, which may be referred to as a Response to Intervention (RTI) team or Multi-Tiered Systems of Support (MTSS) team, addresses student learning needs and ensures that referrals to consider special education are appropriate.

The general education problem-solving process shall include comprehensive early intervening services based on whole-school approaches such as: a tiered model using scientifically based reading (and other content area) programs, positive behavior supports, and a response-to-intervention system.

Instructional and/or behavioral interventions shall be attempted during the problem-solving process. These tiered interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and shall be clearly documented. If the student shows adequate progress with tiered general education interventions, a referral to consider a special education evaluation may be unnecessary. However, if tiered general education interventions need to be provided on an ongoing basis or if the student shows limited or no progress *and* the student's performance is significantly discrepant from peers, a referral to consider a special education evaluation may be warranted. Also, a parent of a student may initiate a referral for special education at any time. An LEA may not deny that referral simply because the student has not gone through the tiered general education intervention process.

See Chapter 4 for more information on problem-solving activities.

B. Referral to Consider a Special Education Evaluation

Following the problem-solving team's review of the student's response to general education interventions, and/or if the team suspects that the student has a disability and may be in need of special education, the problem-solving team shall initiate a referral to consider a special education evaluation. The purpose of this referral is to bring a student to the attention of an evaluation team so that it can determine whether to conduct a special education evaluation.

A referral for a special education evaluation marks the point at which procedural safeguards are provided to the parent. The parent/adult student shall be involved in decisions once the referral to consider a special education evaluation process has begun.

The evaluation team shall review existing data, which may include progress monitoring data and/or clinical assessments and information provided by the parent/adult student. The evaluation team shall document the review process and consider the need for further assessment. The evaluation team shall obtain written consent prior to conducting an initial evaluation and for subsequent assessments used to determine eligibility.

See Chapter 3 for more information on the referral process to consider a special education evaluation.

C. Written Notice and Written Consent

Before administering assessments as part of the special education evaluation, written notice shall be provided to the parent/adult student along with the procedural safeguards and written consent shall be obtained from the parent/adult student. The LEA may use a single form that meets the requirements of written notice and consent for assessment. In addition, if the evaluation team needs information for an evaluation from a non-educational agency or an individual, such as a doctor, written consent for the release of information shall be obtained from the parent/adult student.

See Chapter 4 and Chapter 12 for more information.

D. Evaluation and Eligibility Determination

After receiving consent, the evaluation team shall schedule assessments and ensure they are conducted. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs. Next, the evaluation team reviews the assessment data, the response to general education targeted interventions, and parent/adult student input and recommendations to determine whether the student is eligible for special education services. The evaluation team then compiles an *Eligibility Report* using data collected from individual assessments and provides the parent/adult student with a copy of the report. The eligibility report shall address, to the extent required, the general education instruction provided, targeted interventions previously employed, and the student's response to those interventions.

For children transferring from the Infant Toddler Program (ITP), eligibility shall be determined and an IEP or Individual Family Services Plan (IFSP) developed and implemented by the child's third (3rd) birthday. If a child turns three (3) during the summer, and the child does not require Extended School Year (ESY) services, the IEP team shall determine when special education and related services will begin, which may be in the new school year if the parent and LEA agree.

See Chapter 5 for more information on IEPs for children from ITP.

For students ages three (3) to twenty-one (21) the time between receiving consent for an initial evaluation and/or assessments and determining eligibility cannot exceed sixty (60) calendar days, with the exception of ITP referrals which must be completed by the child's third (3rd) birthday. In exceptional circumstances, the timeline may be extended beyond the sixty (60) day period.

See Chapter 4 for more information on timeline exceptions.

If the student is found not eligible for special education, the LEA shall provide *Written Notice* to the parent/adult student that the evaluation data does not indicate eligibility under the IDEA. The LEA shall maintain documentation in the student's educational records.

If the parent/adult student disagrees in whole or in part with the LEA's evaluation and/or the eligibility determination, he or she has the right to request Idaho Department of Education mediation, file a due process hearing challenging the decision, or seek an independent educational evaluation (IEE).

See Chapter 12 for more information.

E. IEP Development and Implementation

The following activities are included in the development and implementation of the IEP:

1. Conduct an IEP team meeting to develop and implement an IEP within thirty (30) calendar days of a determination that the student is eligible for special education and related services. For eligible students, the IEP can be developed at the same meeting at which eligibility is determined if all required IEP team members are present and agree to proceed.
2. After determining goals and services, determine the student's placement in the LRE in which the IEP can be implemented.
3. Obtain documentation indicating participation in the IEP team meeting.
4. Obtain initial consent in writing from the parent/adult student for the provision of special education services.
5. Provide copies of the IEP to the parent/adult student and other participants, as appropriate.
6. Provide written notice to the parent/adult student to address proposals or refusals to initiate or change the identification, evaluation, or education placement of the student, or the provision of FAPE to the student.
7. Make arrangements for IEP services by informing staff of their specific

responsibilities under the IEP.

8. Implement the IEP as soon as possible, but no later than within thirty (30) days of eligibility determination.
9. Provide the parent/adult student with periodic reports of the student's progress towards IEP goals, at a minimum, concurrent with the issuance of report cards.

See Chapter 5 for more information on IEP development.

F. Review and Revision of IEP and Placement Decision

1. Send the parent/adult student a *Procedural Safeguards Notice* with an invitation to attend an IEP team meeting (required at least once annually).

2. Convene an IEP team meeting under these circumstances:

   a. when changes in the IEP are requested or if the student is not making progress. In addition, the IDEA allows changes to the IEP without an IEP team meeting between the annual review dates if the LEA and parent agree; and

   b. at least annually to develop a new IEP.

3. Provide a copy of the amended IEP to the parent and the adult student when an IEP is amended or rewritten. In addition, written notice is required if the LEA is proposing to change or refusing to change the educational placement or the provision of FAPE.

4. Under Idaho regulations, the parent/adult student has the right to file a written objection to an IEP program change or placement change. If, within ten (10) calendar days of receiving written notice from the LEA, the parent/adult student files a written objection, the LEA shall not implement the change(s) to which the parent/adult student objects for 15 calendar days.

See Chapter 5 for more information on IEP reviews and Chapter 12 for more information about written objections.

G. Reevaluation

Reevaluations are conducted by the evaluation team. A reevaluation shall be completed as follows: (a) at least every three years, (b) when requested by the student's teacher or the parent/adult student, and (c) whenever conditions warrant. A reevaluation may not be conducted more than once per year unless the LEA and the parents agree.

The evaluation team shall include the following activities in the reevaluation process:

1. Invite the parent/adult student to participate in the review of existing data and to determine what additional data, if any, is needed as part of the reevaluation. Unless the parent/adult student requests that the evaluation team members meet as a group in a formal meeting, data can be gathered from individual team members at various times using a variety of methods.

2. Obtain written consent from the parent/adult student if assessments shall be

conducted. After gaining consent, ensure the completion of assessments and the eligibility report. The IDEA does not require consent for a reevaluation if the LEA has made documented attempts to obtain consent and the parent has not responded.

3. If the evaluation team determines that assessments are not needed to make an eligibility determination, provide *Written Notice* to the parent/adult student of this decision and of the parent's/adult student's right to request assessments.
4. Prepare an *Eligibility Report* that details the eligibility requirements for the student, even when no new assessments are conducted. The report shall address each required eligibility component.

5. Make an eligibility determination as a team. Provide the parent/adult student with a final copy of the *Eligibility Report*.

6. Determine whether revisions to the IEP are necessary and implement an IEP, if the student continues to be eligible. If the student is not eligible, follow procedures to discontinue services.

See Chapter 4 for more information on reevaluation.

H. Discontinuation of Services

Provide *Written Notice* to the parent/adult student informing them of the discontinuation of services when:

1. The evaluation team determines the student no longer meets eligibility requirements for special education services; or

2. The student meets the LEA and State requirements that apply to all students for receipt of a regular high school diploma; or

3. The student completes the semester in which he or she reaches the age of twenty-one (21) years or

4. Parent/adult student revokes consent for special education services.

When a student exits from special education as a result of graduating or aging out, the LEA shall provide the student with a summary of his or her academic achievement and functional performance, along with recommendations on how to assist the student in meeting postsecondary goals.

See Chapter 7 for more information on the discontinuation of services.

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CHAPTER 2: FREE APPROPRIATE PUBLIC EDUCATION

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CHAPTER 2: FREE APPROPRIATE PUBLIC EDUCATION

The LEA is required to ensure that a free appropriate public education (FAPE) is available to residents, homeless individuals and individuals from migrant families ages three (3) to twenty-one (21), residing or enrolled in the LEA and who are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the Glossary.

Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the IDEA means special education and related services that are:

1. FREE: provided at public expense;
2. APPROPRIATE: provided in conformity with an appropriately developed individualized education program (IEP);
3. PUBLIC: provided under public supervision and direction; and
4. EDUCATION: include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the Idaho Department of Education.

Section 2. Provision of FAPE

A. LEA Obligation

The LEA is required to ensure that FAPE is available to students residing or enrolled in the LEA who are eligible for special education. This includes students who reside in group, personal care, or foster homes, as well as institutions, if their legal guardian is a resident of Idaho, even though the guardian may reside in another Idaho LEA. It also includes students who are migratory or homeless as defined by the McKinney-Vento Homeless Assistance Act (see Glossary). If a student from another state is placed in Idaho by an out-of- state agency, parent, or LEA, the placing LEA, parent, or agency is responsible for the educational costs. If a student is placed in an LEA by an Idaho agency, the student is entitled to FAPE and the responsible agency is determined by Idaho Code regarding the specific situation.

The LEA is obligated to make FAPE available to each eligible student in the LEA as follows:

1. The LEA shall provide FAPE to an individual who is at least three (3) years old and qualifies for special education services unless the parent/adult student has refused special education services.
2. The LEA shall offer FAPE to parentally-placed students in nonprofit private schools in accordance with statutory and regulatory language
3. A free appropriate public education shall be available to any individual student with a disability who needs special education and related services, even though the student has not failed or been retained in a course and is advancing from grade to grade.
4. Participation in Comprehensive Early Intervening Services neither limits nor creates a right to FAPE.
5. LEAs are prohibited from requiring that a student obtain a prescription or take

medication as a condition of attending school, receiving an evaluation, receiving services under the IDEA, or otherwise accessing FAPE.

See Chapters 5, 8, 9, 10, and 14 for more information about the FAPE obligation.

B. Limit to LEA Obligation

A student with a disability who has been placed in a nonprofit private school or facility by the parent does not have an individual right to receive all or part of the special education and related services that the student would receive if enrolled in a public school. However, the LEA would have Child Find responsibilities. Students who are homeschooled are considered nonpublic school students; however, a student being homeschooled is not considered a private school student.

See Chapters 9 and 10 for more information about FAPE as it relates to parentally-placed private school students and homeschool students.

C. When LEA Obligation to Provide FAPE Ends

The LEA's obligation to provide FAPE to a student ends:

1. at the completion of the semester in which the student turns twenty-one (21) years old;
2. when the student meets the LEA requirements and the Idaho Content Standards that apply to all students for receipt of a high school diploma; a high school diploma does not include an alternative degree that is not fully aligned with the Idaho Content Standards, such as a high school equivalency diploma;
3. when the student no longer meets the eligibility criteria for special education services, as determined by the team after a reevaluation; or
4. when a parent/adult student has revoked consent for the continued provision of special education services.

D. Temporary Suspension of Educational Services

The LEA is not required to provide educational services to an eligible student during a suspension of ten (10) cumulative school days or less during a school year (unless the LEA provides services to students who are not disabled who are also suspended); however, educational services must be provided following this ten (10) day exception.

Section 3. FAPE Considerations

A. Applicability to Charter and Alternative Schools

Federal law requires that students with disabilities be provided educational choices comparable to those choices offered to students without disabilities. These choices include the opportunity to attend a public charter school or alternative public school. Students enrolled in public charter and alternative schools are entitled to FAPE and retain all of the rights and protections that are available under the IDEA.

B. Applicability to Detained Youth

Students with disabilities or suspected disabilities who are detained in city or county jails, juvenile detention centers, juvenile correctional facilities, or Idaho prisons are entitled to FAPE.

1. Services to Youth Detained in City or County Jails: The LEA in which the facility is located has the responsibility for Child Find and the provision of FAPE to eligible youth.

2. Services to Youth Detained in Juvenile Detention Centers (JDC): The LEA in which the facility is located has the responsibility for the provision of FAPE to eligible youth. Typically, detention in a JDC is short term, and the student most likely returns to his or her home LEA. While not obligated to do so, the home LEA may find it beneficial to coordinate school assignments through the JDC's education staff while the student is in the facility.

3. Services to Youth Placed in the Custody of the Department of Juvenile Corrections (DJC): When a student is placed in the custody of the Department of Juvenile Corrections, the responsibility for the provision of FAPE resides with the Department of Juvenile Corrections.

Services to Youth in the Custody of the Department of Correction (DOC): When a student is placed in the custody of the Department of Correction, the responsibility for the provision of FAPE resides with the Department of Correction.

C. Using Public and Private Insurance Funds to Provide FAPE

If a student is covered by a parent's private or public insurance or benefits, the LEA may access this insurance only if the parent provides informed consent. The consent requirements are different for accessing a parent's private insurance as opposed to public insurance (such as Medicaid).

If an LEA proposes to access a parent's public insurance to cover any of the costs associated with the provision of special education and/or related services, the LEA must do the following:

1. Provide written notification regarding the use of public benefits or insurance to the child's parents before accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent and annually thereafter. The written notification must explain all of the protections available to parents to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice must include a statement that the refusal to provide consent or the withdrawal of consent will not relieve the LEA's responsibility to ensure that all the required IEP services are provided at no cost to the parent. The notice must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.

2. Obtain a one-time written consent from the parent after providing the written

notification regarding use of public benefits or insurance before accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (e.g., billing for services); and (c) the agency to which the disclosure may be made (e.g., Medicaid). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services. Such consent may be withdrawn at any time by the parent.

3. If the child on an IEP moves into a new LEA, the new LEA responsible for providing a FAPE must provide the parents with written notification regarding use of public benefits or insurance and must obtain consent before accessing the child's or parent's public insurance.

If an LEA is proposing to access a parent's private insurance to cover any of the costs associated with the provision of special education and/or related services, the LEA must obtain parental consent each time the LEA proposes to access private insurance and must inform parents that their refusal to permit the LEA to access private insurance does not relieve that LEA of its responsibility to ensure that all required services are provided at no cost to parents.

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CHAPTER 3: CHILD FIND

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CHAPTER 3: CHILD FIND

The Child Find system involves three basic components leading to the determination of whether a student has a disability and requires special education. The components of Child Find are location, identification, and evaluation. This chapter describes location and identification activities.

See Chapter 4 for more information on the evaluation process.

Section 1. LEA Responsibility

The LEA is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students suspected of having disabilities, ages three (3) through the semester during which they turn twenty-one (21), who may need special education, regardless of the severity of the disabilities. The LEA is also responsible for coordinating with the Department of Health and Welfare (DHW) regarding the Child Find system for children ages birth through two (2) years. The LEA may appoint an individual to coordinate the development, revision, implementation, and documentation of the Child Find system.

The Child Find system shall include all students residing or enrolled in the LEA including students who are:

1. enrolled or may be enrolled in the LEA;
2. enrolled in alternative schools;
3. enrolled in charter schools;
4. enrolled in homeschool;
5. enrolled in private elementary and secondary schools (including religious schools) located in the LEA's geographic boundaries; including out-of- state parentally-placed private school students with disabilities;
6. not enrolled in elementary or secondary school, including resident students ages three (3) through five (5);
7. advancing from grade to grade;
8. highly mobile students (such as migrant and homeless students as defined by the McKinney-Vento Homeless Assistance Act); and
9. wards of the state.

Section 2. Locating Students

Locating students who may have disabilities involves coordinating with other agencies and promoting public awareness.

A. Coordination

For infants and toddlers, birth through two (2) years of age, Child Find is provided by the Idaho Infant/ Toddler Program (ITP). Although lead responsibility for the ITP has been designated to the DHW, interagency agreements provide for collaboration and coordination. The LEA shall use local interagency agreements for efficient use of resources and ease of service accessibility for students and families.

B. Public Awareness

The LEA shall take and document the necessary steps to ensure that LEA staff and the general public are informed of the following:

1. the availability of special education services;
2. a student's right to a free appropriate public education (FAPE);
3. confidentiality protections; and
4. the referral process.

This information may be provided through a variety of methods, which may include distributing brochures or flyers, including information in school or LEA publications, disseminating articles and announcements to newspapers, arranging for radio and television messages and appearances, speaking at faculty meetings or LEA in-services, and making presentations.

Section 3. Identification

The identification component of Child Find includes screening, early intervening through tiered general education interventions, and referral to consider a special education evaluation. The procedural rights under the IDEA are afforded when the student is referred for a special education evaluation by the parent/adult student or the LEA.

A. Screening

Screening is an informal, although organized, process, of gathering information related to student performance. Screening information may be used for identifying students who are not meeting or who may not be meeting Idaho Content Standards or Idaho Early Learning Guidelines (eGuidelines). A variety of methods may be used to screen students, including performance on statewide assessments, curriculum-based measures, daily work in the classroom, teacher observations, hearing and vision screeners, developmental milestones, and/or kindergarten readiness measures.

Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Although screening is an important part of the Child Find system, screening cannot be used to delay processing a referral to consider a special education evaluation where immediate action is warranted.

B. Tiered General Education Interventions

Tiered general education interventions are services for K-12 students who need additional academic and behavioral support to succeed in the *general education environment*. When a school's screening process reveals that a student is at risk of not meeting the Idaho Content Standards, the general education problem-solving team shall consider the student's need for tiered instructional and/or behavioral interventions to help the student succeed. These interventions are referred to as tiered general education interventions. It is important to remember that students who receive these interventions are not currently identified as needing special education or related services and do not have a right to FAPE

LEAs shall implement tiered general education interventions and activities that involve providing educational and behavioral evaluations, services, and supports. These services may also include professional development for teachers and other staff to enable them to deliver evidence-based academic and behavioral interventions with fidelity.

Tiered general education interventions should be based on whole-school approaches such as; the three-tiered model, research- based curriculum and instruction, positive behavior supports, and a response to intervention (RTI) system.

C. General Education Problem Solving

1. Establishing a Problem-Solving Team
    a. The LEA shall establish a problem-solving team and a process to plan accommodations and tiered interventions in general education and to ensure that referrals to consider a special education evaluation are appropriate. Team membership is established by the school or the LEA and shall involve general educators and administrators, and may include counselors, specialists, and special education personnel. While parent/adult student involvement is valuable and encouraged, the LEA is not required to include the parent/adult student on the problem-solving team.
    b. When problem solving involves a child three to five (3-5) years of age, the team shall seek input from family members, childcare programs, private preschools, or Head Start Programs, as appropriate. An early childhood problem- solving process needs to consider early childhood environments and the preschool student's need for supported instructional interventions in order for the student to participate in appropriate activities.
2. Referrals to the Problem-Solving Team
    a. Referrals to the problem-solving team may come from a variety of sources

including parents, students, other family members, public or private school personnel, agencies, screening programs, or as a result of annual public notice.

b. Referrals may be made for academic and/or behavioral concerns.

3. Tiered Interventions

a. Tiered interventions in general education or an early childhood environment shall be attempted before a student is referred to an evaluation team, unless the student's performance indicates an evaluation is warranted or a parent makes a request for a referral for a special education evaluation.

b. Tiered interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and should be clearly documented.

c. Documentation of the student's response to tiered interventions provided shall be reviewed and discussed by the problem-solving team.

4. Problem-Solving Team Decisions Following General Education Intervention

Following an intervention, the problem-solving team shall review progress monitoring data from the intervention and other relevant information to determine what action is warranted. The team considers a variety of options, including whether to:

1) continue the general education intervention because the student is making adequate progress but needs more time to reach goals;

2) discontinue the general education intervention because the student has met their intervention goals;

3) modify the intervention to better meet student needs;

4) explore services or programs outside of special education (such as Title I of the Elementary and Secondary Education Act, including English language programs; Section 504 accommodations; counseling); and/or

5) make a referral to consider a special education evaluation.

In the case of a preschool student, data and information shall be gathered and reviewed from such settings as childcare programs, private preschools, Head Start Programs, or the home.

Although problem-solving activities are an important part of the system, they cannot be used to delay processing a referral for consideration of a special education evaluation where immediate action is warranted. Either a parent or an LEA may initiate a request for an initial evaluation. If a parent initiates a referral for a special education evaluation, the evaluation cannot be delayed or denied due to the student not completing the general education intervention process.

Section 4. Referral to Consider a Special Education Evaluation

A. Evaluation Team

The evaluation team is the group of individuals established by the IDEA responsible for making decisions regarding evaluation, assessments, and eligibility.

The composition of the evaluation team will vary depending on the nature of the student's suspected disability and other relevant factors but must include qualified professionals and the

parent of the student/adult student. The evaluation team shall include the same membership (although not necessarily the same individuals) as the IEP team and other professionals as needed to ensure that appropriate, informed decisions are made.

An evaluation team has the flexibility of conducting business with or without a meeting. The case manager can gather input from evaluation team members in a variety of ways. The parent/adult student shall be included in the evaluation team and shall be given the opportunity to indicate whether he or she wishes the team to hold a meeting with all members attending.

B. Referral to Consider a Special Education Evaluation

The procedure for a referral to consider a special education evaluation for students suspected of having a disability includes the following:

1. Unless immediate action is warranted and documented, a referral to consider a special education evaluation is sent to the evaluation team *after* the problem-solving team has determined:
    a. the student's response to research-based interventions in general education (or age- appropriate activities for preschool) has not resulted in adequate progress;
    b. language and cultural issues are not the primary factors in the student's academic or behavioral discrepancy from peers.; and
    c. a lack of appropriate instruction in reading and/or math is not the primary factor in the student's academic or behavioral discrepancy from peers.
2. A *Referral to Consider a Special Education Evaluation/Reevaluation* form shall be completed.
3. Procedural safeguards are activated when a referral is made to consider a special education evaluation. If the referral came from someone other than the parent/adult student -the parent/adult student shall be notified. In either case, the parent/adult student shall be provided a copy of the *Procedural Safeguards Notice*. At the same time, the parent/adult student shall be afforded an opportunity to provide input regarding the need for and scope of the initial evaluation, including the opportunity to hold a meeting if desired.
4. The evaluation team (including the parent/adult student) reviews all available records, including family and health history, past school experiences, the results of general education interventions, and previous assessments and evaluations. The evaluation team shall decide what additional assessments, if any, are needed. This review and determination process can take place at a face-to-face meeting of the evaluation team or through an alternate format, unless the parent/adult student desires that a meeting be held.
    a. If the evaluation team determines that an evaluation is warranted, written notice shall be provided to the parent/adult student describing the proposed evaluation and written consent shall be obtained from the parent/adult student.
    b. If the evaluation team determines that an evaluation is not warranted at this time, the team may consider meeting the student's needs through other means, such as tiered systems of support, research-based curriculum and instruction, individualized positive behavior supports, or an evaluation under Section 504 of the Rehabilitation Act of 1973. The person initiating the referral, if other than the

parent/adult student, may be informed as to why the evaluation is not being conducted. Written notice of the LEA's refusal to evaluate a student for special education services shall be provided to the parent/adult student when a referral for a special education evaluation is made and the LEA determines that the evaluation is not warranted.

See Chapter 4 for more information on evaluation and eligibility.

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CHAPTER 4: EVALUATION AND ELIGIBILITY

This chapter contains the requirements for completing a special education evaluation from a referral to consider a special education evaluation through the determination of eligibility for special education services. The Idaho Department of Education has provided State eligibility criteria for special education services consistent with the IDEA for LEAs to use when determining eligibility.

See Chapter 3 for more information on Child Find procedures used to locate and identify students with suspected disabilities.

Section 1. Evaluation Team

The evaluation team is a group of people outlined by IDEA who make decisions regarding evaluation, assessments, and eligibility. The specific composition of the evaluation team will vary depending upon the nature of the student's suspected disability and other relevant factors. This tailored composition helps ensure that decisions are both appropriate and well-informed. The parent/adult student is a member of the evaluation team and shall be given an opportunity to provide input and participate in making team decisions. The evaluation team may review existing data and/or make an eligibility decision without a meeting unless the parent/adult student requests that a meeting be held. However, all required team members must participate in the evaluation and eligibility process.

Team Membership Requirements:

1. Parent/adult student;
2. District representative;
3. General education teacher;
4. Special education teacher; and
5. Other qualified professionals including individual(s) who can interpret assessment results and instructional implication.

The following additional qualified professionals are required team members when considering the following disability categories:

Qualified Professional	ASD	EBD	Intellectual Dis.	Language Imp.	Multiple Dis.	Other Health Imp.	Specific Learning Dis.	Speech Imp.
School Psychologist	Yes	Yes	Yes	No	Yes	Yes*	Yes	No
Speech Language Pathologist	Yes	No	No	Yes	No	No	Yes**	Yes

Additional Team Membership Requirements

1. *The evaluation team for making an educational determination of ADHD when considering Other Health Impairment shall include a school psychologist.

2. The evaluation team for identifying a Specific Learning Disability shall include:

    a. the student's general education teacher; or if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age;

    b. a school psychologist; and

    c. **when considering oral expression and/or listening comprehension as areas of concern under SLD, a speech language pathologist is a required member.

See Chapter 5 for more information about IEP Team membership, roles, and responsibilities.

Section 2. Purpose of an Evaluation

The purpose of the evaluation process is to determine the eligibility of a student for special education services. This pertains to both initial determination and reevaluation. It is also a process for gathering information about a student's strengths and needs to inform the IEP team in determining special education and related service needs. An evaluation process shall include a variety of assessment tools and strategies to gather relevant functional, developmental, social, emotional, behavioral, and academic information about the student, including information provided by the parent.

A. Definitions

Although the terms "evaluation" and "assessment" are often interchanged, there are significant differences between the meanings of the two terms. The terms are defined as follows:

1. Evaluation refers to procedures used to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.
2. Assessment is integral to the evaluation process and refers to the formal and informal processes of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. A test is one method of obtaining credible information. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal data.

B. Initiation of an Evaluation

A parent or a public agency may initiate a referral to consider a special education evaluation to determine whether an evaluation for special education is warranted. If warranted, the LEA shall conduct a comprehensive and individualized initial evaluation before determining eligibility and prior to the provision of special education and related services. If an evaluation is not warranted, written notice shall be provided to parent/adult student detailing the basis for the decision.

See Chapter 3 for more information about a referral to consider a special education evaluation.

Section 3. Written Notice, Consent for Assessment, and Timelines

Written notice shall be provided and informed consent shall be obtained before assessments are administered to a student as part of an evaluation.

A. Written Notice Requirements

Written notice shall be provided to the parent/adult student within a reasonable amount of time in any of the following instances:

1. prior to conducting any new assessments;
2. to explain the LEA's refusal to initiate assessment or evaluation; and
3. when the evaluation team determines that new assessments are not required for an evaluation or to make an eligibility determination.

Written notice shall be in words understandable to the general public. It shall be provided in the native language or other mode of communication normally used by a parent/adult student unless it is clearly not feasible to do so.

If the native language or other mode of communication is not a written language, the LEA shall take steps to ensure:

1. the notice is translated orally or by other means in the native language or other mode of communication;
2. the parent/adult student understands the content of the notice; and
3. there is written evidence that the above two requirements have been met.

The written notice shall include:

1. a description of the evaluation proposed or refused by the district;
2. an explanation of why the district proposes or refuses to assess or evaluate the student;
3. a description of any other options the district considered and the reasons why those options were rejected;
4. a description of each assessment, record, or report that the district used as a basis for the proposed or refused evaluation;
5. a description of any other factors relevant to the evaluation;
6. a statement of the parent/adult student's special education rights and how to obtain a copy of the *Procedural Safeguards Notice* (Note: If this is the initial evaluation, the parent/adult student must be provided a copy of the *Procedural Safeguards Notice* when initiating the referral to consider a special education evaluation process); and
7. sources for parents to contact for assistance in understanding the *Procedural Safeguards Notice.*

B. Consent Requirements

Informed consent in special education is the process of ensuring that parents have the

information they need to make a knowledgeable decision about a proposed activity for their student.

1. Consent means that the parent/adult student:
    a. has been fully informed in his or her native language or other mode of communication of all information relevant to the assessment and/or evaluation for which consent is sought;
    b. understands and agrees in writing (as indicated by signature) to the activities described; and
    c. understands that granting consent is voluntary and may be revoked in writing at any time *before* an assessment and/or evaluation is completed. However, once an assessment and/or evaluation has been completed, revocation of consent cannot be used to disregard the results of assessments already administered.
2. Consent for initial evaluation
    a. Informed written consent shall be obtained from the parent/adult student before the LEA conducts an initial evaluation of the student to determine whether the student qualifies for special education as a student with a disability. Written consent is required for initial evaluation even if the team determines no new assessments are necessary and the team is using only existing information to make the eligibility determination.
        1) If, after written consent has been obtained, the team determines the need to assess another area, written consent shall be sought for that area. The 60-day timeline does not change based on the new consent date. The evaluation shall be completed within 60 days of the date that the original written consent was received by the LEA.
    b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.
    c. The LEA shall make and document reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student has a disability and to identify the educational needs of the student. If a parent refuses consent, the LEA does not violate its obligation to provide FAPE if it declines to pursue the evaluation. If the parent does not provide consent, the LEA may offer an Idaho Department of Education facilitated meeting, or mediation, or request a due process hearing to challenge the decision.

        See Chapter 13 for more information about dispute resolution processes.
    d. If the student is a ward of the State and is not residing with the student's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility if:
        1) despite reasonable efforts to do so, the LEA cannot locate the parent;
        2) the rights of the parents of the student have been terminated in accordance with Idaho law; or
        3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Idaho law and consent for initial evaluation has been given by an individual appointed by the judge to represent the student.

C. Consent for Reevaluation

1. Written consent shall be sought for reevaluation that requires new assessments. Reevaluation consisting solely of review of existing data does not require written consent. This includes a review of the student's educational files/records. Written notice shall be provided when proposing to complete a reevaluation using only existing information.
2. Informed parental consent for a reevaluation is not required if the LEA demonstrates and documents that it made reasonable efforts to obtain consent and the child's parent has failed to respond.

D. When Consent Is Not Required

Parental consent is *not* required for:

1. the review of existing data as part of an evaluation;
2. an assessment that is administered to all students, unless consent is required for all students;
3. teacher or related service provider observations, ongoing classroom evaluations, or measures that are used to determine the student's progress toward achieving goals on the IEP; and/or
4. screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation, which may include group or individual curriculum-based or norm-referenced measures.

E. Refusing Consent or Failure to Respond to a Request for Consent

The parent/adult student can refuse consent for assessment(s).

For an initial evaluation, if consent is refused or the parent/adult student fails to respond, the student cannot be evaluated. However, the LEA may request Idaho Department of Education facilitation, mediation, or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates that evaluation is appropriate and there is no appeal, then the student may be evaluated. However, the LEA does not violate its obligations to provide FAPE if it declines to pursue the evaluation. Consent for the initial evaluation shall not be construed as consent for the initial provision of special education services should the student be deemed eligible.

If a student is homeschooled or placed in a private school by the parents at their own expense, and the parent does not provide consent for evaluation, or the parent fails to respond to a request to provide consent, the LEA may not use Idaho Department of Education mediation or due process procedures in order to gain consent and the LEA is not required to consider the student eligible for services.

An LEA shall not use a parent's refusal for consent to one service or activity to deny the parent or student any other service, benefit, or activity. In the case of assessment, this means that a parent/adult student's refusal of consent to assess a particular area cannot be used by the LEA to refuse assessment in other areas. The student's evaluation team should work to reach consensus

on the components required to complete a comprehensive evaluation.

See Chapter 12 for more information on consent and reasonable efforts.

F. Timeline

The time between receiving written consent for initial assessment and/or evaluation and eligibility determination cannot exceed sixty (60) calendar days. In unusual circumstances, an extension of the sixty (60) calendar day timeline may apply for the purpose of initial assessment. These circumstances may include the following:

1. The student enrolls in another LEA after the sixty (60) calendar day timeline begins and prior to the determination of the student's eligibility in the previous LEA. In such cases, the parent and LEA may agree in writing to a specific alternative timeline.
    a. Assessments shall be coordinated between the student's prior and subsequent schools to ensure prompt completion of the comprehensive evaluation.
2. The parent repeatedly fails or refuses to produce the student for an assessment or evaluation after the LEA has made reasonable efforts to schedule.

The time between eligibility determination and the development and implementation of the IEP shall not exceed thirty (30) calendar days.

For children transferring from Part C, the Infant Toddler Program (ITP), to Part B, eligibility shall be determined and an IEP developed by the child's third (3rd) birthday.

If a child turns three (3) during the summer, is eligible for special education, and does not require Extended School Year (ESY) services, special education and related services may begin in the new school year.

See Chapter 5 for additional information on collaboration with the ITP throughout the transition process.

Section 4. Information from Other Agencies or LEAs

Consent for release of information shall be received before the LEA seeks to obtain information about the student from other agencies, unless otherwise authorized by law. Upon receipt of consent, the case manager will send an *Authorization to Exchange Confidential Information Form* requesting information to individuals or agencies that have relevant information about the student. A copy of the signed *Authorization to Exchange Confidential Information Form* shall be retained in the student's confidential file. Sources of this additional information may include records from health and social service agencies, private preschool programs, legal service agencies, and non-school professionals such as physicians, social workers, and psychologists.

Federal laws and regulations do not require consent for the LEA to:

1. request information from other LEAs that the student has attended; or
2. send information to other LEAs in which the student intends to enroll.

Section 5. Evaluation and Eligibility Determination Procedures

A. Areas to Assess

The student shall be assessed in all areas of suspected need, which includes areas such as functional, behavioral, developmental, and academic skills needed to participate and progress in the general education curriculum. If needed, qualified personnel shall conduct a functional evaluation in the individual's customary environment to determine the need for assistive technology. The evaluation of each student with a suspected disability shall be individualized and sufficiently comprehensive to identify all of the student's suspected special education and related service needs whether or not commonly linked to the disability category in which the student may be classified. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), appropriate transition assessments shall be conducted.

Evaluation teams shall be especially mindful of cultural and linguistic differences during the evaluation and eligibility process. Teams should use caution when choosing assessments, whether informal or formal, to ensure the assessments are unbiased. Attention should be given to how the assessments are administered, interpreted, and applied to accurately identify culturally or linguistically diverse students who may need special education services.

B. Determination of Needed Initial or Reevaluation Data

As part of an initial evaluation or reevaluation, the evaluation team shall review existing evaluation data regarding the student including:

1. assessments and information provided by the parent/adult student concerning the student, including medical reports, clinical assessment or evaluation data, and other information from non-school providers;
2. current classroom-based assessments and observations, and/or data regarding the student's response to scientific, evidence-based interventions;
3. observations by teachers and related service providers; and
4. results from statewide and districtwide testing.

Based on that review, and input from the parent/adult student, the evaluation team will decide on a case-by-case basis what additional data, if any, are needed to determine:

1. whether the student meets State eligibility criteria as a student with a disability;
2. the student's present levels of academic and functional performance, including academic achievement and related developmental needs of the student;
3. whether the student needs specially designed instruction; or
4. whether any additions to the special education and related services are needed to enable the student to:
    a. meet the measurable annual goals set out in the student's IEP; and
    b. be involved in and progress in the general education curriculum (for preschool students, to participate in age-appropriate activities).

If the evaluation team determines new assessments are not required for the purpose of determining whether the student meets eligibility criteria during an evaluation, the LEA shall

provide written notice to the parent/adult student of the decision and the reasons for that decision.

The parent/adult student shall also be informed of his or her right to request assessments to determine eligibility and to determine the student's educational needs. The LEA will provide written notice if a parental request for additional assessment is denied. In the case of an initial evaluation, written consent to conduct an initial evaluation for special education must be obtained, whether or not new assessments are required.

C. Assessment Procedures and Instruments

The LEA shall ensure the evaluation or reevaluation meets the following requirements:

1. The evaluation shall be individualized and sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the suspected disability category. This includes, if appropriate, assessment of health, vision, hearing, social and emotional skills, general intelligence, communication, motor skills, and transition needs.
2. All assessments shall be provided at no expense to the parent/adult student.
3. The LEA shall provide and use assessment tools and strategies that produce relevant information that directly assists the evaluation team in determining the educational needs of the student.
4. The LEA shall use technically sound instruments that are valid and reliable and are tailored to measure specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient or standard score.
5. A variety of assessment tools and strategies shall be used to gather relevant academic, developmental, behavioral, and functional information about the student, including information provided by the parent/adult student and information related to enabling the student to be involved in and progress in the general education curriculum (or, for a preschooler, to participate in age-appropriate activities).
6. No single measure or assessment may be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.
7. Assessments shall be administered by qualified and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
8. Assessments and other materials shall be selected and administered so as not to be discriminatory on a racial or cultural basis.
9. Materials used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than solely measuring the student's English language skills.
10. Assessments and other materials shall be provided and administered in the student's native language and in the form most likely to yield accurate information on what the student knows and can do academically, behaviorally, developmentally, and functionally unless it is not feasible to provide or administer. Attempts to provide a

qualified examiner in the student's native language or mode of communication shall be documented.

11. In all direct contact with a student, the language normally used by the student in the home or learning environment shall be used. For an individual with blindness/low vision, for an individual who is deaf or hard of hearing, or for an individual with no written language, the mode of communication is that which is normally used by the individual (e.g., sign language, Braille, or oral communication).

Assessments shall be selected and administered to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills unless those are the factors that the test purports to measure.

D. Eligibility Determination

Upon completion of the student's initial evaluation or reevaluation, the evaluation team will consider the findings and determine whether the student meets or continues to meet State eligibility criteria. The evaluation team will draw upon information from a variety of sources, such as norm-referenced, standardized tests; parent/adult student input, teacher input, health history, social or cultural background; adaptive behavior; behavioral performance; and functional assessments to interpret evaluation data and determine eligibility.

See Section 7 of this chapter for more information on State eligibility criteria.

Special Rule for Eligibility Determination

A student cannot be identified as a student with a disability if the primary reason for such a decision is:

1. lack of appropriate instruction in reading, including the essential components of reading instruction as defined by the Elementary and Secondary Education Act—phonemic awareness; phonics; vocabulary development; reading fluency, including oral reading skills; and reading comprehension strategies;
2. lack of appropriate instruction in math; or
3. Limited English Proficiency.

Related Services

Related services include transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and include speech-language pathology and audiology services, interpreting services, psychological services, and physical and occupational therapy. Related services also include counseling services, orientation and mobility services, school health services, social work services, and parent counseling and training.

An IEP team may determine that a student found eligible for special education has a need for a related service. However, if a student with a disability needs only a related service and not

special education, then the student is not eligible for the related service. In Idaho, speech and/or language services may be considered a special education service.

E. The Eligibility Report

The evaluation team shall prepare an Eligibility Report and provide a copy of the report to the parent/adult student.

The Eligibility Report shall include:

1. names and positions of all evaluation team members;
2. information regarding the student's need for specially designed instruction (special education and related services);
3. confirmation and supporting data that the disability is not primarily due to lack of appropriate instruction in reading, including the essential components of reading — phonemic awareness; phonics; vocabulary development; reading fluency, including oral reading skills; and reading comprehension strategies; or math;
4. information about how the student's disability adversely affects his or her educational performance;
5. data on the student for all areas of suspected disability as required in the State eligibility criteria;
6. confirmation and supporting data that the student's learning difficulties are not primarily due to Limited English Proficiency;
7. the date of the eligibility determination; and
8. the name and position of all those administering assessments.
9. In the case of Specific Learning Disability eligibility determination, the eligibility report shall include certification in writing that the report reflects each member's conclusions (agreement). In the case of team member disagreement with the conclusions, a written statement shall be attached to the eligibility report presenting the dissenting team member's conclusions.

Section 6. Reevaluation and Continuing Eligibility

A. Reevaluation Requirements

The LEA shall ensure that a comprehensive, individualized reevaluation of each student with a disability is conducted in accordance with all the required evaluation procedures outlined in this chapter.

A reevaluation shall occur at least once every three (3) years. The evaluation team shall complete the reevaluation consideration process and the associated form to determine whether new assessment(s) are needed for the reevaluation. The evaluation team may agree that new assessments are not required to determine eligibility. Written notice shall be provided to the parent/adult student stating this decision and the reasons for it. The parent/adult student shall be notified of the right to request new assessment(s) as part of the reevaluation. An updated Eligibility Report documenting all eligibility criteria shall be completed by the reevaluation due

date to establish and document continuing eligibility.

The LEA shall ensure that a reevaluation is conducted more frequently than every three (3) years if it is determined that the education or related service needs of the student, including present levels of academic achievement and functional performance, warrant a reevaluation; or the parent/adult student or the student's teacher requests a reevaluation.

A reevaluation may not occur more than once per year unless the parent/adult student and the LEA agree otherwise. If the parent makes a request within the year and the LEA does not agree, the LEA shall send written notice of refusal.

B. Reevaluation Prior to Discontinuation

1. The LEA shall evaluate a student with a disability before the team determines that the student is no longer eligible for special education.

    a. If a parent/adult student refuses consent for assessment, an evaluation may be completed using existing information.

2. Reevaluation is not required in the following two circumstances:

    a. before the discontinuation of a student's eligibility due to graduation, if the student meets comparable academic requirements that are equally as rigorous as those required of nondisabled students and receives a regular diploma;

    b. the student has reached the end of the semester in which he or she turns twenty-one (21) years of age.

        1) Note: Although a reevaluation is not required in these two cases, the LEA shall provide the student with a summary of his or her academic achievement and functional performance, including recommendations on how to assist the student in meeting his or her post-secondary goals.

See Chapter 7 for more information about the Summary of Performance.

C. Informing the Parent/Adult Student

Before the reevaluation is due, contact shall be made with the parent/adult student informing him or her:

1. that the reevaluation will be conducted;
2. of the decision to conduct or not conduct new assessments for the reevaluation with appropriate written notice and/or written consent based on this decision; and
3. that input will be sought from the parent/adult student.

D. Nature and Extent of Reevaluation

Before any reevaluation of the student, the evaluation team will determine the nature and extent of the student's needs by reviewing existing data using the reevaluation consideration process and the associated form.

Based on this review, the evaluation team will proceed with one of the following options:

1. No New Assessments or Additional Information Needed
    a. If the evaluation team decides that no new or additional assessments are needed to determine whether the student continues to be eligible for special education services, the LEA shall provide written notice to the parent/adult student of this decision and his or her right to request further assessment.
    b. If the parent/adult student requests new or additional assessments to determine whether the student continues to meet criteria for special education services under the IDEA, then the LEA is required to conduct the assessments.
    c. If the parent/adult student requests an additional assessment for reasons other than eligibility, such as admission to college, then the LEA shall consider the request and provide written notice of its decision.
2. New Assessments Needed
    a. If the evaluation team determines that new assessments are needed, the LEA will seek consent to administer the needed assessments and provide the parent/adult student with written notice regarding proposed assessments. If the parent/adult student fails to respond after the LEA has made reasonable efforts to obtain consent for assessments as part of a reevaluation, the LEA may proceed with the assessments. The LEA shall maintain documentation of its efforts to seek consent.
    b. See Section 3B of this chapter for a definition of reasonable efforts.
    c. If the parent/adult student denies consent to reassess, no new assessments can be conducted. However, an evaluation may be conducted using existing information.
    d. The LEA may request Idaho Department of Education mediation or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates the assessment is appropriate and there is no appeal, then the student may be assessed. All reevaluation procedures shall be provided at no cost to the parent/adult student.

Informed parental consent for a reevaluation need not be obtained if the LEA can demonstrate through documentation that it made reasonable efforts to obtain consent and the parent/adult student has failed to respond.

E. Eligibility Report for Reevaluations

The evaluation team shall consider evaluation findings and determine whether the student continues to meet criteria for special education services.

The evaluation team shall prepare an eligibility report detailing the review of existing data, the results of new assessments, and a summary demonstrating how the student continues to meet eligibility criteria. The eligibility report shall be completed even if no new assessments were conducted. The eligibility report shall address each required eligibility component and include results of previous assessments if they are being used to determine eligibility.

Refer to Section 5 of this chapter for eligibility requirements.

Section 7. State Eligibility Criteria

The LEA shall use the eligibility criteria and assessment procedures set forth in this Manual when determining eligibility for special education. This section contains the definition and the eligibility criteria for each specific disability that shall be used to determine whether an individual qualifies as a student with a disability in need of special education.

All disabilities except Developmental Delay (DD) are applicable for students from the age of three (3) to twenty-one (21).

Only students ages three (3) through nine (9) can be identified in the DD category. If the LEA elects to use the DD category, it applies only to students from age three (3) up until their tenth (10th) birthday.

A. Three-Prong Test for Eligibility

To demonstrate eligibility for special education services all three of the following criteria shall be met and documented. This is often called the three-prong test for eligibility.

The Eligibility Report shall document each of the following three criteria:

1. the student has a disability according to the established State eligibility criteria;
2. the student's disability adversely affects educational performance; and
3. the student needs specially designed instruction.

Definitions:

State Eligibility Criteria: The State eligibility requirements for specific disabilities listed in this chapter.

Adverse Effect: A determination made by the evaluation team that the student's progress is impeded by the disability to the extent that the student's educational performance measures significantly and consistently below the level of similar-age, grade-level peers, preventing the student from benefiting from general education. Educational performance refers to the student's performance in academic achievement, developmental, social, emotional, behavioral and/or functional skills.

Specially Designed Instruction: Special education is specially designed instruction, provided at no cost to the parents, to meet the unique needs of a student with a disability. Specially designed instruction means adapting the content, methodology, or delivery of instruction to address the unique needs of an eligible student that result from the student's disability and to ensure access to the general education curriculum so that the student can meet the Idaho Content Standards that apply to all students.

B. Disability Categories

1. Autism Spectrum Disorder

Definition: An Autism Spectrum Disorder (ASD) is a developmental disability, generally evident in the early developmental period, significantly affecting communication and social interaction, characterized by the following:

a. Persistent deficits in social communication and interaction across multiple contexts, currently or by history.

b. Symptoms generally present in the early developmental period, before age three (3), but may not fully manifest until social demands exceed limited capacities or may be masked by learned strategies in later life.

c. Other characteristics often associated with ASD include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and hyper- or hypo-reactivity to sensory input.

d. Characteristics vary from mild to severe as well as in the number of symptoms present and are not primarily the result of intellectual disability, developmental delay, or an emotional behavioral disorder.

State Eligibility Criteria for Autism Spectrum Disorder (ASD): An evaluation team will determine that a student is eligible for special education services as a student with ASD when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student has a developmental disability, generally evident in the early developmental period, before age three (3), that affects social communication and social interaction;

c. The student must meet the disability definition (above) of an autism spectrum disorder as determined by an evaluation team that includes a school psychologist and a speech-language pathologist. The team must consider a private evaluation or diagnosis of ASD provided by a parent from a psychiatrist, a physician, or a licensed psychologist as meeting the definition of autism spectrum disorder;

d. The student's disability adversely affects educational performance; and

e. The student needs specially designed instruction.

2. Blindness or Low Vision

Definition: Blindness refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials. Low vision refers to the ability to use vision as one channel of learning if educational materials are adapted.

State Eligibility Criteria for Blindness or Low Vision: An evaluation team will determine that a student is eligible for special education services as a student with blindness or low vision when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student has documentation of blindness or low vision, as determined by a qualified professional, including one or more of the following:

i. Blindness – visual acuity of 20/200 or less in the better eye with the best possible correction at distance and/or near, or visual field restriction of 20 degrees or less in the better eye;

ii. Low Vision – visual acuity better than 20/200 but worse than 20/70 in the better eye with the best possible correction at distance and/or near, or visual field restriction of 70 degrees or less but better than 20 degrees in the better eye;

iii. Eye condition – including oculomotor apraxia, cortical visual impairment, convergence insufficiency, or other condition;

iv. Progressive loss of vision which may affect a student's educational performance in the future;

v. Functional vision loss where acuity or visual field alone may not meet the criteria above;

c. The student's disability, even with correction, adversely affects educational performance; and

d. The student needs specially designed instruction.

3. Deaf or Hard of Hearing

Definition: Deaf or Hard of Hearing refers to a hearing loss, whether permanent or fluctuating, that impairs the access, comprehension, and/or use of linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

State Eligibility Criteria for Deaf or Hard of Hearing: An evaluation team will determine that a student is eligible for special education services as a student who is deaf or hard of hearing when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student exhibits a hearing loss that hinders his or her ability to access, comprehend, and/or use linguistic information through hearing, with or without amplification;

c. The student has been diagnosed by an audiologist as having a hearing loss;

d. The student's disability adversely affects educational performance; and

e. The student needs specially designed instruction.

4. Deaf-Blindness

Definition: A student with deaf-blindness demonstrates coexisting hearing and vision loss, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be appropriately educated with special education services designed solely for students who are deaf/hard of hearing or blind/low vision.

State Eligibility Criteria for Deaf-Blindness: An evaluation team will determine that a student is eligible for special education services as a student with deaf-blindness when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been

conducted;

b. The student exhibits coexisting hearing and vision loss, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students who are deaf/hard of hearing or blind/low vision;

c. The student is diagnosed with vision loss by an optometrist or ophthalmologist and with hearing loss by an audiologist;

d. The student's disability adversely affects educational performance; and

e. The student needs specially designed instruction.

5. Developmental Delay

Definition: The term developmental delay is appropriate for students ages three (3) until their tenth (10^{th}) birthday who do not clearly meet criteria for another disability category and are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following broad developmental areas:

a. cognitive development – includes perceptual discrimination, memory, reasoning, pre-academic/academic skills, and/or conceptual development;

b. physical development – includes coordination of the large and/or small muscles of the body (e.g., gross, fine, and perceptual motor skills);

c. communication development – includes expressive and/or receptive communication abilities, verbal and/or nonverbal;

d. social or emotional development – includes meaningful social interactions with adults and/or other students as well as those involved in emotional/behavioral regulation; and/or

e. adaptive development – includes independent functioning in major life activities, as well as self-help/daily living skills (e.g., eating, dressing, toileting, etc.).

A student who qualifies for special education under the category of developmental delay cannot qualify for special education services beyond his or her tenth (10^{th}) birthday unless he or she has been determined to be eligible as having a disability other than developmental delay. If the student turns ten (10) before the due date of his or her next reevaluation, the evaluation team must conduct a reevaluation to determine whether the student is eligible under another disability category prior to the student's tenth (10^{th}) birthday.

State Eligibility Criteria for Developmental Delay: An evaluation team may determine that a student is eligible for special education services as a student with a developmental delay when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student is at least three (3) years of age but less than ten (10) years of age;

c. The student does not clearly meet the eligibility criteria for another disability category;

d. The student has developmental and/or learning problems that are not primarily the result of limited English proficiency, or cultural difference;

e. The student meets either of the following two criteria in one or more of the broad developmental areas listed below as measured by a score that combines multiple data points into a summary score, such as full scale, domain, composite, index, or quotient scores in the broad developmental area of concern:

   1) Criteria:

      i. The student functions at least 2.0 standard deviations below the mean in one broad developmental area (30 percent delay in age equivalency, or functions at or below the 2nd percentile). When T-scores are reported with elevated scores signifying increased concerns, T-scores of 70 or higher or at or above the 98th percentile, correspond to 2.0 standard deviations from the mean; or

      ii. The student functions at least 1.5 standard deviations below the mean in two or more broad developmental areas (25 percent delay in age equivalency, or functions at or below the 7th percentile). When T- scores are reported with elevated scores signifying increased concerns, T-scores of 65 or higher or at or above the 93rd percentile, correspond to 1.5 standard deviations from the mean.

   2) Broad Developmental Areas:

      i. Cognitive development;

      ii. Physical development;

      iii. Communication development

      iv. Social or emotional development; and/or

      v. Adaptive development,

f. The student's disability adversely affects educational performance; and

g. The student needs specially designed instruction.

6. Emotional Behavioral Disorder

Definition: A student with an emotional behavioral disorder exhibits one or more of the following characteristics over a long period of time, and to a marked degree:

a. an inability to learn that cannot be explained by intellectual, sensory, or health factors;

b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

c. inappropriate types of behavior or feelings under normal circumstances;

d. a general pervasive mood of unhappiness or depression;

e. a tendency to develop physical symptoms or fears associated with personal or school problems; or

f. Schizophrenia.

The term *does not* include social maladjustment unless it occurs concurrently with an emotional behavioral disorder.

State Eligibility Criteria for Emotional Behavioral Disorder: An evaluation team will determine that a student is eligible for special education services as a student with emotional behavioral disorder when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student has been identified as exhibiting characteristics consistent with the criteria (*a) i-vi* above) by one or more of the following: school psychologist, licensed psychologist, psychiatrist, physician, or licensed social worker;

c. The student has been observed exhibiting one or more of the six (6) behavioral or emotional characteristics listed in the definition of emotional behavioral disorder;

d. The characteristic(s) has been observed:

   1) for a long period of time (at least 6 months); and

   2) by more than one knowledgeable observer; and

   3) in more than one setting; and

   4) at a level of frequency, duration, and/or intensity that is significantly different from other students' behavior in the same or similar circumstances;

e. The student's disability adversely affects educational performance in the area(s) of academics, peer and teacher interaction, participation in class activities, and/or classroom conduct; And

f. The student needs specially designed instruction.

7. Intellectual Disability

Definition: Intellectual Disability is defined as significantly subaverage intellectual functioning that exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period.

State Eligibility Criteria for Intellectual Disability: An evaluation team will determine that a student is eligible for special education services as a student with an intellectual disability when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student has a full-scale intelligence score or intelligence quotient (IQ) at or below a standard score of 70, plus or minus the standard error of measurement at the 95 percent confidence level of the test being used. The assessment must be conducted by a licensed psychologist or certified school psychologist using an individually administered intelligence test;

   1) If, due to the severity and complexity of a student's disability, an IQ score cannot be obtained, the school psychologist may determine the presence of Intellectual Disability using a preponderance of evidence which must include:

i. an explanation of why an IQ score cannot be obtained;

ii. evidence supporting the presence of an Intellectual Disability; and

iii. scores indicating severe and global adaptive deficits at least two (2) standard deviations below the mean as measured by a norm-referenced assessment of adaptive skills using the global adaptive score.

The preponderance of evidence approach is not to be used for students who are unable or unwilling to participate in an assessment solely due to behavior.

c. The student exhibits concurrent deficits in adaptive functioning unexpected for his or her age in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, or safety. "Concurrent deficits" means two (2) standard deviations below the mean, plus or minus the standard error of measurement at the 95 percent confidence level;

d. The student's disability adversely affects educational performance; and

e. The student needs specially designed instruction.

To prevent inappropriate identification of students as having an intellectual disability, caution is advised when assessing students with cultural or language differences. When determining eligibility, tests measuring intellectual ability shall be used with care; that is, only those tests designed and normed for the population being tested may be used. Tests measuring intellectual ability that are translated into another language by the examiner or an interpreter yield invalid test results and shall not be used.

8. Language Impairment

Definition: A language impairment exists when there is a disorder or delay in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems. The impairment may involve any one or a combination of the following:

a. the form of language (morphological and syntactic systems);

b. the content of language (semantic systems); and/or

c. the function of language in communication (pragmatic systems).

A language disorder does not exist when language differences are due to non-standard English or regional dialect or when the evaluator cannot rule out environmental, cultural, or economic disadvantage as primary factors causing the impairment. If the student has or is suspected of having hearing loss, the evaluation team should consider whether a hearing screening should be conducted, if one has not previously been completed. Additionally, the team must consider consulting an audiologist, Deaf and Hard of Hearing Teacher, and/or Idaho Educational Services for the Deaf and Blind (IESDB). If the criteria for Deaf or Hard of Hearing have not been met, the student can be considered as having a Language Impairment when the State eligibility criteria below are met.

State Eligibility Criteria for Language Impairment: An evaluation team will determine that a student is eligible for special education and related services as a student who has a language impairment when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. At least two procedures, one of which yields a standard score, are used to assess receptive language and/or expressive language.

c. The student has attained scores on a standardized measure that are 1.5 standard deviations or more below the mean, at or below the 7th percentile, in receptive or expressive language or the function of language in communication.

d. The student's disability adversely affects educational performance.

e. The student needs specially designed instruction. (Language therapy can be considered a special education service or a related service.)

Caution is advised when evaluating a student whose primary language is other than English. The acquisition of the English language is not to be mistaken as a language impairment. When assessing a student whose primary language is not English and an appropriate standardized measure is not available in the student's primary language, the speech language pathologist may determine the presence of Language Impairment using a preponderance of evidence which must include:

a. information regarding the student's language history and background (e.g., language exposure for all languages utilized, age of acquisition for each language, use of each language);

b. developmental history, in order to consider patterns of development and to determine if other areas of development should also be considered during the evaluation;

c. assessment in both languages to differentiate between language difference and a Language Impairment. The assessment may include the following:

    1) Standardized measures if they are culturally and linguistically appropriate and available in the student's primary language. The administration of these assessments should follow the guidelines of the testing manuals and be administered by a person competent in the language being assessed. An interpreter should not be used to translate a standardized language assessment not designed for the population represented by the student. Note: If there are not culturally and linguistically appropriate standardized tests available, the preponderance of evidence takes the place of required standardized assessment scores listed in the Language Impairment eligibility criteria.

    2) Dynamic Assessment, a pretest-intervention-posttest approach to evaluate a student's learning of language. It is an approach that focuses on how a student learns and responds to instruction.

d. peer comparison information;

e. parent and teacher reports regarding the student's language use and performance in different settings; and

f. information regarding cultural considerations that may impact language development and assessment (e.g., cultural values, beliefs, practices, and dialect differences).

Required evidence (listed above) supporting the presence of a Language Impairment for multilingual learners must be present in the Eligibility Report.

NOTE: A student may receive language services if he or she is eligible for special education under another disability category and needs language services as a special education service or related service in order to benefit from special education without meeting the eligibility criteria for Language Impairment. As a special education service or related service under another eligibility category, there is no specific score that indicates the need or lack of need for language therapy.

9. Multiple Disabilities

Definition: Multiple disabilities are two or more co-existing, severe impairments, one of which usually includes an intellectual disability, such as intellectual disability/blindness, intellectual disability/orthopedic impairment, etc. Students with multiple disabilities exhibit impairments that are life long, significantly interfere with independent functioning, and necessitate environmental accommodations or adaptations to enable the student to participate in school and society.

If the student meets eligibility criteria for both Deaf or Hard of Hearing and Blind or Low Vision, the category of Deaf-Blindness should be considered. However, a student who meets criteria under Deaf-Blindness and another disability listed below may meet the criteria for Multiple Disabilities.

At least one of the qualifying disabilities included **must** be:

Autism;

Blindness or Low Vision;

Deaf or Hard of Hearing;

Deaf-Blindness;

Intellectual Disability; or

Orthopedic Impairment.

The following disability categories may **not** be used to establish the two or more co-existing, severe impairments required for eligibility under Multiple Disabilities:

Developmental Delay;

Language Impairment;

Specific Learning Disability; or

Speech Impairment.

State Eligibility Criteria for Multiple Disabilities: An evaluation team will determine that a student is eligible for special education services as a student with multiple disabilities when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student meets eligibility criteria for two or more severe co-existing impairments as defined above, the combination of which causes such significant educational

problems that the student cannot be accommodated by special education services designed solely for one of the disabilities;

c. The student meets State eligibility criteria as outlined for each disability category;

d. The student's disability adversely affects educational performance; and

e. The student needs specially designed instruction.

10. Orthopedic Impairment

Definition: Orthopedic impairment means a severe physical limitation. The term includes impairments caused by congenital anomaly (clubfoot, absence of an appendage, etc.), an impairment caused by disease (poliomyelitis, bone tuberculosis, etc.), and an impairment from other causes (cerebral palsy, amputations, and fractures or burns that cause contractures, etc.).

State Eligibility Criteria for Orthopedic Impairment: An evaluation team will determine that a student is eligible for special education services as a student with an orthopedic impairment when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student exhibits a severe orthopedic impairment. The term includes congenital anomalies, impairments caused by disease, and impairments from other causes that are so severe as to require special education services;

c. The student has documentation of the condition by a physician or other qualified professional;

d. The student's disability adversely affects educational performance; and

e. The student needs specially designed instruction.

11. Other Health Impairment (OHI)

Definition: A student classified as having Other Health Impairment exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems. These health problems may include, but are not limited to, asthma, attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, and stroke.

A student with ADHD may also be eligible under another category (generally Specific Learning Disability or Emotional Behavioral Disorder) if he or she meets the criteria for that other category and needs special education and related services. All students with a diagnosis of ADHD are not necessarily eligible to receive special education under the IDEA, just as all students who have one of the other conditions listed under Other Health Impairment are not necessarily eligible, unless it is determined the disability adversely affects educational performance and the student requires specially designed instruction.

State Eligibility Criteria for Other Health Impairment: An evaluation team will determine that a student is eligible for special education services as a student with an Other Health Impairment when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems;

c. The student has been diagnosed by a physician with a condition consistent with an Other Health Impairment as described above. In the case of ADHD, an educational determination may be provided by a school psychologist. Diagnosis from a licensed psychologist or other diagnostician provided to the LEA must be considered by the evaluation team;

d. The student's disability adversely affects educational performance; and

e. The student needs specially designed instruction.

Educational Determination of ADHD: Attention-deficit/hyperactivity disorder (ADHD) is a condition characterized by an ongoing pattern of inattentive, hyperactive, and/or impulsive behaviors manifested to a significant degree, over time, and in more than one setting. While school personnel are not typically qualified to make a formal, clinical diagnosis of ADHD, an educational determination may be made by a certified school psychologist.

It is important that evaluation teams draw from a variety of sources of information to gather the most comprehensive view of the student's performance across environments. There is no single assessment or measure that identifies ADHD. An educational determination of ADHD must include:

a. Observation of the student in the general education classroom setting as well as any other educational settings in which the student's educational performance may be impacted;

b. Review of the student's educational, family, and medical history;

c. Formal assessment(s) comparing the student's inattentive, hyperactive, and/or impulsive behavior to that of other students of the same sex and age (rating scales, continuous performance assessments, etc.); and

d. Informal assessment(s) such as interviews, review of classroom work, feedback from staff or parents, behavior trackers, etc.

The school psychologist, in conjunction with the evaluation team, should also consider whether the following assessments are needed when making an educational determination of ADHD:

a. Intellectual/cognitive assessment;

b. Speech or language assessment;

c. Vision assessment;

d. Hearing assessment; and/or

e. Other assessments that may be necessary to support decision-making and/or rule out other conditions that may be impacting the student's educational performance.

An educational determination of ADHD should not be used to avoid consideration of another category that may better explain the student's learning difficulties.

12. Specific Learning Disability

Definition: Specific Learning Disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

The IDEA recognizes dyslexia as a type of SLD. According to the International Dyslexia Association, dyslexia is characterized by "difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction." When considering SLD, particularly in the areas of Basic Reading Skills and Reading Fluency, the evaluation team may determine if there is a need to conduct assessment(s) specific to dyslexia.

Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional behavioral disorder, or environmental, cultural, or economic disadvantage.

State Eligibility Criteria for Specific Learning Disability: In determining whether a student has a Specific Learning Disability, an evaluation that meets the procedures outlined in Section 5 of this chapter must be conducted, and the student must meet, at a minimum, the following criteria:

a. **Exclusionary Factors.** The student's lack of achievement is not primarily the result of:

   1) A visual, hearing, or motor impairment;
   2) Intellectual disability;
   3) Emotional behavioral disorder;
   4) Environmental, cultural or economic disadvantage;
   5) Limited English Proficiency;
   6) A lack of appropriate instruction in reading, including the essential components of reading; and/or
   7) A lack of appropriate instruction in math.

AND

b. **Evidence of Low Achievement.** The student demonstrates low achievement in the area(s) of suspected disability listed below as evidenced by a norm-referenced,

standardized achievement assessment in the area(s) of:

1) Oral expression;
2) Listening comprehension;
3) Written expression;
4) Basic reading skills;
5) Reading comprehension;
6) Reading fluency;
7) Mathematics calculation; and/or
8) Mathematics problem solving.

AND

c. **Observation.** The student has been observed in their learning environment to document academic performance and behavior in each area(s) of concern.

AND

d. **Response to Intervention OR Pattern of Strengths and Weaknesses.**

1) **Response to Intervention.** The student does not make sufficient progress in response to effective, evidence-based instruction and intervention for the student's age or to meet state-approved, grade-level standards in one or more of the following areas:

i. Oral expression;
ii. Listening comprehension;
iii. Written expression;
iv. Basic reading skills;
v. Reading comprehension;
vi. Reading fluency;
vii. Mathematics calculation; and/or
viii. Mathematics problem solving.

OR

2) **Pattern of Strengths and Weaknesses.** The student demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning.

AND

e. **Adverse Impact**. The disability adversely impacts the student's educational performance.

AND

f. **Need for Specially Designed Instruction**. The student needs specially designed instruction.

Required Evidence

Required Evidence. The evaluation for determining initial Specific Learning Disability eligibility and requirements for parent notification and involvement shall be conducted in accordance with the procedures detailed in Chapter 4 of this Manual. To demonstrate initial student eligibility under this category, the following evidence must be provided:

a. **Exclusionary Factors.** The team must provide evidence that the student's learning difficulty is not primarily the result of: visual

1) A vision or hearing loss, or motor impairment;

If prior to or during the *Referral to Consider a Special Education Evaluation* process, a vision or hearing loss and/or motor impairment was suspected or identified as an area of concern for the student, provide evidence that such impairment is not the primary factor in the student's learning difficulties.

2) Intellectual disability;

Provide evidence that the student does not have an intellectual disability that is best served under the category of Intellectual Disability as defined in this *Manual*.

3) Emotional behavioral disorder;

If prior to or during the *Referral to Consider a Special Education Evaluation* process, an emotional behavioral disorder was suspected or identified as an area of concern for the student, provide evidence that such impairment is not the primary factor in the student's learning difficulties.

4) Environmental, cultural or economic disadvantage;

If prior to or during the *Referral to Consider a Special Education Evaluation* process, an environmental, cultural, and/or economic disadvantage was suspected or identified as an area of concern for the student, provide evidence that such factors are not the primary factor(s) in the student's learning difficulties.

5) Limited English Proficiency;

If the student is an English Learner, provide evidence that English language acquisition is not the primary factor in the student's learning difficulties and provide evidence that the student received meaningful and equitable access to general education curriculum and English Learner services.

6) A lack of appropriate instruction in reading, including the essential components of reading; or

Attendance. Provide evidence that the student has attended school regularly. If the student meets the criteria as a student who is or has been chronically absent, provide evidence that attendance is not the primary factor in the student's learning difficulties.

General Education Instruction. Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in

reading. If the student has not received grade-level, standards- aligned instruction in reading, provide evidence that lack of access to general education instruction in reading is not the primary factor in the student's learning difficulties.

Qualified Personnel. Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in reading from a qualified teacher. If the student has not received grade- level, standards-aligned instruction in reading from a certified teacher, provide evidence that lack of instruction from qualified personnel in reading is not the primary factor in the student's learning difficulties.

7) A lack of appropriate instruction in math.

Attendance. Provide evidence that the student has attended school regularly. If the student meets the criteria as a student who is or has been chronically absent, provide evidence that attendance is not the primary factor in the student's learning difficulties.

General Education Instruction. Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in math. If the student has not received grade-level, standards- aligned instruction in math, provide evidence that lack of access to general education instruction in math is not the primary factor in the student's learning difficulties.

Qualified Personnel. Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in math from a qualified teacher. If the student has not received grade- level, standards-aligned instruction in math from a certified teacher, provide evidence that lack of instruction from qualified personnel in math is not the primary factor in the student's learning difficulties.

AND

b. **Evidence of Low Achievement**. Provide evidence of low achievement in each area of concern. These include:

1) Oral expression;
2) Listening comprehension;
3) Written expression;
4) Basic reading skills;
5) Reading comprehension;
6) Reading fluency;
7) Mathematics calculation; and/or
8) Mathematics problem solving.

This evidence must indicate performance that is significantly below the mean on a norm-referenced, standardized academic achievement assessment in each area of concern. Significantly below the mean is defined as 1.5 standard deviations (SD) below the mean,

with a standard score (SS) of 78 or lower. When the preponderance of evidence indicates the likely presence of a Specific Learning Disability (SLD), a more lenient threshold of 1.0 standard deviations below the mean or a standard score of 85 or lower may be used.

Scores must be reported for each area of concern using:

1) A cluster or composite score comprised of two or more subtests; or
2) Two or more subtest scores.

There are cases when the use of norm-referenced assessment is not appropriate. For example, this may not be appropriate for students who are culturally and linguistically diverse. In such cases, teams may consider the preponderance of evidence when providing evidence of low achievement.

AND

c. **Observation.** Provide a record of an observation in the student's learning environment (including the regular education setting) of the student's behavior and academic performance in EACH academic area of concern. The observation(s) must be conducted by an evaluation team member other than the student's general education teacher and may be conducted in one or both of the following ways:
   1) Use information from an existing, current, and relevant observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation; or
   2) Have at least one member of the team conduct observation(s) after the student has been referred for an evaluation and written parental consent has been obtained.

AND

d. **Response to Intervention OR Pattern of Strengths and Weaknesses in Psychological Processing.** All students being considered for Specific Learning Disability must participate in grade-level instruction delivered by qualified personnel and evidence-based intervention in general education in a tiered system of support (e.g., RTI or MTSS) prior to or as part of the referral process. Provide documentation of either failure to respond to scientific, evidence-based intervention (RTI) or the presence of a pattern of processing strengths and weaknesses that impacts learning.

*Provide evidence for items 1 and 2, below. Then provide evidence for **either** item 3 **OR** item 4, listed below.*

1. **Parent Notification of General Education Instruction and Intervention.** Documentation that prior to or as part of the intervention and referral process, parents were notified about:
   a. The state's policies regarding the amount and nature of student performance data collected and the general education services provided;
   b. Strategies for increasing the student's rate of learning; and
   c. The parents' right to request an evaluation.

This requirement may be met by providing such notification to parents using the document provided by the Idaho Department of Education or through an LEA-created document that addresses the above-listed requirements.

2. **Effectiveness of Core Curriculum.** Provide documentation that instruction in the core curriculum is effective for most students. This is demonstrated using current data that helps establish that the grade-level, standards-aligned core curriculum is effective for most (50% plus 1) students based on growth and/or proficiency.

   If the referred student belongs to a population of students whose performance is regularly disaggregated, data for the disaggregated group shall also be reviewed and considered.

3. **Option 1:** Response to Intervention. Provide evidence that the student failed to respond to scientific, evidence-based intervention in specific area(s) of concern.
   a. Provide a description of each targeted intervention that was provided to address specific skill deficit(s) in each area of concern; and
   b. Provide evidence that progress was monitored on identified skill deficits in each area of concern using a standardized, norm-referenced or criterion-referenced progress monitoring measure.
      1) For each area of concern, provide information about the progress made during the intervention(s). The information must include a visual representation (e.g., graph or table) and description of each of the following:
         i. Aimline;
         ii. Trendline;
         iii. Decision points;
         iv. The student's rate of improvement; and
         v. National or local norms describing expected performance for grade level peers.
      2) Provide a summary of how the evaluation team used this information to determine that the student has not made sufficient progress toward grade-level expectations and performs significantly and consistently below grade level peers.

OR

4. **Option 2:** Pattern of Processing Strengths and Weaknesses. Provide evidence of a pattern of strengths and weaknesses in psychological processing skills that impact learning.

   Provide evidence that the student's psychological processing skills are linked to the failure to achieve adequately in the academic area(s) of concern. Evidence must rely on standardized assessments. These assessments must be conducted by a professional who is qualified to administer and interpret the assessment results. The student's performance on a psychological processing assessment demonstrates a pattern of

strengths and weaknesses that helps explain why and how the student's learning difficulties occur. Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test psychological processing.

a. Report and describe processing strengths and weaknesses.

b. Provide a description of how the identified pattern of strengths and weaknesses helps explain learning difficulties in the area(s) of concern.

AND

e. **Adverse Effect**. The disability adversely affects the student's educational performance.

AND

f. **Need for Specially Designed Instruction**. The student needs specially designed instruction.

In the case of Specific Learning Disability eligibility determination, the eligibility report shall include certification in writing that the report reflects each member's conclusions (agreement). In the case of team member disagreement with the conclusions, a written statement shall be attached to the eligibility report presenting the dissenting team member's conclusions.

13. Speech Impairment

The term speech impairment includes articulation/phonology disorders, voice disorders, or fluency disorders that adversely impact a student's educational performance. The following eligibility criteria and minimum assessment procedures have been established for all three types of speech impairments.

a) Articulation/Phonology Disorder

Definition: Articulation is the ability to speak distinctly and connectedly. Articulation disorders are incorrect productions of speech sounds including omissions, distortions, substitutions, and/or additions that may interfere with intelligibility. Phonology is the sound system of a language and the rules that govern the combination of these sounds. Phonology disorders are errors affecting the understanding and use of phonemes and sound patterns, and the rules governing their combinations.

a. An articulation/phonology disorder exists when:

1) the disorder is exhibited by omissions, distortions, substitutions, or additions;

2) the articulation interferes with communication; and

3) the disorder adversely affects educational or developmental performance.

b. An articulation/phonology disorder does not exist when:

1) errors are temporary in nature or are due to temporary conditions such as dental changes;

2) differences are due to culture, bilingualism or dialect, or from being non-English speaking; or

3) the sounds in error are developmentally appropriate errors for the student's age.

State Eligibility Criteria for Articulation/Phonology Disorder: An evaluation team will determine that a student is eligible for special education and related services as a student who has an articulation/phonology disorder (speech impairment) when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. At least two procedures are used to assess the student, one of which yields a standard score.

c. The student must have a score that is at least 1.5 standard deviations below the mean, at or below the 7th percentile, on a standardized articulation/phonological assessment, or the speech impairment is judged as moderate on the standardized measure.

d. The student's disability adversely affects educational performance.

e. The student needs specially designed instruction. (Speech therapy can be considered a special education service or a related service.)

b) Fluency Disorder

Definition: A fluency disorder consists of stoppages in the flow of speech that are abnormally frequent and/or abnormally long. The stoppages usually take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

a. A fluency disorder exists when an abnormal rate of speaking, speech, interruptions, repetitions, prolongations, blockages of airflow and/or voicing interferes with effective communication.

b. A fluency disorder does not exist when developmental dysfluencies are part of normal speech development and do not interfere with educational or developmental performance.

State Eligibility Criteria for Fluency Disorder: An evaluation team will determine that an individual is eligible for special education and related services as a student who has a fluency disorder (speech impairment) when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student has a fluency rating of moderate or severe on the Fluency Communication Rating Scale for the student's age. See the documents and resources provided on the Idaho Department of Education website under Chapter 4 for the Fluency Communication Rating Scale.

c. The student's disability adversely affects educational performance.

d. The student needs specially designed instruction. (Speech therapy can be considered a special education service or a related service.)

c) Voice Disorder

Definition: Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

In order for a student who has a suspected laryngeal-based voice disorder to receive voice therapy services from a speech language pathologist, a student must first be evaluated by an ear, nose, and throat (ENT) physician (otorhinolaryngologist/otolaryngologist) and gain medical clearance to receive voice therapy services.

a. A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:
    1) interfere with communication;
    2) draw unfavorable attention to the speaker;
    3) adversely affect the speaker or listener; or
    4) are inappropriate to the age and gender of the speaker.
b. A voice disorder does not exist when the vocal characteristics of quality, pitch, intensity, or resonance:
    1) are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;
    2) are the result of regional dialectic or cultural differences or economic disadvantage; or
    3) do not interfere with educational or developmental performance.

State Eligibility Criteria for Voice Disorder: An evaluation team will determine that a student is eligible for special education and related services as a student who has a voice disorder (speech impairment) when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
b. The student has a voice production rating of moderate or severe on the Voice Rating Scale. See the documents and resources provided on the Idaho Department of Education website under Chapter 4 for the Voice Rating Scale.
c. An ear, nose, and throat (ENT) physician's (otorhinolaryngologist) statement documents that voice therapy is not contraindicated.
d. The student's disability adversely affects educational performance.
e. The student needs specially designed instruction. (Speech therapy can be considered a special education service or a related service.)

See the documents and resources provided on the Idaho Department of Education website under Chapter 4 for information on documenting adverse effects on educational performance for students with speech disorders.

NOTE: A student may receive speech services if he or she is eligible for special education under another disability category and needs speech services as a special education service or related service in order to benefit from special education without meeting the eligibility

criteria for Speech Impairment. As a special education service or related service under another eligibility category, there is no specific score that indicates the need or lack of need for speech therapy.

14. Traumatic Brain Injury (TBI)

Definition: Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and/or speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma, medical illness, or another health impairment.

State Eligibility Criteria for Traumatic Brain Injury: An evaluation team will determine that a student is eligible for special education services as a student who has a traumatic brain injury when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;
b. The student has an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both;
c. The student has medical documentation of a traumatic brain injury;
d. The student's disability adversely affects educational performance; and
e. The student needs specially designed instruction.

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CHAPTER 5: INDIVIDUALIZED EDUCATION PROGRAMS

If a student is eligible for special education services, they have met the requirements of eligibility under the IDEA. Eligibility requires a student to meet the following three prongs: 1) the student has a disability that meets State eligibility criteria; 2) the disability adversely affects the student's educational performance; and 3) the student needs specially designed instruction to progress toward Idaho Content Standards that apply to all students.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability including instruction conducted in the classroom, the home, hospitals, institutions, and other settings. The definition of special education also includes, but is not limited to, instruction in physical education, speech or language therapy services, travel training, and vocational education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access to the general education curriculum so that the student can meet the Idaho Content Standards that apply to all students.

The Individualized Education Program (IEP) is a written document developed for each eligible student which documents specially designed instruction, including related services. The IEP is the product of team collaboration among the parent/adult student, LEA personnel, and other IEP team members who, through full and equal participation, identify the unique needs of a student with a disability and plan the special education services and educational program to meet those needs.

In developing each student's IEP, the IEP team shall consider:

1. the strengths of the student;
2. the concerns of the parents for enhancing the education of their child;
3. the results of the initial or most recent evaluation of the student;
4. the unique circumstances of the student;
5. the academic achievement, developmental, and functional needs of the student; and
6. special factors related to the student.

Section 1. IEP Initiation

A. Purpose of IEP Team Meeting

The primary purpose of an IEP team meeting is to design an appropriately ambitious IEP that meets the unique needs of a student with a disability. The IEP team determines the special education and related services reasonably calculated to enable the student to make progress in light of the student's individual circumstances in the least restrictive environment. The parent/adult student shall be invited to the meeting and participate meaningfully. (Note: transition age students must be invited to the IEP team meeting). Each IEP team member shall

come prepared to discuss specific information about the student and the educational program to be provided to address the student's unique circumstances.

The meeting format shall invite open discussion that allows participants to identify and consider the unique circumstances of the student related to his or her disability and what is necessary for the student to access, participate in, and make progress toward Idaho Content Standards in the general education curriculum. Placement decisions shall be considered *after* the special education services are determined and shall not be the determining factor in developing the IEP content.

Informal or unscheduled conversations involving LEA personnel on various issues (e.g., teaching methodology, lesson plans, or coordination of service provisions) are not considered to be an IEP meeting as long as no decisions are made regarding issues addressed on the student's IEP. Preparatory activities in which LEA personnel engage to develop a proposal or a response to a parent/adult student proposal that will be discussed at a later meeting are not considered to be an IEP meeting.

B. IEP Team Decision Making

The IEP team meeting serves as a communication tool between IEP team members, enabling them to make joint, informed decisions regarding the student's special education services as equal participants. All members of the IEP team are expected to work toward consensus regarding IEP decisions to ensure the student receives a free appropriate public education (FAPE).

Consensus means a commitment of all IEP team members to support the decision of the team, which requires that all members of the team have an opportunity for meaningful participation.

If the parent/adult student, school personnel, and other IEP team members are unable to reach consensus regarding an IEP decision, then school personnel on the IEP team should seek consensus within the school team and provide written notice to the parent/adult student.

If school personnel are unable to reach consensus, then the LEA representative on the IEP team shall make the decision and provide written notice to the parent/adult student.

The parent/adult student will be made aware of their procedural safeguards, including due process rights.

See Section 2O of this chapter, "Parent/Adult Student Objection to the IEP," for more information about parent/adult student due process rights.

C. When IEP Team Meetings Are Held

An IEP team meeting shall be held for one or more of the following reasons:

1. to develop an IEP within thirty (30) calendar days of a determination that the student is eligible for special education and related services;
2. to conduct an annual review of the IEP, no more than one year (365 days) from the date of development of the current IEP,

3. when another agency fails to deliver transition or other services outlined in the IEP to consider other options for how the student's needs may be met;
4. to consider revisions to the IEP if there is any lack of expected progress toward annual goals and/or in the general education curriculum;
5. at the reasonable request (as determined by the LEA) of any member of the IEP team (Note: Written notice shall be provided to the parent/adult student who requests an IEP team meeting when an LEA refuses to hold one);
6. to review behavioral intervention strategies and/or to develop a behavior intervention plan as part of the IEP; and/or
7. to address the IDEA discipline requirements (see Chapter 11).

An IEP team meeting shall be considered to review the results of any evaluation, clinical evaluation, or independent educational evaluation (IEE) received by the LEA. Consideration of any evaluation, clinical evaluation, or IEE should be documented in a Written Notice.

NOTE: Under the IDEA, amendments to a student's annual IEP may occur without a meeting if the parents and LEA agree in writing using the Parent/Adult Student and District Agreement form.

See Section 3B of this chapter for more information about IEP Amendments.

D. IEP Team Members and Roles

The IEP team is a group of individuals responsible for developing, reviewing, or revising an IEP for a student with a disability.

Required IEP Team Membership and Roles

1. Parent/Adult Student

   In the IDEA, the term "parent" means

   a. a biological or adoptive parent;

   b. a foster parent if the parent's authority to make educational decisions on behalf of the student has been terminated by law. The foster parent shall be an individual who has no interest that would conflict with the interests of the student;

   c. a guardian generally authorized to act as the student's parent or authorized to make educational decisions (does not include State agency personnel if the student is a ward of the state);

   d. a person acting in place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the student lives or an individual who is legally responsible for the student's welfare; or

   e. a surrogate parent who has been appointed by the LEA.

f. the biological or adoptive parents meet the definition of parent, the biological or adoptive parents serve as the parents in the IEP process, unless a judicial decree or order identifies a specific person or persons to make educational decisions for the student.

g. An "adult student" is a student with a disability who is eighteen (18) years of age or older to whom special education rights have transferred under the IDEA and Idaho Code. In this case, the parent may attend the IEP team meeting as an individual who has knowledge or special expertise regarding the student, at the invitation of the adult student or the LEA.

h. The parent/adult student may not serve in another role other than that of parent/adult student.

See Chapter 12 for more information about parent/adult student membership on the IEP team.

2. LEA Representative

a. The LEA representative or designee shall be qualified to provide or supervise the provision of special education to meet the unique needs of students with disabilities. The representative shall be qualified to provide or supervise the provision of specially designed instruction, shall be knowledgeable about the general education curriculum, and shall have the authority to allocate resources to ensure that the IEP will be implemented. Examples of the LEA representative include the building principal, the special education director, the LEA superintendent, or others who meet the criteria described above.

b. This person may serve a dual role on the team if all of the criteria are met for both roles.

3. General Education Teacher (not less than one)

a. A general education teacher of the student is required to participate in developing the IEP if a student is, or may be, participating in the general education environment. The participating general education teacher must be knowledgeable about Idaho Content Standards and the general education curriculum at the student's grade level.

b. For preschool-age students, the general education teacher may be the kindergarten teacher or an appropriate designee. Designees at the preschool level may include a care provider, Head Start teacher, or community preschool teacher, if that person meets Idaho childcare licensing standards. The parent may not serve as the general education teacher.

c. If a student is or may be participating in the general education curriculum or environment, not less than one of the student's general education teachers shall participate in developing the IEP. The general education teacher's role in the development, review, and revision of the IEP includes:

1) discussion of the student's involvement and progress in the general education curriculum, if known;

2) discussion of appropriate positive behavioral interventions and other strategies for the student; and

3) discussion of supplementary aids and services, program accommodation/ or adaptations, and supports provided by school personnel in the general education classroom.

d. This person may not serve the dual roles of general education teacher and special education teacher.

4. Special Education Teacher (not less than one)

a. This individual will generally be the student's special education teacher or service provider who is responsible for implementing the student's IEP. For example, in the case of a student receiving special education services from a speech-language pathologist, it may be appropriate for the speech- language pathologist to fill this role on the IEP team.

b. This person may serve a dual role on the team if all of the criteria are met for both roles. However, this person may not serve the dual roles of general education teacher and special education teacher.

5. Other qualified professional(s) including individual(s) who can interpret assessment results and instructional implications

a. This person may be someone who participated in the evaluation of the student. This person shall be able to explain the results, the instructional implications, and the recommendations of the evaluation.

1) This person may serve a dual role on the team if all of the criteria are met for both roles

b. In the case of a student with limited English proficiency, the IEP team must consider the language acquisition needs of the student as those needs relate to the student's IEP. The IEP team shall include one or more participants who have the requisite expertise about the student's language needs.

1) This person may serve a dual role on the team if all of the criteria are met for both roles.

6. Individual(s) with Special Expertise

a. At the discretion of the parent/adult student or the LEA, other individuals who have knowledge or special expertise regarding the student, including related service personnel, may be included as IEP team members. The determination of having knowledge and special expertise regarding the student shall be made by the parent/adult student or school personnel who invited the individual to be a member of the IEP team.

7. Student

a. Whenever appropriate, the IEP team should include the student with a disability. When post-secondary goals and transition services will be discussed, the student shall be invited by the LEA to attend the IEP team meeting. In Idaho, this requirement begins with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team). If the student is a minor, the parent shall make the decision regarding the student's attendance. If the student does not attend the IEP team meeting, the LEA shall take other steps to ensure that the student's preferences and interests are considered.

See Section 2M of this chapter for more information on transition services and goals.

Other Potential Team Membership and Roles (required when applicable)

8. Private School Representative

    a. If a student is enrolled in or referred to a private school, the LEA shall ensure that a representative of the private school is invited to the Services Plan (SP) or IEP team meeting. If a representative cannot attend, the LEA shall use other methods to ensure participation by the private school.

    See Chapter 9 for more information about private schools.

9. Transition Agency Representative

    a. If transition services are being discussed, a representative of any participating agency likely to be responsible for providing or paying for transition services shall be invited (with the written consent of a parent/adult student obtained prior to inviting the representative). If a representative does not attend, steps should be taken to obtain participation from the agency in transition planning.

10. Part C Coordinator or Representative

    a. A Part C coordinator or other representative may be invited by the LEA to participate in the team IEP meeting for a preschooler transitioning to Part B services. Parents shall be informed of their right to request that an Infant Toddler Program representative(s) be invited to attend the initial IEP team meeting.

E. Excusal of Required IEP Team Members

A required school team member may be excused from an IEP team meeting, in whole or in part, if the parent/adult student and LEA agree in writing and the requirements below are met:

1. the team **does not** intend to modify or discuss that team member's services or area of curriculum; or

2. the team **does** intend to modify or discuss that team member's services or area of curriculum, and the team member has provided written input to the IEP team prior to the meeting.

    a. Written input shall include substantive data (e.g., interpreting assessment findings,

providing meaningful guidance to the team regarding the purpose of the meeting, reflecting on general education curriculum).

In the event the LEA representative is the individual excused, a school team member in attendance shall be vested with the authority to bind the LEA to the decisions of the team.

F. Invitation to IEP Team Meetings

The LEA shall ensure that the parents/guardians of a student with a disability have a meaningful opportunity to participate in each IEP meeting. To the extent possible, the LEA should encourage the consolidation of all team meetings, including meetings that may involve eligibility, reevaluation, and IEP development.

The LEA shall meet the requirements outlined below.

1. Notify the parent/adult student of the meeting with enough notice to ensure that they will have the opportunity to attend. If the student is of secondary transition age, the student shall also be invited. If the student is a minor, the parent shall make the decision regarding the student's attendance.

2. Schedule the meeting at a place and time mutually agreed upon by the parent/adult student and the LEA. Alternatives to in-person meetings, such as video and telephone conferencing, may take the place of in-person IEP team meetings to meet the parent/adult student's needs.

3. The LEA shall keep a record of this invitation. The invitation shall include the following:

    a. the purpose(s), time, and location of the meeting;

    b. who will attend the meeting, by role;

    c. information regarding the parent's/adult student's right to bring other people to the meeting and invite a Part C representative, if appropriate; and

    d. notification that post-secondary goals and transition services will be discussed, as applicable. When the IEP team will consider transition services, the invitation shall:

        i. indicate this purpose;

        ii. invite the student; and

        iii. identify any other agency that will be invited to send a representative, with parent's/adult student's consent.

4. The invitation should clarify the parent's/adult student's (or secondary transition age student's) role on the team and request that he or she come prepared to discuss the unique needs and characteristics of the student, the goals that would support the success of the student in the general education curriculum aligned with Idaho Content Standards, and the types of services needed to address those goals.

5. The invitation may be written or verbal and shall be in the parent/adult student's primary language. In either case, the LEA shall document that all the required components noted in items 3 and 4 above were included in the invitation.

6. The LEA shall take appropriate action to ensure that a parent/adult student understands the proceedings at an IEP team meeting, including arranging for an interpreter for a parent/adult student who has hearing loss or whose native language is other than English.

7. The IEP team may meet without the parent/adult student if he or she cannot be convinced to attend the meeting. If the parent/adult student cannot be convinced to attend the meeting, the following criteria shall be met:

    a. The LEA has documented its attempts to arrange a mutually agreed upon time and place for the meeting.
    b. Alternatives to in-person meetings, such as video and telephone conferencing, have been offered to take the place of in-person IEP team meetings to meet the parent/adult student's needs.

    c. If a meeting is held without the parent/adult student, the LEA has offered and documented alternative methods, such as video and telephone conferencing, to gain the parent/adult student's participation in the development of the IEP.

        Note: Documentation may include records of telephone calls or conversations, copies of correspondence sent to the parent/adult student and any responses received, and/or detailed records of any visits made to the parent's/adult student's residence.

Section 2. IEP Development

The IDEA clearly defines the required components of an IEP and the Idaho IEP form is designed to include only those IDEA required components. Therefore, no additional information may be required in a student's IEP beyond what is explicitly required by the IDEA, nor can information be required under one component of a student's IEP that is already contained under another component of the student's IEP.

NOTE: IEP team meeting notes are not part of the official IEP document and are not required. However, teams are strongly encouraged to take meeting notes.

A. General Demographic Information for All IEPs

All IEPs shall include, at a minimum, the date of the IEP team meeting and the following general demographic components: the student's name as it appears in school records, native language, student ethnicity, student sex, birth date, and State identification number, names of parents, address, phone number, school, and grade.

B. Documentation of Participants

The LEA shall ensure the attendance and participation of the IEP team members at the IEP team meeting. Documentation of attendance can be accomplished by listing team member roles on the IEP and checking their attendance status. Prior to the beginning of the meeting, an excusal form

identifying any required LEA members not present at the IEP team meeting, with the parent/adult student's written consent, shall be obtained. In the event the parent does not agree to excuse the required team member, the meeting shall be rescheduled at a time when the LEA member(s) can be present.

The attendance list on the IEP Team Information page indicates attendance at the meeting and is not a reflection of agreement or disagreement with the IEP. As with any team member, the parent's/adult student's inclusion on the list does not indicate agreement or disagreement with the IEP contents. If the parent/adult student disagrees with all or part of the IEP, the LEA should remind the parent/adult student that he or she may file a written objection. Any participant at the IEP team meeting may file a minority report if he or she disagrees with a program decision. A minority report shall not prevent the implementation of an IEP team decision.

See Section 2O of this chapter for additional information on parent/adult student objections.

C. Present Levels of Academic Achievement and Functional Performance (PLAAFP)

The IEP identifies present levels of academic achievement and functional performance (PLAAFP) and measurable goals that enable the IEP team to report on the student's progress towards goals and the effectiveness of the services being provided for each skill area identified as an area of need by the IEP team. A PLAAFP statement must be included addressing each skill area identified by the IEP team and shall be written in objective, measurable terms using easy-to-understand, non-technical language.

Each PLAAFP shall include:

1. a description of the student's strengths in the skill area;

2. parent concerns for enhancing student performance in the skill area;

3. a disability impact statement indicating how the student's disability impacts involvement in and ability to make progress toward grade-level, Idaho Content Standards in the general education curriculum (i.e., the same curriculum used by students without disabilities);

4. a student need statement identifying the skill(s) the student needs to learn that will guide the develop of the annual goal; and

5. baseline data indicating the student's current performance on the skill that will be targeted in the annual goal referencing the same condition, target skill, and evaluation procedure that will be described in the annual goal.

The PLAAFP statements guide the development of the other components of the IEP, including special education services, annual goals, and objectives and benchmarks for students who participate in an alternate assessment based on alternate academic achievement standards. These components shall show a direct relationship to the content of present levels of academic achievement and functional performance;

Note: For preschool students, the PLAAFP should describe how the disability affects the student's performance and/or participation in age-appropriate activities according to the Idaho Early Learning Guidelines (eGuidelines).

See Section 2L of this chapter for more information about Early Childhood IEPs.

D. Annual Goals, Objectives, and Benchmarks

Annual IEP goals shall be appropriately challenging and reflect the needs described in the PLAAFP statement. Measurable academic achievement, developmental, behavioral, and functional annual goals are designed to meet the student's unique needs that result from the student's disability, to enable the student to be involved in and make progress toward grade-level, Idaho Content Standards in the general education curriculum, and to meet each of the student's educational needs that result from the student's disability.

The statements below shall be true of each annual goal included in the student's IEP.

1. Goals are written, measurable statements, aligned with baseline data, describing what a student is reasonably expected to accomplish within the time period covered by the IEP, generally one year.
2. Goals are written to enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability.
3. Goals shall be appropriately challenging given the circumstances of the student.
4. Each goal shall reference and be aligned to the Idaho Content Standards, Workplace Skills for Career Readiness Standards, or eGuidelines, as applicable.
5. Each goal shall include:
    1. Condition—the conditions under which the student will be expected to demonstrate the target skill;
    2. Target skill—the specific skill or behavior that will be targeted for instruction;
    3. Performance criteria—the measurable frequency, rate, or accuracy of the occurrence or demonstration of the target skill;
    4. Evaluation procedure—the procedure that will be used to measure the progress of the student toward achieving the goal, including how progress will be monitored; and
    5. Schedule—the description of how and when data outlined in the evaluation procedure will be gathered.
6. Goals should include the consideration of any Assistive Technology (AT) or Accessible Educational Materials (AEM) needs for the student;
7. Goals with objectives and benchmarks are required for students taking an alternate assessment based on alternate academic achievement standards. Objectives and

benchmarks shall align with the PLAAFP and the annual goals, as a progression toward meeting the annual goals.

E. Monitoring and Reporting Progress Toward Goals

The IEP shall include information describing:

1. How the student's progress toward IEP goals will be measured and the progress monitoring schedule, to be described in the evaluation procedure and schedule connected to each IEP goal; and

2. How and when the parent/adult student will be informed of the student's progress toward the annual goals.

At minimum, periodic written progress statements related to progress toward annual goals shall be reported concurrent with the issuance of report cards.

F. Special Education and Related Services

Once the IEP team has reviewed the student's PLAAFP and established goals in each skill area of need, the team shall determine which special education and related services are needed to ensure the student's progress toward meeting goals.

1. **Special Education Services** include specially designed instruction the team has identified to meet the student's unique needs. These are the services that will support the student's growth on annual goals and help them move closer to grade level.

2. **Related Services** include any additional services that help the student with a disability to benefit from special education. Examples of related services include but are not limited to Occupational Therapy, Special Transportation, Orientation and Mobility Services, Nursing Services, Counseling Services, and more.

Related Services

"Related services" means transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education as described in the IEP. These services include, but are not limited to, those listed and defined below.

1. **Audiology**

   Audiology services include identification of students with hearing loss; determination of the range, nature, and degree of hearing loss; provision of habilitative activities; creation and administration of programs for prevention of hearing loss; counseling and guidance to students, parents, and teachers regarding hearing loss; and the determination of student need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating effectiveness of amplification.

2. **Counseling services**

   Counseling services include services provided by qualified social workers, psychologists, guidance counselors, and other qualified personnel, including personnel qualified to

provide services exclusively in a school setting.

3. **Interpreter services**

   Interpreter services for students who are deaf or hard of hearing include oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services. Students who are deaf-blind may require special interpreting services.

4. **Language therapy**

   Language therapy services include identification of students with language impairments, diagnosis and appraisal of specific language impairments, referral for professional habilitation of language impairments when necessary, and provision of language services for the habilitation or prevention of communicative impairments.

5. **Occupational therapy**

   Occupational therapy services mean services provided by a qualified occupational therapist for improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation, improving ability to perform tasks for independent functioning if functions are impaired or lost, and/or preventing, through early intervention, initial or further impairment or loss of function.

6. **Orientation and mobility services**

   Orientation and mobility services include services provided to students who are blind or low vision by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community. These services may also include teaching spatial and environmental concepts and use of information received by the senses to establish, maintain, or regain orientation and line of travel, teaching the use of the long cane or a service animal, and teaching the use of remaining vision and distance low vision aids, and other concepts, techniques, and tools.

7. **Parent counseling and training**

   Parent counseling and training includes helping a parent understand child development and the special needs of the student and acquire skills to support the implementation of the student's IEP.

8. **Physical therapy**

   Physical therapy services mean services provided by a qualified physical therapist for improving gross motor skills, including treatment to increase muscle strength, mobility, endurance, physical movement, and range of motion; improve posture, gait, and body awareness; and monitor function, fit, and proper use of mobility aids and devices.

9. **Psychological services**

   Psychological services include administering and interpreting assessments related to the student's educational performance and conditions related to learning, consulting with other staff members in planning school programs to meet the student's special educational needs, planning and managing a program of psychological services, including psychological counseling for students and parents, and assisting in developing positive behavioral intervention strategies.

10. **Recreation, including therapeutic recreation**

    Recreation services include assessment of leisure function, therapeutic recreation services, recreation programs in schools and community agencies, and leisure education.

11. **Rehabilitation counseling services**

    Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment, preparation, achieving independence, and integration in the workplace and community of a student with a disability. This also includes vocational rehabilitation services provided through vocational rehabilitation programs.

12. **School health and school nurse services**

    School health services are services that may be provided by either a qualified school nurse or other qualified person. School nurse services are services provided by a qualified school nurse.

13. **Social work services in school**

    Social work services in school include preparing a social or developmental history on a student with a disability, group and individual counseling with the student and family, working in partnership with parents and others on those problems in the student's living situation that affect the student's adjustment in school, mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program, and assisting in developing positive behavioral intervention strategies.

14. **Speech therapy**

    Speech therapy services include identification of students with speech impairments, diagnosis and appraisal of specific speech impairments, referral for professional habilitation of speech impairments when necessary, and provision of speech services for the habilitation or prevention of communicative impairments.

15. **Supports for school staff**

    Supports for school staff include training, equipment, assistive technology, or other supports required to ensure staff have the skills and tools needed to address the needs of a student with a disability.

The above list of related services is not exhaustive and may include other developmental,

corrective, or supportive services, transition services or assistive technology.

Related services are the responsibility of the LEA only if the IEP team determines they are required to assist the student to benefit from special education. Although related services may be of benefit to any student, not all related services may be required for each individual student. Determinations as to the provision of related services must be based on individual student need. A student is not entitled to related services if he or she is not eligible for special education or the parent/adult student does not consent to initial provision of special education services.

EXCEPTION: The IDEA lists some exceptions to related services as they relate to surgically implanted medical devices. See Legal Citations for more information.

Documentation of Special Education and Related Services in the IEP
Each student's IEP shall describe the specific special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable that will be provided to or on behalf of the student to meet the student's unique needs.

1. The description of special education and related services in the IEP shall include:

    a. the specific special education or related service to be provided to meet the unique needs of the student, allowing the student to:

        1) advance appropriately toward attaining the annual goal(s);

        2) be involved and make progress toward the Idaho Content Standards in the general education curriculum;

        3) participate in extracurricular and other nonacademic activities; and
        4) be educated and participate with students without disabilities to the maximum extent appropriate.

    b. The title of the professional staff responsible for ensuring the provision of the service ("professional staff" means the individual who holds certification from the Idaho Department of Education and/or professional licensure);

    c. the frequency and duration of the provision of the special education or related service (i.e., minutes per week, per day, or per month);

    d. the location of the services (i.e., special education environment or general education environment); and

    e. the start and end date of the special education or related service.

2. The description of services in the IEP shall:

    a. Identify the program accommodations and supplementary aids and services to be provided to the student in the areas of need.

    b. List the specific services that will meet the unique needs of the student, allowing the student to advance appropriately toward attaining the annual goals, and:

1) be involved in and make progress in the general education curriculum;

2) participate in extracurricular and other nonacademic activities; and

3) be educated and participate with other students with disabilities and with students without disabilities to the maximum extent appropriate.

Based on the unique needs of each student, the IEP team shall consider any services that may be appropriate for the student and shall document such services on the IEP accordingly. The student's annual goals and the services needed to address those goals will guide the team in the discussion about Least Restrictive Environment (LRE) for the student.

See Section 2H of this chapter and Chapter 6 for more information about LRE.

Note: The IEP should show a clear connection between the student's goals, the services provided, and all other IEP components.

Note: Nonacademic and extracurricular services and activities may include, but are not limited to, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

G. Supplementary Aids and Services

Supplementary aids and services are aids, services, and other supports that are provided in general education classes, other education-related settings, and extracurricular and nonacademic settings to enable students with disabilities to be educated with students without disabilities to the maximum extent appropriate in accordance with LRE requirements.

The determination of which supplementary aids and services are appropriate for a particular student shall be made on an individual basis. Supplementary aids and services may include the following: assistance of an itinerant special education teacher, related service provider, or paraprofessional; support or training for the general educator; use of resource services; provision of note takers; supports for extracurricular or other nonacademic activities; and supports for participation in state- or district-wide assessments.

The LEA shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings. Supplementary aids and services deemed appropriate by the IEP team shall be provided whether or not the LEA currently has these services in place.

H. Least Restrictive Environment (LRE) and Placement Decisions

Each student with a disability shall be educated with age-appropriate students without disabilities in the general education classroom to the maximum extent appropriate.

The IEP shall explain the extent, if any, to which the student will *not* participate in the general education classroom, the general education curriculum, and/or extracurricular or other nonacademic activities.

In recommending the appropriate placement in the least restrictive environment (LRE) for the

student with a disability, the IEP team shall consider the student's annual goals, the services needed to meet those goals, the unique circumstances of the student, and the continuum of services available to meet the student's needs. The parent/adult student shall be involved in the placement decision as an active IEP team member.

Removal from the general education environment shall occur only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. A student with a disability is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and adaptations in the general education curriculum. Participation in general education curriculum and instruction assumes that the student is participating with same-aged peers.

NOTE: The LEA's reassignment of students (with or without disabilities) to another classroom or building in the LEA is *not* a change of placement for a student with a disability, as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; or going to a different school as a result of moving from one grade level to another grade level.

See Chapter 6 for more information on placement decisions in the LRE.

I. Special Considerations

In considering the unique circumstances of the student, the IEP team shall determine whether the student requires other services or supports to make progress toward IEP goals and the Idaho Content Standards in the general education curriculum. As appropriate, the IEP team shall consider the following in the development of the IEP:

1. **Transportation**
   Transportation is a related service provided to a student whose disability requires special arrangements to assist the student in benefiting from special education. The student's individual needs concerning his or her education are the main considerations in determining services—this includes transportation services.

   The IEP team shall consider how the student's disability affects his or her need for transportation, including determining whether the student's disability prevents the student from using the same transportation provided to students without disabilities, or from getting to school in the same manner as students without disabilities. This includes transporting a preschool-age student to the site at which the LEA provides special education and related services to the student, if that site is different from the site at which the student receives other preschool or day-care services.

   When the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA shall be afforded to the student in matters concerning transportation.

   Transportation needs may include, but are not limited to, the following:

   a. travel to and from school and between schools to access special education;

   b. travel in and around school buildings;

c. equipment including lifts and ramps, if required to provide special transportation; or

d. other services that support the student's use of transportation, such as:

1) special assistance (e.g., an aide on the bus and/or assistance getting on and off the bus);

2) safety restraints, wheelchair restraints, and/or child safety seats;

3) accommodations (e.g., preferential seating, a positive behavioral support plan for the student on the bus, and/or altering the bus route);

4) training for the bus driver regarding the student's disability or special health-related needs; or

5) attending non-academic and extracurricular activities, if required by the IEP.

When considering transportation as a related service, the IEP team should document whether:

a. The student has no need for transportation as a related service; they may use regular busing WITHOUT individualized supports;

b. The student will ride the regular bus WITH supports (describe specific supports);

c. The student will ride the special education bus (describe specific supports); or

d. The student requires another type of transportation as a related service (describe special transportation).

When a student's IEP team determines that transportation is required for the student to benefit from their special education program, the LEA is responsible for providing transportation as a related service at no cost to the parent/adult student. If the LEA provides an appropriate transportation option and the parent/adult student voluntarily chooses to provide transportation instead, this decision must be documented in the IEP. The IEP should clearly indicate the student's need for special transportation, the parent's decision to transport, and that the LEA remains responsible for providing transportation should the parent/adult student become unable or unwilling to continue. If the parent/adult student agrees to transport and requests reimbursement, the LEA is responsible for reimbursing mileage or other agreed-upon costs. The LEA cannot deny transportation solely because a parent is willing to transport.

2. **Extended School Year (ESY) Services**

The LEA shall provide extended school year (ESY) services for students with disabilities who qualify for such services, as determined by each student's IEP team. The ESY programs for eligible students shall meet the requirements of FAPE. The student's educational program is based on individual needs and is not determined by what programs are readily available within the LEA. The student cannot be required to fail or to go for an entire school year without ESY services, simply to prove a need. The IEP team shall consider the following in the development and provision of an ESY program:

a. The term "extended school year services" means special education and/or related

services that are provided beyond the regular school year:

1) to a student with a disability;
2) in accordance with the student's IEP; and
3) at no cost to the parent/adult student.

b. The ESY services shall be considered in light of the totality of the circumstances, including the following:
   1) **Emerging skill:** Few, if any, gains are made during the regular school year. A skill is in the process of emerging, and the IEP team believes that with ESY services the student would make reasonable gains;
   2) **Regression-recoupment:** The student, in the absence of an educational program, will experience significant regression, and the amount of time required to relearn a skill or behavior becomes so significant that the student would be unable to benefit from his or her special education; or
   3) **Self-sufficiency**: An interruption in services would threaten the acquisition of critical life skills that aid in the student's ability to function as independently as possible, thereby continuing the student's reliance on caretakers, including institutionalized care. Critical life skills relate to those skills that lead to independent functioning. Development of these skills can lead to reduced future dependency on caretakers and enhance the student's integration with individuals without disabilities. Skills may include toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

c. Decisions concerning ESY services shall be based on student performance data and written documentation. Types of data and information may include, but are not limited to, those listed below:
   1) Criterion-referenced test data: Consider daily/weekly probes or pre-test/post- test data.
   2) Norm-referenced test data: Consider pre-test/post-test data.
   3) Anecdotal records: Consider information collected throughout the school year.
   4) Physical, mental, or emotional health factors: Consider the student's educational, medical, and psychological records as well as the prognosis or judgements of educators, medical personnel, parents, and others who work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.
   5) History: Consider evidence of past regression or past ESY services. The IEP team should not automatically assume that a student who has received ESY services in the past will be eligible for ESY services in the future, but it is a factor to consider.
   6) Data on observed performance: Consider data collected regarding the student's performance observed in the classroom, during community-based activities, and as part of IEP progress monitoring.
   7) Teacher interviews and recommendations: Consider progress reports by teachers, therapists, and others who have direct contact with the student before and after

breaks in educational programming.

8) Parent/Adult student input: Consider parent observations of the student, as well as parent/adult student requests for ESY services.

d. The ESY services shall be clearly described in the IEP.

e. The goal of ESY services is to assist students with disabilities with the emergence and maintenance of specific IEP goals addressed during the school year preceding the ESY. These may include goals related to independence, behavior, socialization, communication, and academics. The ESY services for special education students provide a different focus from general summer school programs.

3. **Behavior**

If the student's behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports and other strategies to address that behavior, including a formal Behavior Intervention Plan (BIP), if needed.

4. **Limited English Proficiency**

If the student has limited English proficiency, the IEP team shall consider the language needs of the student.

5. **Blind or Low Vision**

If the student is blind or has low vision, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines that Braille is not appropriate for the student. This determination can only be made after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille).

6. **Deaf or Hard of Hearing**

The IEP team must consider the specific type and degree of hearing loss, as well as the technology a student uses, to support their communication and learning needs effectively.

Schools are required to perform routine checks of hearing aids and external components of surgically implanted medical devices, such as cochlear implants and bone-anchored hearing aids, to ensure these hearing assistive technology devices are functioning properly.

7. **Communication Needs**

The IEP team shall consider the communication needs of the student, including students with communication disorders, students requiring augmentative and alternative communication (AAC), and students requiring interpretation services. The IEP team shall consider the language and communication needs of the student, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, the student's academic level, and his or her full range of needs including opportunities for direct instruction in the student's language and communication mode.

8. **Health Care Needs**

   The IEP team shall consider the student's health care needs. When applicable, these needs should be documented and addressed in the IEP. This may mean inclusion in goals, services, accommodations, or other components of the IEP, or the inclusion of a formal Health Care Plan.

J. Accommodations, Adaptations, and Assistive Technology

Accommodations and adaptations include any changes that allow students with disabilities the same opportunity as students without disabilities to participate in and benefit from the educational program, activities, and services of the LEA.

Modifications include accommodations and adaptations. Idaho uses the terms accommodations and adaptations to describe two separate instructional and assessment practices.

1. **Accommodations:** Accommodations are changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology, as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the grade-level standard requirements.

   Examples include Braille editions, large print, pencil grips, audio recording, note takers, and computers with spell check. Accommodations do not include changes that invalidate assessment results and must not fundamentally alter the grade level requirements of the Idaho Content Standards.

2. **Adaptations:** Adaptations are changes to curriculum, instruction, or assessments that fundamentally alter the grade level requirements of the Idaho Content Standards but enable a student with a disability that significantly impacts performance an opportunity to participate. Adaptations include strategies such as reading the reading portion of a test, using spelling/grammar check for language arts assessments, and substituting out-of-level testing. Other examples include fewer concepts to be mastered, different test questions, and material at a different reading level. Adaptations invalidate assessment results and provide non-comparable results.

3. **Assistive Technology:** The LEA shall ensure that assistive technology devices and/or services are made available to a student, if required, as special education, related services, or supplementary aids and services.

   a. "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a device that is surgically implanted or the replacement of such a device.

      1) The LEA shall permit the student to use school-purchased assistive technology devices at home and in other settings if the IEP team determines that the student needs access to these devices in non-school settings to receive FAPE. An example

of this would be to complete homework. The LEA may hold a parent/adult student responsible for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the LEA if it is lost, stolen, or damaged because of negligence or misuse at home or in another setting outside of school.

b. "Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

   1) an evaluation of the student's assistive technology needs, including a functional assessment in the student's customary environment;

   2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

   3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

   4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

   5) training or technical assistance for a student with a disability or, if appropriate, that student's family; and

   6) training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a student with a disability.

c. The LEA shall ensure that the hearing technology worn by students who are deaf or hard-of-hearing in school is functioning properly.

   See Legal Citations for IDEA reference.

d. The LEA is responsible for appropriately monitoring and maintaining medical devices appropriately monitoring and checking surgically implanted devices to make sure the devices are functioning properly, if the team has determined that those services are necessary. This responsibility applies to devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is at school or being transported to and from school. The L will ensure that the external components of surgically implanted medical devices are functioning properly, but is not responsible for the post-surgical maintenance, programming or replacement of the medical device that has been surgically implemented, or of an external component of the surgically implanted medical device. IDEA lists some responsibilities related to surgically implanted medical devices.

   See Legal Citations for more information.

K. Statewide and Districtwide Achievement Testing

Students with disabilities shall participate in all state- and district-wide assessments. Participation rates and performance data, both aggregate and disaggregate, for students with disabilities, are reported to the public annually.

The IEP team shall determine how the student will participate in state- and district- wide assessments: without accommodations, with supports and accommodations, or by means of an alternate assessment based on alternate academic achievement standards. The IEP team determines the supports and accommodations a student will use based on those that are used regularly by the student during instruction or classroom testing and on what is documented in the accommodations section of the IEP.

The following guidelines shall be used to determine how the student will participate in state- and district-wide assessments:

1. General Assessment without Accommodations

   The IEP team determines and documents in the IEP that a student with a disability can adequately demonstrate his or her knowledge, abilities, or skills on state- and district-wide assessments without accommodations.

2. General Assessment with Supports and Accommodations

   Appropriate supports and accommodations for students with disabilities shall be based on the individual needs of each student. Supports and accommodations decisions are made by the IEP team and shall be recorded in the IEP. Accommodations should facilitate an accurate demonstration of academic achievement, developmental, and functional performance on state- and district-wide assessments. They should not provide the student with an unfair advantage or change the underlying skills that are being measured by the test. Supports and accommodations shall be the same or nearly the same as those used by the student in completing classroom assignments and assessment activities. The supports and accommodations shall be necessary for enabling the student to demonstrate knowledge, ability, skill, or mastery of academic content.

   Accommodations *must not* invalidate test results. The LEA must follow state-wide guidelines and establish district-wide guidelines. The LEA's guidelines must:

   a. Identify only those accommodations for each assessment that do not invalidate the score; and

   b. Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

   Students taking state- and district-wide assessments with supports and/or accommodations shall be given opportunities to practice and become familiar with said supports and/or accommodations in the relevant test delivery system before they begin testing.

3. Alternate Assessments based on Alternate Academic Achievement Standards. Alternate assessments are statewide testing options intended only for those students with the most

significant cognitive disabilities, in lieu of the general education assessment, with or without supports and accommodations. Participation in alternate assessments reflects the pervasive nature of significant cognitive disabilities and requires that a student meet all participation eligibility criteria. Students with the most significant cognitive disabilities represent about 1% of the total student population. The IEP team shall consider a student's participation in alternate assessments on an annual basis using the participation criteria listed below. The IEP team shall document the student's testing status in the appropriate sections of the IEP.

a. A student must meet **all four** of the following participation criteria to qualify for an alternate assessment.

   1) The student has a significant cognitive disability.

      i. Definition of significant cognitive disability: A designation given to a small number of students with disabilities for the purposes of their participation in alternate assessments. Having a significant cognitive disability is not solely determined by an IQ test score nor based on a specific disability category, but rather a complete understanding of the complex needs of a student. Students with significant cognitive disabilities have a disability or multiple disabilities that significantly impact their adaptive skills and intellectual functioning. These students have global adaptive skills significantly below average and intellectual functioning well below average (typically associated with an IQ below 55). Severe and global adaptive deficits are at least two (2) standard deviations below the mean as measured by a norm-referenced assessment of adaptive skills using the global adaptive score.

         a. This reference to an IQ typically below 55 is not intended to be a hard cut score, but to provide IEP teams with guidance.

         b. In circumstances when an IQ score cannot be obtained, the IEP team may use a preponderance of evidence to determine if a student has a significant cognitive disability. If, due to the severity and complexity of a student's disability, an IQ score cannot be obtained, the school psychologist may determine the presence of a significant cognitive disability using a preponderance of evidence, which must include:

            1. an explanation why an IQ score cannot be obtained;

            2. evidence supporting the presence of a significant cognitive disability; and

            3. scores indicating severe and global adaptive deficits at least two (2) standard deviations below the mean as measured by a norm-referenced assessment of adaptive skills using the global adaptive score.

         c. This provision is not to be used for students who are unable or unwilling to participate in an assessment solely due to behavior.

   2) The student is receiving functional academic instruction at a level that is not typically measured by the Idaho Content Standards.

i. The student's instruction and IEP goals/objectives/benchmarks address knowledge and skills that are appropriate and challenging for the student.

3) The student's course of study is primarily focused on adaptive skills typically not measured by grade-level state or district assessments.

i. Adaptive skills are essential to living independently and functioning safely in daily life, and include, but are not limited to motor skills, socialization, communication, personal care, self-direction, functional academics, and personal health and safety.

4) The student requires extensive, direct, individualized instruction and substantial supports to achieve measurable gains in the grade- and age- appropriate curriculum.

i. The student consistently requires individualized instruction in core academic and adaptive skills at a substantially lower level relative to other peers with disabilities.

ii. It is extremely difficult for the student to acquire, maintain, generalize, and apply academic and adaptive skills in multiple settings, across all content areas, even with high-quality, extensive, intensive, pervasive, frequent, and individualized instruction.

iii. The student requires pervasive supports, substantially adapted materials, and individualized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate, and transfer skills across multiple settings.

b. Students shall not qualify to participate in an alternate assessment solely based on any of the following reasons:

1) Having a disability;

2) Poor attendance or extended absences;

3) Primary language, or social, cultural or economic differences;

4) Expected poor performance or past basic/below basic performance on the regular education assessment;

5) Academic and other services the student receives;

6) Educational environment or instructional setting;

7) Percent of time receiving special education services;

8) English Learner (EL) status;

9) Low reading level and/or low achievement level;

10) Anticipated disruptive behavior;

11) Impact of student scores on the accountability system;

12) Administrative decision;

13) Anticipated emotional distress; and/or

14) Need for accommodations (e.g., assistive technology/AAC) to participate in the assessment.

L. IEPs for Children in Early Childhood Programs

Beginning at age three (3) until eligible to enroll in kindergarten, students with disabilities who qualify for special education are served through Early Childhood (EC) programs in schools and within the community. In Idaho, kindergarten eligibility begins when the student turns five (5) years old on or before September 1st of the school year. All requirements of IDEA and this manual apply to EC IEPs; however, EC IEPs have additional requirements as outlined in this section.

Early Childhood Outcomes (ECO)

To ensure that students receive high quality education and services in EC Programs, IEP teams assess and report on three Early Childhood Outcomes (ECO) at entry into the EC program and prior to exit from the program. These ECOs include:

1. ECO 1: Positive Social-Emotional Skills, including Social Relationships;
2. ECO 2: Acquiring and Using Knowledge/Skills, including Communication and Early Literacy; and
3. ECO 3: Taking Appropriate Action to Meet Needs.

Each IEP goal and service shall relate to one or more of these outcomes, based on the guidelines in this section.

1. **Obtaining ECO Ratings**
   a. Department-Approved Anchor Assessment: The IEP team shall use a Department-approved anchor assessment to establish an ECO rating at entry to and exit from an EC program if the student will be in the EC program for longer than six months.
   b. ECO Entry Rating: An ECO entry rating for each outcome area shall be reported on the initial IEP for each student entering an EC program. The IEP team must use a Department-approved anchor assessment to establish the ECO entry rating. If the student will be in the program for less than six (6) months, an entry rating is not required.
   c. ECO Exit Rating: An ECO rating for each outcome area shall be reported prior to exit from the EC program. The IEP team must use a Department-approved anchor assessment to establish the ECO exit rating. If the student has been in the program for less than six (6) months, an exit rating is not required.
   d. Early Childhood Outcome (ECO) Ratings: ECO ratings should be reported annually with the annual IEP review. ECO ratings indicate the student's performance in each of the outcome areas and rate skills from 1 to 7 based on skill development as foundational, immediate foundational, or age-appropriate. The student's IEP team shall reference Early Childhood Technical Assistance (ECTA) Center resources to make these determinations.
   e. Foundational (F): Skills and behaviors that occur earlier in development and serve as the foundation for later skill development.

1) Immediate Foundational (IF): Child shows functioning that might be described as that of a slightly younger child. The child exhibits skills that are conceptually linked to later skills and immediately precede the later skills developmentally.

2) Age-Appropriate (AA): Child shows functioning expected for his or her age in all or almost all the everyday situations that are part of the child's life.

2. **Early Childhood IEP Goals**

a. Components of a Goal

1) Present Levels of Academic Achievement and Functional Performance (PLAAFPs) are required for EC IEPs and are addressed with ECO ratings. To establish ECO ratings, the IEP team must discuss parent concerns and discuss and analyze current student skills in each outcome area.

2) All other components of an IEP goal such as student need, baseline data, annual goals, procedure and schedule for data collection, and reporting on progress shall meet the same requirements as a K-12 IEP.

b. General Education Standards

1) Each annual goal in an EC IEP shall be developed with the purpose of ensuring student progress toward general education standards that apply to all students. For EC programs, general education content standards are outlined in the *eGuidelines*.

3. **Least Restrictive Environment (LRE) Reporting**

Each EC IEP requires reporting of an appropriate LRE code based on the type of EC program the student participates in, where special education and related services are received, and the amount of time the student spends in a non-special education environment. EC LRE codes include:

a. **Regular Early Childhood Program (10+ hours per week):** Student attends a regular early childhood program at least 10 hours per week and receives the majority of special education and related services in the regular early childhood program.

b. **Regular Early Childhood Program (10+ hours per week and Other Location):** Student attends a regular early childhood program at least 10 hours per week and receives the majority of special education and related services in some other location.

c. **Regular Early Childhood Program (<10 hours per week):** Student attends a regular early childhood program less than 10 hours per week and receives the majority of special education and related services in the regular early childhood program.

d. **Regular Early Childhood Program (<10 hours per week and Other Location):** Student attends a regular early childhood program less than 10 hours per week and receives the majority of special education and related services in some other location.

e. **Separate Special Education Class:** Student attends a special education program that is not a regular early childhood program.

f. **Separate School:** Student receives special education in a public or private day school designed specifically for children with disabilities.

g. **Residential Facility:** Student receives all special education and related services in a

public or private facility.

h. **Service Provider Location (or some other location not in any other category):** Student receives all special education and related services from a service provider and does not attend a special education program in any regular early childhood program.

i. **Home:** Student receives special education and related services in the principal residence of the child's family or caregiver and does not attend a regular early childhood program or a special education program.

M. Additional Transition Components for Secondary-Level IEPs

Secondary transition services are defined as a coordinated set of activities for a student with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post school activities including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The activities include instruction, related services, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These activities are based on the individual student's needs, taking into account the student's strengths, preferences, and interests. The following are required components for all secondary students receiving special education services.

1. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), the IEP team shall:

   a. include present levels of academic and/or functional performance as they relate to the student's postsecondary goals in the IEP;

   b. conduct an age-appropriate transition assessment or functional vocational evaluation;

   c. include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills in the IEP;

   d. include transition services, including a course of study, that will reasonably enable the student in reaching postsecondary goals identified on the IEP which may include postsecondary education and training, employment and career counseling, community participation, independent living or adult services in the IEP;

   e. provide evidence that the student was invited to the IEP team meeting where transition services are to be discussed; if the student does not attend the IEP team meeting, the IEP team must take other steps to ensure the student's preferences and interests are considered;

   f. provide evidence that a representatives of any participating agency was invited to the IEP team meeting with written consent of the parent/adult student;

   g. include the graduation requirements for the student receiving special education services in the IEP; and

      See Chapter 7 for more detailed information on documentation of high school

graduation in the IEP.

h. ensure the postsecondary goals and transition services shall be updated on the IEP annually.

2. Not later than the student's seventeenth (17th) birthday, the IEP shall include a statement that the student and parent have been informed that special education rights will transfer to the student on his or her eighteenth (18th) birthday. Special education rights will transfer from the parent to the student when the student turns eighteen (18) years old unless the IEP team determines that:

   a. there is sufficient basis for denial of transfer of rights to the student, meaning the student is unable to provide informed consent with respect to his or her special education program; or

   b. the parent has obtained legal guardianship.

3. The IEP shall contain a statement referring to the transfer or non-transfer of rights:

   a. If the team determines that there is no relevant information about the student to prohibit the transfer of rights at age eighteen (18), the student's IEP shall contain a statement that the student has been informed that special education rights will transfer to the student.

   b. If the IEP team determines that the student lacks the ability to provide informed consent with respect to his or her educational program, a statement will be included in the IEP indicating that the parent, or other individual if the parent is not available, will retain all special education rights after the student reaches age eighteen (18).

      1) Basis for Denial of Transfer: During the IEP team meeting to discuss the transfer of rights, the IEP team will use the following as the basis for any denial of the transfer:

         i. Evaluation data, test results, written reports, teacher observation, education records, and parent input, including whether the parent intends to seek guardianship.

         ii. Answers to the following questions:

            a. Is the student capable of understanding his or her rights?

            b. Is the student capable of exercising his or her rights?

            c. Is the student capable of understanding the consequences and impact of his or her decisions?

   c. Following the Transfer of Rights: When the student's special education rights transfer at age eighteen (18), the parent and student will be informed that rights have transferred. The parent may still be invited to participate as an individual who has knowledge or special expertise regarding the adult student.
   See Chapter 12 for more information on the transfer of student rights.

4. When a student exits from special education as a result of meeting the Idaho Content Standards and such applicable LEA graduation requirements or aging out, the LEA shall provide the student with a summary of his or her academic achievement and functional performance along with recommendations concerning how to assist the student in

meeting postsecondary goals.

N. Consent for Initial Provision of Special Education and Related Services

The LEA shall make reasonable efforts to obtain informed written consent from the parent/adult student before the initial provision of special education and related services for the student.

If the parent/adult student communicates in writing that he or she refuses special education and related services following the evaluation and eligibility determination, the LEA shall not provide special education and related services to the student. If the parent/adult student fails to respond to an LEA's documented efforts to gain consent for initial provision of special education and related services, the LEA shall not provide special education and related services to the student. In both cases:

1. The LEA shall not be in violation of the requirement to provide FAPE to the student or the requirement to provide special education and related services;
2. The LEA shall not be required to convene an IEP team meeting or develop an IEP for the student; and
3. The LEA shall not use mediation and/or due process in order to obtain consent or a ruling allowing initial placement.

If the parent/adult student wishes to move forward with the provision of services proposed on the IEP and placement in special education, consent for initial placement in special education shall be obtained. Consent occurs when the parent/adult student agrees in writing, as indicated by a signature, to the carrying out of the activity for which consent is sought.

See Chapter 4 for more information on parent/adult student consent.

O. Parent/Adult Student Objection to the IEP

If the parent/adult student disagrees with an IEP team's proposed IEP for the student, the parent or adult student may file a written objection to all or parts of the proposed IEP.

Either party retains the right to exercise procedural rights under the IDEA. The LEA and parent/adult student may use methods such as additional IEP team meetings, IEP facilitation, or Department mediation to resolve the disagreement. If these attempts to resolve the dispute fail or are refused, the proposed IEP shall be implemented unless a due process hearing request is filed by either party to obtain a hearing officer's decision regarding the proposed IEP, unless it is an initial IEP.

A written objection cannot be used to prevent the LEA from placing a student in an interim alternative educational setting (IAES) in accordance with the IDEA procedures for discipline of a student, or to challenge an eligibility/identification determination.

See Chapter 12 for information about the written notice requirements regarding the provision of FAPE and educational placement.

See Chapter 13 for more information about the various forms of dispute resolution including facilitation and mediation.

P. Following the Meeting

Following the IEP team meeting, a copy of the IEP and written notice of proposed or refused actions shall be given to the parent/adult student. IEPs and written notice shall also be given to

the parent/adult student whenever a change is made to the IEP. A parent/adult student may also request a copy of an IEP and written notice at any time.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the IEP shall have access to the IEP and be informed of his or her specific responsibilities. This includes being informed of any specific accommodations, adaptations, or supports that shall be provided to the student to ensure that the IEP is implemented appropriately.

Section 3. IEP Reviews

A. Annual Reviews

Each student's IEP shall be reviewed by the IEP team, at least annually, which means once every 365 days. Meetings may be held any time throughout the school year, as long as the IEP is reviewed annually and is in effect at the beginning of each school year. After the annual review, written notice that the new IEP changes will be implemented shall be provided to the parent/adult student.

An IEP review may include

1. to determine whether the student's annual goals have been achieved;
2. to revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. to determine whether any additional assessments are necessary and to address the results of those conducted;
4. to address information regarding the student provided to the team;
5. to address the student's anticipated needs;
6. to monitor the continuing eligibility of the student based on an evaluation or review of a variety of data, which may include formal or informal assessment, progress toward IEP goals and, when applicable, objectives and benchmarks;
7. to write a new IEP; and
8. to consider a reevaluation to determine if a student is no longer eligible and special education services should be discontinued.

B. IEP Amendments

If changes to a student's IEP are needed after the annual IEP meeting has been held, the parent/adult student and the LEA may agree in writing using the *Parent/Adult Student and District Agreement* form not to convene an IEP team meeting for the purposes of making such changes, and instead may develop a written amendment to the student's current IEP. The parent/adult student will be provided with a revised copy of the IEP and Written Notice documenting the changes made. The annual review date remains the date of the original IEP.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the amended IEP shall have access to the amended IEP and be informed of his or her specific responsibilities.

If the parent/adult student believes that the student is not progressing satisfactorily or has

concerns about the current IEP, the parent/adult student may request an IEP team meeting. The LEA shall grant any reasonable request for such a meeting. If the LEA refuses to convene an IEP team meeting requested by the parent/adult student, the LEA shall provide written notice to the parent/adult student, including an explanation of why the LEA has determined the meeting is unnecessary.

If any other member of the IEP team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP team meeting.

Section 4. Transfer Process and Timelines

When a student with a disability transfers LEAs within Idaho or outside of Idaho, there are requirements around timely transfer of records, decision-making, and IEP implementation, as outlined below.

A. Timelines for Document Requests and Transfers

1. The receiving LEA shall request, as soon as possible but within no more than two (2) school days of the student's enrollment in the LEA, the eligibility documents and the most current IEP from the sending LEA.
2. Once an LEA has received a request for a student's record from another Idaho LEA, the sending LEA shall provide the student's special education records as soon as possible, but within no more than five (5) school days of the request. The records must include, at a minimum, the student's most recent IEP and eligibility documentation. LEAs shall retain originals or copies of the most recent five (5) years of programmatic and fiscal records.
3. Within fourteen (14) calendar days the receiving LEA will request the full educational record of the transferring student from the former school. LEAs shall retain originals or copies of the most recent five (5) years of programmatic and fiscal records.
4. The current IEP, a new annual IEP, an amended IEP, or an interim IEP shall be implemented within five (5) school days of the student's enrollment.
5. If eligibility documentation is not received within a reasonable time period, written consent for a reevaluation shall be sought. During the reevaluation process, the LEA shall implement an interim IEP to provide services comparable to those provided in the student's most recent IEP.

B. Transfer Process for Reviewing and Determining Eligibility

The IEP team, which includes the parent/adult student, shall review eligibility documentation to determine whether the documentation reflects eligibility for special education or whether a reevaluation is required.

1. When a student transfers from another Idaho LEA and eligibility documentation is current, the team shall presume eligibility and proceed to the review of the IEP.

   Note: The purpose of the Transfer Process is to make decisions about the student's eligibility status and ensure services begin immediately upon enrollment. If, during this process, the team determines that the documentation does not meet the Department's expectations for General Supervision File Review (GSFR), the team should complete the Transfer Process and proceed to consider whether a reevaluation is needed using the

Reevaluation Consideration process and the associated form.

2. When a student transfers from an LEA outside of Idaho and eligibility documentation is current, the team shall determine whether the documentation is sufficient to demonstrate that the student meets Idaho criteria for special education. If documentation is sufficient, the team shall proceed to the review of the IEP.
3. When a student transfers from an LEA outside of Idaho and eligibility documentation is not sufficient to demonstrate that the student meets Idaho criteria for special education, the team shall seek written consent for a reevaluation and immediately develop an interim IEP to be implemented while the reevaluation is completed. Within sixty (60) calendar days the reevaluation shall be completed, and the IEP team shall develop a new IEP based on the reevaluation results or exit the student from special education services if the student does not meet Idaho eligibility criteria.
4. If eligibility documentation is expired, whether from an LEA within or outside of Idaho, the team shall seek written consent for a reevaluation and immediately develop an interim IEP to be implemented while the reevaluation is completed. Within sixty (60) calendar days the reevaluation shall be completed, and the IEP team shall develop a new IEP based on the reevaluation results or exit the student from special education services if the student does not meet Idaho eligibility criteria.

C. Transfer Process for Reviewing and Implementing the IEP

1. If, based on the review of eligibility documentation described above, the student is eligible for special education and related services, the IEP team shall make one of three (3) decisions:
    a. Implement the student's current IEP as written;
    b. Implement the student's current IEP with amendment(s); or
    c. Develop and implement a new IEP.
2. If, based on the review of eligibility documentation described above, the IEP team has initiated a reevaluation to determine continued eligibility in Idaho, the team shall develop an interim IEP to address the student's needs while a reevaluation is conducted.
    a. An interim IEP is a temporary program developed by the IEP team to be implemented for fewer than 365 days. Typically, an interim IEP is implemented while a reevaluation is conducted or additional information is gathered.
    b. In the case of transfer students, the interim IEP shall not be implemented for more than sixty (60) days while a reevaluation is conducted.

Section 5. Transition Process for Children from the Infant/Toddler Program (ITP)

A. Interagency Agreement and Protocols

The school district, as the local lead agency for Part B, shall initiate the development of a signed interagency protocol with the regional Infant/Toddler Program (ITP) of the Department of Health and Welfare (DHW), the lead agency under Part C of the IDEA. The protocol shall be in accordance with the current state *Interagency Agreement for Early Childhood Special Education*

Services and *Early Intervention for Children Ages Two through Five*.

The protocol will outline the obligations of each agency to ensure:

1. a smooth and effective transition of children served under Part C to early childhood special education (ECSE) services under Part B;
2. by the child's third birthday, eligibility for Part B services has been determined and an IEP or Individual Family Service Plan (IFSP) has been developed and implemented; and
3. each district and agency shall participate in transition planning conferences.

NOTE: A child who turns three (3) after May 1, has been determined eligible for Part B services, and for whom written parental consent has been obtained for initial placement for Part B services can be served as outlined in the IFSP by the ITP until school starts in the fall. This is the case unless specified differently in the local interagency protocol.

B. Part C to Part B Transition Planning

In the case of a child who may be eligible for ECSE services, the district shall participate in a transition planning conference with the family arranged by the ITP. The conference will be conducted at least ninety (90) calendar days (and up to nine (9) months at the discretion of all parties) before the child's third (3rd) birthday to discuss eligibility requirements under Part B of the IDEA, needs and concerns of the child and family, and any services the child may receive.

The ITP has the responsibility to:

1. notify the school district and the Idaho Department of Education of potentially eligible children;
2. invite and coordinate a transition planning meeting to review the process to determine eligibility and assess service options available;
3. obtain a signed *Authorization to Exchange Confidential Information*;
4. establish a plan for facilitating the transition of the toddler with a disability to early childhood special education services;
5. provide the district with the current IFSP, all addendums/outcomes relevant to the most recent IFSP, other progress reports, and any evaluations and assessments completed within the last six months; and
6. upon invitation, attend the initial IEP team meeting.

The school district has the responsibility to:

1. contact the family and provide notice of procedural safeguards and written information about the Part B and early childhood special education services (this information may be provided in person, at a transition conference, by electronic means, or by mail);
2. attend and participate in the transition planning meeting;
3. determine eligibility and develop an IEP or IFSP prior to the child's third (3rd) birthday;
4. invite ITP representatives, at the request of the parent, to the initial IEP team meeting; and
5. obtain consent for initial provision of special education and related services under Part B.

C. IEP or IFSP Required

1. By the child's third (3rd) birthday, the district shall have an IEP or IFSP in place for each student three (3) through five (5) years old who is eligible for ECSE services.
2. In developing the IEP, the IEP team shall consider the content of the IFSP including:
   a. the least restrictive environment statement; and
   b. the educational component that promotes school readiness, pre-literacy, language, and numeracy skills.
3. The IFSP may serve as the IEP of the child, if:
   a. agreed by the district and the child's parents;
   b. a detailed explanation of the differences between the IFSP and the IEP is provided to the parents);
   c. parental written informed consent is obtained; and
   d. the IFSP is developed according to the IEP procedures outlined in Section 2 of this chapter. If the district elects to use an IFSP, the district is required to implement only the educational components of the IFSP.

D. Consent and Notice Requirements

1. Notice Announcing Initial IEP Team Meeting: The district shall inform the parents of their rights to request the participation of ITP representatives at the initial IEP team meeting for children previously served by Part C.
2. Authorization to Exchange Confidential Information: The district shall ensure that written parental consent for the exchange of confidential information has been obtained prior to exchanging pertinent student records from non-educational agencies such as ITP, developmental disabilities agencies, medical providers, day-care centers, and Head Start.
3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility, the student's present levels of academic achievement and functional performance, and/or goals or services on the IEP, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier under Part C). Otherwise, only written notice to inform the parent of the district's decision to use the current evaluation data, and not to conduct any further assessments, shall be provided to the parent. The parent shall also be informed of his or her right to request additional assessments.
4. Consent for Initial Provision of Special Education and Related Services: Written parental consent for the initial provision of special education and related services and written notice for the implementation of the IEP or IFSP under Part B is required. Eligibility, initial provision of services, and LRE placement shall be documented for Part B services.

Section 6. Students with Disabilities in Adult Prisons

The following provisions apply for students with disabilities ages eighteen (18) to the semester when they turn twenty-one (21) who are convicted as adults under Idaho law and incarcerated in adult prisons:

1. A student identified as a student with a disability, who is eligible for special education, and who is convicted as an adult and incarcerated in an adult prison, is not subject to

Child Find.

2. If already identified, the student is entitled to FAPE until age twenty-one (21).
3. The student will not participate in statewide assessments.
4. Transition planning and services do not apply if the student will remain in prison beyond the semester of his or her twenty-first (21st) birthday.
5. The IEP team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot otherwise be accommodated.

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CHAPTER 6: LEAST RESTRICTIVE ENVIRONMENT

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CHAPTER 6: LEAST RESTRICTIVE ENVIRONMENT

The IDEA states that, to the maximum extent appropriate, all students with disabilities, ages three (3) to twenty-one (21) years of age, are to be educated with age-appropriate peers who are nondisabled. This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The LEA shall have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student.

See Section 2 of this chapter for information on the continuum of settings and services.

An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an individualized education program (IEP) while being educated with peers who are nondisabled to the maximum extent appropriate as determined, at least annually, by the IEP team. The student's IEP shall indicate the LRE for the student and explain to what extent, if any, the student will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. This provision includes students with disabilities placed in public or private institutions or other care facilities.

Special classes, separate schooling, and other removals of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education environment cannot be achieved satisfactorily, even with the use of supplementary aids and services.

See Chapter 5, Section H for more information on LRE.

Section 1. Least Restrictive Environment Considerations

A. When to Make and Review Placement Decisions

Placement determinations are made under the following circumstances:

1. Placement decisions for a student with a disability are made following the determination of the student's individual needs, goals, and required services.
2. Placement decisions shall be reviewed at least annually by the IEP team, which includes the parent/adult student, LEA representative, general education teacher, special education teacher or provider, and other persons who are knowledgeable about the student, can interpret evaluation data, and are knowledgeable about the placement options available.
3. Placement decisions shall be reconsidered, as appropriate, when an IEP team is convened to review a student's academic, functional, or developmental progress.

B. Considerations in Placement Decisions

LRE decisions shall be made on an individual basis for each student at least annually and documented in the student's IEP. The IEP team shall consider the following when determining the LRE in which the IEP can be implemented:

1. IEP Goals and Services: The student's goals and services are developed prior to the determination of the services and settings. The services and settings needed by each student must be based on the student's unique needs, not the student's category of disability.

2. Age-Appropriate Peers: Students with disabilities ages three (3) to twenty-one (21) shall be educated with age-appropriate peers to the maximum extent appropriate. A student with a disability shall not be removed from age-appropriate general education environments solely because of needed accommodations and/or adaptations in the general education environment or curriculum based on the Idaho Content Standards.
3. School of Attendance: A student with a disability shall be educated in the school the student would attend if not disabled, unless the severity and extent of the student's disability is such that the student cannot be satisfactorily educated in that school. In such case, the student's placement shall be based on the student's individual needs and unique circumstances and as close as possible to the student's home.
4. Harmful Effects: Consideration shall be given to any potential harmful effect on the student or on the quality of services the student needs. Teams shall consider the potential benefits and harmful effects of the student not participating in the general education environment and accessing grade-level Idaho Content standards when instruction in a separate environment or with an adapted curriculum is being considered.
5. Accommodations and/or Adaptations: A student with a disability-shall not be removed from age-appropriate general education settings solely because of needed accommodations and/or adaptations in the general education environment or curriculum.
6. Participation in Nonacademic and Extracurricular Services and Activities:
    a. A student may not be denied the opportunity to participate in nonacademic and extracurricular services and activities based solely on the fact that a student has a disability or due to the student's current educational placement.
    b. A student with a disability shall be allowed an equal opportunity to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include but are not limited to meals, recesses, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to community agencies that provide assistance to individuals with disabilities, career development, and employment of students, including both employment by the LEA and assistance in making outside employment available.

The IEP team shall consider and determine what supplementary aids and services are appropriate and necessary for the student to participate in nonacademic and extracurricular services and activities to afford students with disabilities an equal opportunity for participation in those services and activities.

C. Documentation of Placement Decisions

If the student will not participate *entirely* in the general education classroom, curriculum, and/or nonacademic and extracurricular activities, the IEP shall include a written explanation justifying the IEP team's decisions. This justification shall include the consideration of potential benefits or harmful effects of removing the student from the general education setting, curriculum, and/or nonacademic and extracurricular activities, with or without the provision of supplementary aids and services beyond the need for specially designed instruction. The LEA shall provide written notice to the parent/adult student whenever the IEP team proposes to change or refuses to change the educational placement of the student.

The IEP includes a section for reporting the educational environment required for Child Count. This section is for reporting the amount of time the student spends in the general education environment, with or without special education and related services.

Section 2. LEA Responsibility for Continuum of Settings and Services

The continuum of settings includes instruction in general education, special education, special schools, in homebound settings, residential programs, hospitals, and correctional facilities. In addition, the continuum includes provision for supplemental services, such as resource services or itinerant instruction, to be provided in conjunction with general education.

In determining appropriate settings and services for a student with a disability, the IEP team shall consider the student's needs and the continuum of alternative placements and related services required to meet those needs. Regardless of placement, the student shall be given appropriate access to the age-appropriate, grade-level general education curriculum and the Idaho Content Standards that apply to all students, as determined by the IEP team. The LEA shall be able to justify the available continuum of services and placement decisions for individual students, which shall not be limited by LEA structure, LEA charter or mission statements, LEA policy, instructional philosophy, staffing, funding, or any other factors not based on the individual student's unique needs.

All LRE considerations also apply to preschool students with disabilities ages three (3) until eligible to enroll in kindergarten who are eligible for special education and, therefore, entitled to receive a free appropriate public education (FAPE).

Public schools that do not operate early childhood programs for preschool students without disabilities are not required to initiate such programs solely to satisfy LRE requirements. IEP teams in public schools that do not have an inclusive public preschool that can provide all the appropriate services and supports to meet the individual needs of preschool students with disabilities shall explore alternative methods to ensure LRE requirements are met for preschool students ages three (3) until eligible to enroll in kindergarten, which may include:

1. providing opportunities for full-time or part-time participation of preschool students with disabilities in public or private regular early childhood programs operated for preschool students without disabilities by other agencies, such as Head Start;
2. placing preschool students with disabilities in the following:
    a. private early childhood programs for preschool students *without* disabilities; or
    b. private early childhood programs or other community-based early childhood settings that integrate students *with and without* disabilities; and/or,
3. providing classes for preschool students with disabilities in elementary schools, which may include participation in non-academic and/or non-curricular activities as appropriate to meet the individual needs of the students.

See Chapter 12 for information regarding written notice requirements that apply to proposed or refused changes in educational placement

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CHAPTER 7: DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

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CHAPTER 7: DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

Section 1. Discontinuation of Services

A. Students Who Are No Longer Entitled to Services

There are several circumstances which may lead to an LEA no longer providing special education and/or related services to a student. An LEA discontinues services when the student is no longer entitled to services, when the LEA's obligation to provide services changes, or when consent for services is revoked by the parent/adult student.

1. Student No Longer Meets Eligibility Criteria

If it is suspected that a student no longer meets the eligibility criteria for special education, the evaluation team shall conduct a comprehensive evaluation. The evaluation team shall use the reevaluation consideration process and associated form to determine whether new assessments are necessary to complete a comprehensive evaluation and make an eligibility decision. The team will obtain consent for new assessments to be conducted, if necessary. The evaluation team will document the eligibility decision within an eligibility report. If the student is no longer eligible under the Idaho eligibility criteria, the LEA will provide the parent/adult student with written notice of this decision, including the date that services will cease, prior to discontinuing special education services.

2. Student Completes Requirements for High School Graduation

A student is no longer eligible for special education services and the LEA's obligation to provide special education services ends when the student meets the LEA and State graduation requirements that apply to all students without adaptations to those requirements. Although this is considered a change of placement, an evaluation is not required. Prior to graduation and the discontinuation of special education services, the LEA shall:

a. provide the parent/adult student with written notice that the student is no longer eligible for special education services and that the LEA's obligation to provide special education services has ended because the student has met LEA and State graduation requirements that apply to all students; and

b. provide the parent/adult student with a written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting postsecondary goals. This summary is known as the *Summary of Performance* (SOP).

3. Student Reaches Maximum Age

For students who have not yet met LEA and State graduation requirements, the student is no longer eligible for special education and the LEA's obligation to provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age. This is considered a change of placement that does not require an evaluation. When this happens, the LEA shall:

a. provide the parent/adult student with written notice that the student is no longer eligible for special education and the LEA's obligation to provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age; and

b. provide the parent/adult student with a written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting postsecondary goals. This summary is known as the *Summary of Performance* (SOP).

B. Change in LEA Obligation to Provide Services

Under certain circumstances, a student may continue to be eligible for special education services, but the LEA's obligation to provide services to the student changes.

1. Transfer to Another LEA

When a student enrolls in another LEA, the receiving LEA becomes responsible for FAPE.

See Chapter 5 for more information about the transfer review process.

2. Enrollment in Private School or Homeschool

When a parent/adult student withdraws a student from public school and enrolls the student in a private school or provides homeschooling, the LEA's responsibilities vary depending on the circumstances.

See Chapter 3 for more information about Child Find. See Chapter 9 for more information about Private Schools. See Chapter 10 for more information on Homeschooling.

3. Students Who Drop Out of School

When a student drops out of school, written notice shall be sent to the parent/adult student and a copy of the written notice shall be included in the student's special education record. If the student reenrolls in the LEA, the LEA shall complete the Transfer Process to determine whether an evaluation is needed and whether the student's most recent IEP can be implemented as written or implemented with an amendment, or whether an interim IEP is appropriate while an evaluation is completed.

Note: A student completing a high school equivalency diploma is considered to have dropped out because high school equivalency diplomas do not meet the LEA and State requirements for graduation.

4. Students Who Complete Graduation Requirements with Adaptations

When a student meets the graduation requirements outlined in the IEP but does not meet LEA and State requirements for graduation, the student is considered to have graduated by meeting adapted requirements. Because the student has not met LEA and State graduation requirements, the student may remain eligible for FAPE through the semester the student turns twenty-one (21). In many cases, students who graduate by meeting adapted requirements leave high school and pursue postsecondary options. In this event, written notice shall be sent to the parent/adult student and a copy of the written notice shall be included in the student's special education record.

If the student returns to pursue graduation by meeting LEA and State requirements or to participate in a transition program, the LEA shall complete the transfer process to determine whether an evaluation is needed and whether the student's most recent IEP can be implemented as written or implemented with an amendment, or whether an interim IEP is appropriate while an evaluation is completed.

See Chapter 5 for more information about the Transfer Process and Timelines.

C. Parent/Adult Student Revokes Consent for Special Education Services

When a parent/adult student revokes consent for special education services in writing, written notice shall be provided specifying when the special education and related services will cease. The written notice shall include a statement indicating the LEA stands ready, willing, and able to provide FAPE should the student remain eligible for special education services. If a parent revokes consent for special education and related services and later requests that special education services be reinstated, the LEA shall treat this request as a request for an initial evaluation. This includes completing the referral process to determine whether new assessments are required to determine eligibility and obtaining written consent from the parent/adult student to initiate the evaluation process. The team shall complete an eligibility report to identify whether the student is eligible for special education services.

A parent/adult student has the right to revoke consent for special education services in their entirety, not service by service. However, the LEA cannot use the parent/adult student's refusal of consent to a particular service as the basis for refusing to provide any special education or related services. The IEP team should work to reach consensus on an appropriate offer of FAPE.

See Chapter 3 for more information about the Referral to Consider a Special Education Evaluation. See Chapter 4 for more information about conducting an Initial Evaluation.

Section 2. Graduation

A student is eligible for FAPE until they meet LEA and State standards for graduation or through the semester the student turns twenty-one (21). A student may graduate in one of the following ways:

1. **Graduation Meeting LEA and State Requirements**

   The student has met LEA and State requirements that apply to all students with or without accommodations in the classroom. Accommodations are determined by the IEP team if deemed necessary for the student to complete coursework required for graduation. Accommodations maintain the same level of rigor of the LEA and State graduation requirements. For example, a teacher may use different instructional strategies or alternate methods for assessing the student's mastery of Idaho Content Standards that are equally rigorous. Accommodations shall be stated in the student's IEP.

2. **Graduation Meeting Adapted Requirements**

   When a student meets the graduation requirements outlined in the IEP but does not meet LEA and State requirements for graduation, the student is considered to have graduated by meeting adapted requirements. Long-term consequences for the student shall be considered when adaptations are made to LEA and State graduation requirements. Adaptations alter the level of rigor required in the LEA or State graduation requirements.

   Examples of adaptations include, but are not limited to, changes made to course content, course credit requirements, learning objectives, or grading standards that alter the level of rigor or the grade-level standard but shall not include exempting or excluding the student from an opportunity to pursue or meet the Idaho Content Standards.

A. Individualized Education Program (IEP) Team Requirements Regarding Graduation

A student's IEP team shall review graduation requirements, including the student's progress towards meeting LEA and State requirements and/or adapted graduation requirements as determined by the IEP team, at least annually, beginning with the IEP in effect when the student

turns sixteen (16).

When reviewing graduation requirements for a student receiving special education, the IEP team shall include an LEA representative knowledgeable about the Idaho Content Standards and the LEA and State graduation requirements. The IEP team shall:

1. Determine whether the student will meet LEA and State graduation requirements, and the anticipated graduation date.
2. Develop the student's secondary transition plan, including the student's course of study and a record of the number of credits earned and anticipated to be earned in each high school grade, including any transition program the student is anticipated to participate in beyond their twelfth (12^{th}) grade year. The IEP team shall review the student's course of study annually and make any changes needed for the student to meet graduation requirements.
3. Document any adaptations made to the LEA's and State's regular graduation requirements based on the student's individual needs.

B. Graduation Ceremonies

A special education student who completes a secondary program through meeting graduation requirements or criteria established on the student's IEP will be afforded the same opportunity to participate in graduation ceremonies, senior class trips, or any other graduation activities as students without disabilities. Participation in a graduation ceremony does not necessarily mean that the student has met LEA or State requirements for graduation.

Section 3. Transcripts and Diplomas

A. Transcripts

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts shall adhere to the following conditions:

1. Accommodations that allow the student to complete and demonstrate that the student has met graduation requirements shall not be noted on the transcript.
2. Adapted course work may be noted on the transcript if the parent/adult student is informed in advance and the designation is not discriminatory and does not identify the student as having a disability or receiving special education.
3. Course designations, titles, or symbols that are used solely to identify adapted course work that is taken by students with disabilities shall not be used.

B. Diploma

The LEA will use the same high school diploma for all students at the completion of the secondary program. This includes students who meet the graduation requirements with adaptations.

A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities in the same graduating class.

Section 4. Grades, Class Ranking, and Honor Roll

Grades earned by students with disabilities will not be categorically disregarded or excluded from the LEA's grade point average (GPA) standing. The LEA may establish objective criteria for class rankings, honors, etc., that weight courses according to degree of difficulty or exclude non-core courses so long as such practices are nondiscriminatory.

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CHAPTER 8: CHARTER SCHOOLS

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CHAPTER 8: CHARTER SCHOOLS

Federal law requires that students with disabilities be offered educational choices comparable to those offered to students without disabilities. One of these choices is the opportunity to attend a public charter school. Each public charter school, whether a charter school within a district or a charter school LEA shall accept and appropriately serve students with disabilities under the IDEA in the same manner as any other public school.
The LEA charter school board of directors/trustees shall adopt the most current Idaho Special Education Manual and all subsequent revisions and ensure the appropriate implementation of the IDEA within the LEA.

Section 1. Definition and Parent/Student Rights

A. Definition of Charter Schools

In Idaho, a charter school is a public school authorized pursuant to Title 33 Chapter 52, Idaho Code. A charter school operates as a nonprofit, publicly funded, nonsectarian school in one of three ways:

1. as a school within a district, if authorized by the local board of trustees of a school district;
2. as a school authorized by a district, but operating as a separate LEA; or
3. as its own LEA, if authorized by the Idaho Public Charter School Commission or an Idaho college or university.

A charter school is bound by the conditions of its charter, and all applicable state and federal laws.

B. The Rights of Charter School Students and Their Parents

A charter school student is a public school student. Students with disabilities who attend charter schools, and their parents, have all the same rights granted to students who attend other public schools. These rights are provided under the IDEA: the Elementary and Secondary Education Act (ESEA); the Every Student Succeeds Act (ESSA); Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA); and the Family Education Rights and Privacy Act (FERPA). Idaho law specifically states that charter schools cannot discriminate against any student on any basis prohibited by federal or state constitutions or any federal, state, or local law.

1. Charter schools must have open enrollment policies that include:
    a. giving all students an equal opportunity to attend;
    b. being open and accessible to all students, including students with disabilities; and
    c. admitting students on the basis of a lottery if more students apply for admission than can be accommodated.
2. A charter school shall not adopt an admission standard, policy or procedure or any other criteria for continued enrollment, attendance, or participation that would have the effect of prohibiting or discouraging a student with a disability from enrolling, attending, or continuing to attend; or have the effect of prohibiting or discouraging a parent of a student with a disability from enrolling a student in the charter school by:

a. establishing an examination or other academic criteria for admission;

b. requiring any activity in which the school is unwilling to accommodate or adapt its curriculum or academic standards to meet the needs of the student with a disability;

c. implicitly or explicitly suggesting that another LEA would be a better placement or more capable of providing special education services or delivering instruction (commonly referred to as "counseling out"); and/or

d. suggesting that the behavioral or instructional philosophy or approach, curriculum, or instructional design of the charter may not meet the needs of a student with a disability. This includes but is not limited to suggestions that the academic rigor of the curriculum is not appropriate for students with disabilities or for a particular student with a disability.

3. Every LEA is required to provide a continuum of educational services and supports sufficient to meet the needs of students with disabilities. LEAs shall not indicate to parents that certain services are not available or are substandard when compared to offerings of other LEAs.

4. A charter school must provide every student with a disability a Free and Appropriate Public Education (FAPE), which shall include appropriate special education services starting the first day of school or upon the first day the student enrolls and begins attending school.

Under Idaho state law, the charter of an authorized charter school shall outline specific mission statements, policies, and procedures, and the manner by which special education services will be provided.

Section 2. Responsibility for Services

A. Charter School Authorized by the District and Not Operating as a Separate LEA

The district is ultimately responsible to ensure that the requirements of the IDEA are met with respect to students attending charter schools authorized by the district. A charter school's compliance with the IDEA, Part B, is required regardless of whether the charter school receives any Part B funds.

1. To ensure that a charter school authorized by the district meets the IDEA requirements, the district shall ensure services to students with disabilities attending the charter schools are provided in the same manner as the district serves students with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the district has a policy or practice of providing such services on site to its other public schools.

2. The district shall have information on file with the Idaho Department of Education that demonstrates that students with disabilities who attend charter schools authorized by the district will receive special education and related services from either the district or the charter school (or a combination of both).

3. The district will ensure that its charter schools participate in all monitoring activities conducted by the Idaho Department of Education

4. The district shall provide Part B funds and comparable services to the charter school authorized by the district on the same basis as it provides such funds to other public schools within the district.

B. Charter School Operating as its Own LEA

Charter schools authorized by the Idaho Public Charter School Commission, or an Idaho college or university, are automatically LEAs. Some charters are authorized by school districts but operate as a separate LEA. A charter school LEA, whether virtual, brick-and-mortar, or a combination thereof, shall accept, enroll, and appropriately serve students with disabilities and is solely responsible to ensure that the requirements of the IDEA are met with respect to students enrolled. Compliance with the IDEA, Part B, is required regardless of whether the public charter school receives any Part B funds. A charter school LEA shall participate fully in all monitoring activities conducted by the Idaho Department of Education.

Section 3. Charter Schools and Dual Enrollment

Under Section 33-203, Idaho Code, parents of public charter school students "shall be allowed to enroll the students in any public school, including another public charter school, for dual enrollment purposes." Special education services (specially designed instruction and related services calculated to meet the unique needs of a student with a disability) shall be provided in all public-school settings. The LEA shall allow public charter school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. continue to access FAPE as outlined in the IEP developed by the public charter school, including receiving accommodations in the general education courses in which they are enrolled.

Public charter school students may not dually enroll solely to access special education services, as FAPE must be provided and available in all public-school settings in which the student participates as a dually-enrolled public-school student.

Idaho Code 33-203 does not provide for dual enrollment between two traditional public-school districts. However, some districts choose to enter into an agreement, such as a Memorandum of Understanding (MOU), to exchange or share students to provide a broad array of educational opportunities to all students.

In every case, one LEA maintains primary responsibility for the development, coordination, and implementation of the IEP to ensure that FAPE is provided to the student in every public-school setting in which the student participates as a dually-enrolled public-school student. Primary responsibility for FAPE shall be determined as follows:

Enrollments		**Primary Responsibility for FAPE**
Public Charter School	Traditional Public School	Public Charter School
Public Charter School	Public Charter School	School in which the student spends the majority of the school day.
Traditional Public School	Traditional Public School	Student's District of Residence*
* If neither traditional school district is the student's resident school district because the student has accessed open enrollment, the district in which the student has accessed open enrollment shall have the primary responsibility for the provision of FAPE for the student.		

The LEA with primary responsibility for the provision of FAPE shall ensure that the IEP is implemented in both public-school settings. The LEA with secondary responsibility for the implementation of the IEP and the provision of FAPE shall engage in a cooperative relationship with the primary LEA and support the provision of FAPE in the secondary LEA's environment. It is recommended that the Boards of Directors/Trustees of the LEAs enter into a written agreement, such as an MOU, to outline the responsibilities of each LEA.

Section 4. New Charter Verification

In the first year of operation, all newly established charter schools shall undergo a special education verification process, which may include one or more onsite visits, to ensure the establishment of essential components of a compliant special education program. Designated personnel from the Idaho Department of Education will extend support to the charter school in fulfilling the requirements of the new charter verification process which shall encompass the following:

1. timely completion of the new charter verification form;
2. evidence to support the substantive components of the new charter verification form including such items as facilities, personnel, curriculum, student discipline, and relevant IDEA and Section 504 policies, practices, and procedures;
3. an in-person or virtual site visit from the Idaho Department of Education; and
4. ongoing technical assistance and continued oversight if the essential components of a compliant special education program are not implemented.

It is important to note that the allocation of the charter school's IDEA grant funds is contingent upon the successful completion and verification of all components of the new charter verification form and the associated site visit.

Upon successful verification, the Idaho Department of Education will issue written confirmation to the newly established charter school regarding the successful completion of the new charter verification form. Based on the outcome of the verification process, the Department reserves the right to mandate further reviews in subsequent years of the charter school's operation.

Section 5. Funding

A. State Funds

The Idaho Department of Education will make apportionment payments (from state general funds) to each charter school based on attendance. The Idaho Department of Education will pay state funds directly to charter schools operating as their own LEA using the funding formula described in state law. A charter school authorized by a district but not operating as its own LEA will receive state funds through their authorizing district. A charter school may also be eligible for the following funds:

1. state funds for special education students who live in licensed group, foster, or personal care services homes under the provision of Section 33-1002B, Idaho Code;
2. district-to-agency contract funds under a provision of Section 33-2004, Idaho Code

3. funds to serve high numbers of students with serious emotional disturbance under Section 33-2005, Idaho Code; and
4. state enhancement funding sources.

B. Federal Funds

The Idaho Department of Education disburses federal flow-through funds to all authorized LEAs.

1. Charter School Authorized by the District and Not Operating as a Separate LEA

The district provides funds under Part B to those charter schools that are part of the district on the same basis as the district provides funds and comparable services to the other public schools. This includes proportional distribution based on relative enrollment of students with disabilities. This distribution is made at the same time as the district distributes funds to their other public schools and must be consistent with Idaho's charter school law. The individual school's approved charter will identify whether the district will provide funding or services of comparable value.

a. The amount of funds or comparable services will generally be equal to the per student amount the district is allocated from the Idaho Department of Education in the current year multiplied by the charter school's Child Count from the previous school year.

b. Under certain circumstances the district shall allocate Part B funds to an eligible charter school based on the number of special education students enrolled and served in the current school year.

   1) The district will allocate funds to a charter school within five (5) months of opening or significantly expanding its enrollment if the charter school notifies the district at least 120 calendar days before it opens or significantly expands its enrollment due to a significant event that is unlikely to occur on a regular basis (such as the addition of one or more grades or educational programs in major curriculum areas), and it takes place before February 1 of an academic year.

   2) When these conditions are met, the district will allocate funds to the charter school as follows:

      i. If the opening or expansion occurs prior to November 1, the charter school will be allocated funds in the current school year based on the current school year's Child Count.

      ii. If the opening or expansion occurs after November 1 but before February 1, the charter school will be allocated a pro-rata share of funds in the current school year based on the number of enrolled special education students with active IEPs 30 days after the opening or expansion. The pro-rata share will be the number of days the charter school will be open or expanded, divided by the number of days in the school year, multiplied by the number of special education students.

   3) If the opening or expansion occurs on or after February 1, the charter school will be allocated funds in the following school year based on the following school year's Child Count.

c. For school districts that have authorized a virtual charter school and the charter school's students are enrolled in the district but live outside the district's geographical

boundaries and receive education outside the district, the Idaho Department of Education will determine the district's Part B funding in the following way:

1) The calculation of the district's allocation will be made exclusive of the charter school's enrollment and special education enrollment (student count).
2) After calculating the allocations for all districts using the federal funding formula and the distribution formula for any supplemental award, the Idaho Department of Education will determine any base allocation adjustments.
3) When a base payment adjustment is required as described by 34 CFR §§300.705(b)(2) and 300.816(b), an SEA must redistribute the base payments among the affected LEAs. The Idaho Department of Education calculates each affected LEA's base payment adjustment separately. For each Transferring LEA, the method calculates the amount of the base payment that must be redistributed to the Assuming LEA. The amount of the adjustment is based on the number of students with disabilities for whom responsibility changes due to the circumstance.

2. Charter School Operating as its Own LEA

Public charter schools that are LEAs are responsible for adopting and implementing approved policies and procedures for special education and providing an assurance that funds will be used in accordance with Part B allowable uses.

a. Under 34 CFR § 76.792, the Idaho Department of Education must allocate funds to eligible charter school LEAs. In order to obtain funding for the first year of operations, the LEA must submit an estimate of opening enrollment and low- income population to the Idaho Department of Education to be used towards an initial allocation. To qualify under I.C. 33-5207(7) and 34 CFR § 76.788, the LEA must provide the Idaho Department of Education with written notification at least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment. The Idaho Department of Education will allocate funds to a charter school within five (5) months of opening or significantly expanding its enrollment if the charter school notifies the SEA at least 120 calendar days before it opens as required under 34 CFR §76.793.
b. In the second and subsequent years of operation, charter school LEAs will be allocated Part B funds in the same manner as all LEAs, in accordance with the federally prescribed funding formula for the distribution of flow through funds. The funding formula that the SEA is required to use in calculating these subawards is outlined in 34 CFR §300.705.
c. Once all site verification requirements have been met as outlined in section 4, the LEA will receive a site verification approval notification. The IDEA Part B application shall then be reviewed for approval, at which time the charter LEA may access the IDEA Part B funds for the reimbursement of special education activities.

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CHAPTER 9: PRIVATE SCHOOL STUDENTS

In Idaho, private school students and homeschool students are both types of "nonpublic school students." For the purpose of this chapter, "nonpublic school student" refers to private school students.

The IDEA and state law include the following:

1. statutory and regulatory language, which states that students who are voluntarily enrolled in private schools are not entitled to all of the same services, including the right to a free appropriate public education (FAPE), as public school students;
2. LEA responsibilities for special education students under Idaho's dual enrollment law; and
3. the procedural requirements that apply when a parent unilaterally enrolls his or her child in a private school and asks the LEA for reimbursement of these costs.

Section 1. Definitions of Private School Placements

In order to describe the LEA's responsibilities for serving private school students, it is helpful to distinguish three separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why.

A. Definition of Voluntary Enrollment by a Parent

A parent may choose to enroll his or her child in a private school for a variety of personal reasons, such as to obtain a religious education or to attend a school with a particular philosophy or curriculum. This is considered a voluntary enrollment.

See Section 2 and Section 4 of this chapter for LEA responsibilities.

Note: The IDEA distinguishes between for-profit and nonprofit private schools. If a student is placed in a for-profit private school by their parents, the Services Plan provisions do not apply.

B. Definition of LEA Placement

At times, the LEA may place a student in a private school or facility to fulfill its obligation to provide FAPE. These placements are always made by an individualized education program (IEP) team in accordance with the requirements of Section 3 of this chapter.

C. Definition of Unilateral Placement by Parents when FAPE is an Issue

A parent may enroll a student in a private school or seek services from a private provider at parental expense. The parent may initiate a due process hearing to seek reimbursement for the costs associated with the placement from the LEA. All students who are placed by a parent when FAPE is an issue are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of student enrollment in a private school in this situation is included in Section 5 of this chapter.

Section 2. Students Voluntarily Enrolled by Parents

A. LEA Consultation with Private School Representatives (may be done in coordination with Title 1 requirements for consultation)

To ensure timely and meaningful consultation and prior to the final submission of the IDEA Part B application, an LEA will consult with private nonprofit elementary and secondary school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and related services for the students. The consultation process shall include:

1. Child Find: The child find process and how parentally-placed private school students suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
2. Proportionate Share of Funds: The determination of the proportionate amount of federal special education funds available to serve parentally-placed private school students with disabilities, including the determination of how the amount was calculated. Refer to Section 2G of this chapter for information regarding the calculation of the proportionate share of funds.
3. Determination of Special Education and Related Services: Given the amount of funds to be dedicated by the LEA, the discussion will include the consideration of how, where, and by whom special education and related services will be provided for parentally-placed private school students with disabilities, including a discussion of:
    a. types of services, including direct services and alternate service delivery mechanisms;
    b. how such services will be apportioned if funds are insufficient to serve all parentally-placed private school students; and
    c. how and when these decisions will be made.
4. Ongoing Communication: Clarify how the private school and LEA will operate throughout the school year to ensure that parentally-placed private school students with disabilities identified through the child find process can meaningfully participate in special education and related services. Annual consultation is not required to make these decisions. The LEA determines the period between consultations based on changing circumstances within the LEA, such as significant changes in the total amount of funds to be expended and/or the number and location of private school students with disabilities.
5. Written Affirmation: When timely and meaningful consultation has occurred:
    a. the LEA will obtain a written affirmation signed by the representatives of participating private schools;
    b. if the representatives do not provide the affirmation within a reasonable period of time the LEA will document the consultation process and keep the documentation on file.
6. LEA Decisions: Following consultation with the private school representatives, the LEA will make final decisions concerning items a-c addressed above in number 3.
7. Written Explanation by the LEA Regarding Services: If the LEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the LEA will provide to the private school officials a written explanation of the reasons for the decision.

B. Compliance with Consultation Process

1. General Compliance: A private school official has the right to submit a complaint to the

Idaho Department of Education that the LEA:

a. did not engage in consultation that was meaningful and timely; or

b. did not give due consideration to the views of the private school official.

2. Procedure for Complaint

a. If the private school official wishes to submit a complaint, the official will provide the basis of the noncompliance by the LEA with the applicable private school provisions to the Idaho Department of Education consistent with the procedures provided in Chapter 13.

b. In response, the LEA must forward the appropriate documentation to the Idaho Department of Education.

c. The Idaho Department of Education will render a written decision determining whether the LEA complied with the consultation process requirements and provide the decision to the LEA and private school official.

d. If the private school official is dissatisfied with the decision of the Idaho Department of Education, the official may submit a complaint to the Secretary of the US Department of Education by providing the information on noncompliance by the LEA to the Secretary, and the Idaho Department of Education will forward the appropriate documentation to the Secretary.

C. Child Find Requirements

The LEA shall have an ongoing child find system to locate, identify, and evaluate all students with disabilities ages three (3) to twenty-one (21) who are enrolled by their parents in private schools located within the LEA's geographical boundaries. This includes students who have been placed by a parent in a private nonprofit elementary or secondary school (including a religious school) located in the LEA's geographical boundaries regardless of the student's parents' state or local residency. The LEA of residence would have child find responsibilities for students placed in for-profit schools and for children aged three (3) to five (5).

Parents can also ask the LEA of residence (assuming it is different than the LEA where the private school is located) to evaluate their student. Both LEAs are required to conduct an evaluation if requested to do so by the parent and if the LEA suspects the student has a disability under IDEA, because these evaluations are conducted for different purposes.

1. If the parent requests the LEA of the student's residence to conduct an evaluation for purposes of making FAPE available to the student, that LEA must conduct the evaluation.
2. If the parent requests the LEA where the private school is located to conduct an evaluation for purposes of determining whether the student may be eligible for equitable services through a Services Plan [kindergarten through age twenty-one (21)], that LEA must conduct the evaluation.

The child find process will be designed to encompass the following:

1. The child find process will ensure the equitable participation of parentally- placed private school students with disabilities.
2. Child Find activities for private school students will be similar to child find activities for public school students, which include the evaluation process within the same timelines.

3. The LEA will consult with private school representatives and representatives of parents who place their children in private schools regarding the child find procedures.

Note: The cost of child find is not counted toward the pro-rated proportionate share that the LEA must spend on services for parentally-placed private school students.

D. Annual Count of Parentally-Placed Private School Students

The LEA shall conduct an annual count of eligible students and report to the Idaho Department of Education the number of private school students evaluated, the number found eligible and the number who are provided with special education services. This count will be used to determine the amount of funds the LEA shall expend providing special education and related services to private school students in the next school year. The LEA will consult with representatives of private school students to determine how to conduct the count.

See Section 2G of this chapter for information about the amount of funds to be expended based on the annual count.

E. Provision of Equitable Services

Provision of equitable services applies to all eligible students who are enrolled by their parents in non-profit private elementary and secondary schools within the LEA's geographical boundaries regardless of where they reside. Parentally placed private school students with disabilities do not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school.

Equitable services offered to parentally-placed private school students are determined through the LEA and private school consultation process and are documented in a Services Plan.

1. Equitable Services
    a. Private school students with disabilities may receive a different amount of services than public students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private school student to receive only a related service or piece of equipment.
    b. Special education and related services provided to parentally-placed private school students with disabilities, including materials and equipment, will be secular, neutral, and non-ideological.
    c. Services may be provided at a public-school building, in a virtual environment, or at another agreed-upon site (including parochial schools to the extent consistent with the law) determined by the LEA in consultation with appropriate representatives of private school students.
    d. Services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.
2. Eligibility for Services

    If an evaluation team determines that a student qualifies for special education and related services:

    a. When a student is determined to be eligible for special education and related services, the LEA in which the student resides must develop an IEP that outlines FAPE for the

student so that the parent can make an informed decision regarding enrollment in the public LEA or remaining enrolled in the private school. This LEA may not require that the student enroll in the public school before an offer of FAPE is made.

1) If a parent is unsure of their intention to accept an offer of FAPE and enroll the student in public school or remain enrolled in the private school, the LEA of residence is required to develop an IEP that offers the student FAPE, to be implemented upon the student's enrollment in the LEA. The LEA has no obligation to implement the IEP unless the student enrolls in the public school.
2) If a parent makes clear their intention to keep their child in the private school, the LEA of residence is not required to develop an IEP that offers the student FAPE.

b. If the parent chooses not to enroll the student in the LEA of residence and designated funds are available in the LEA in which the private school is located, a meeting will be held to develop a Services Plan. The meeting will include a representative of the private school to develop a Services Plan. The Services Plan is developed by the same members that would constitute an IEP team.

c. Any services the LEA provides to a private school student shall be in accordance with the student's Services Plan.

3. Services Plan Development

The Services Plan-shall describe the specific special education and related services that will be provided to the student in light of the determinations that have been made by the LEA. There is no individual right to special education and related services. To the extent appropriate, the LEA shall initiate and conduct meetings to develop, review, and revise Services Plans in accordance with the following requirements:

a. Given the services that the LEA has elected to provide to private school students, the Services Plan must meet the requirements of the IEP to the extent appropriate. The Services Plan excludes sections pertaining to:

1) extended school year (ESY) services;
2) participation in statewide and district-wide assessments;
3) placement determination (least restrictive environment);
4) Child Count federal report settings; and
5) elements that, although typical for an IEP, would be inappropriate given the services the LEA has elected to provide.

b. A Services Plan shall be in effect at the beginning of each school year and accessible to each person responsible for its implementation.

c. Meetings shall be held to review and revise Services Plans at least annually to address any lack of student progress toward goals and in the general education curriculum.

d. The Services Plan team members include the same members as an IEP team. The LEA will ensure that a representative of the private school attends these meetings or participates by some other means.

e. A parent shall be invited to Services Plan meetings at a mutually agreed upon date and time. The invitation must indicate the purpose, time, and location of the meeting. The parent shall be informed that he or she may bring other persons knowledgeable about

the student to the meeting. A copy of the Services Plan will be given to the parent.

f. The team developing the Services Plan will consider the student's strengths and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the Services Plan.

g. If necessary for a private school student to benefit from or participate in the services the LEA has elected to provide, the LEA shall provide transportation from the student's school or home to the site where services will be provided. The LEA shall take the student back to either the private school or the home, depending on the timing of the services. Transportation costs may be included in the LEA's expenditure requirement. The LEA is not required to transport the student from home to the private school.

F. Dispute Resolution

Due process hearings are available to parents of private school students only on the issue of child find and evaluation. Parents may challenge decisions regarding the provision of services by filing a state complaint with the Idaho Department of Education.

See Chapter 13 for more information on dispute resolution options.

G. Determining the Proportionate Funding for Private School Students

IDEA requires LEAs to dedicate at least a proportionate share of funds received under Part B to provide services for parentally-placed students with disabilities who attend private schools within the geographical boundaries of the LEA, regardless of their place of residence. To determine this proportionate amount, the LEA shall first determine the number of these private school students through the child find activities developed in the consultation process with private school representatives.

The number of parentally-placed private school students is divided by the total (public and private) number of students with disabilities in the LEA to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by the LEA under Part B grants to determine the LEA's obligation.

Example for the XYZ LEA:

a. The number of parentally-placed private school students within the LEA on December 1, 2023: **10**

b. The number of public-school students with disabilities on December 1, 2023: **90**

c. Percentage of private school students with disabilities: A divided by A+B = **10%**

d. Total Part B funds allocated for school year 2024-2025: **$150,000**

e. Amount the LEA shall spend on providing special education and related services to parentally-placed private school students in 2024-2025: C x D = **$15,000**

1. State and local funds may supplement but may not supplant the proportionate amount of federal funds required to be expended for parentally placed private school students with disabilities.
2. The costs of private school consultations and of carrying out child find activities may not be paid from the proportionate share of funds.
3. The cost of any special education or related service, such as direct service, consultation as

a service, equipment, materials, or transportation, may be used to determine that the LEA has satisfied its expenditure requirement for private school students with disabilities.

4. If all proportionate funds set aside for private school students in a given fiscal year are not expended in that year, they shall be carried forward into the next year for the purpose of providing equitable services.

H. Expenditure Requirements

1. The LEA may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the LEA shall:
    a. retain title and exercise continuing administrative control over all equipment and supplies;
    b. ensure that all equipment and supplies are used only for Part B purposes;
    c. remove equipment and supplies from a private school if no longer needed;
    d. ensure that all equipment and supplies can be removed without remodeling the private school; and
    e. remove equipment and supplies if necessary to prevent unauthorized use.
2. The LEA may use Part B funds to pay an employee of a private school to provide services to students with disabilities when the employee performs the services:
    a. outside of his or her regular hours of duty; and
    b. under public supervision and control.
3. Part B funds shall not be used to:
    a. finance the existing level of instruction in the private school or otherwise benefit the private school;
    b. meet the needs of the private school; or
    c. meet the general needs of students enrolled in the private school.
4. Part B funds shall not be used for repairs, remodeling, or construction of private school facilities.
5. If it is possible for classes to include students enrolled in both public and private schools, then the classes must not be organized separately on the basis of school enrollment or religion.

Section 3. Students Placed by the LEA

When the LEA places a student with a disability in a private school or facility, as a means of providing special education services through the IEP team process, the LEA shall ensure the following:

1. All special education procedures and timelines are followed.
2. Special education and related services are provided in accordance with an IEP.
3. A representative of the private school or facility attends or participates in the meeting to develop the IEP. If the representative cannot attend other measures such as conference telephone calls will be used to ensure participation.

4. The responsibility for reviewing and revising IEPs remain with the LEA.
5. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP team meeting conducted in a geographical area outside the jurisdiction of the LEA.
6. The placement in the private school or facility is the least restrictive environment for that student.
7. The student is provided an education that meets state and district standards.
8. The student will participate in required statewide assessments.
9. The student is afforded the same rights as students with disabilities who attend public schools.
10. The parent is afforded the same rights as parents of students attending public schools.

In accordance with federal and state law, the Idaho Department of Education shall approve special education programs in private schools and facilities. The LEA shall ensure a program is approved prior to placing a student in that school or facility.

At the discretion of the LEA, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting, the LEA shall ensure that the parent and an LEA representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

Section 4. Unilateral Placement of Student by Parents when FAPE is an Issue

A. General Provisions for Reimbursement to the Parent

1. The LEA is required to make FAPE available to all eligible students with disabilities. If parents do not access FAPE, then the LEA is required to make provisions for private school students to receive Part B services consistent with Section 2E of this chapter.
2. The LEA is not required to pay for costs of tuition, special education, or related services and associated costs at a private school or facility for a student who was unilaterally placed there by a parent if the LEA made FAPE available to the student in a timely manner. If a parent disagrees with the availability of FAPE and there is a question about financial responsibility, the parent may request a due process hearing.
3. If the parent of a student with a disability enrolls the student in a private elementary or secondary school, without the consent of or referral by the LEA a court or hearing officer may order the LEA to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:
    a. the LEA had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and
    b. the student's placement in the private school is appropriate.
4. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards. A private school will be deemed appropriate if the parent demonstrates that the private placement provides educational instruction specially designed to meet the unique needs of the student with a disability, supported by such services as are necessary to permit the student to benefit

from that instruction.

B. Denial or Reduction of Reimbursement to the Parent

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. The parent did not inform the LEA that he or she rejected the placement proposed by the LEA to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This notification by the parent shall be provided to:
    a. the IEP team at the most recent IEP team meeting prior to removing the student from the public school; or
    b. the LEA, in writing, at least ten (10) business days (including any holidays that occur on a business day) prior to removing the student from public school.
2. Prior to removal of the student from the public school, the LEA informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.
3. A judicial decision finds unreasonableness with respect to the actions taken by the parent.

Reimbursement shall not be reduced or denied under any of the following circumstances:

1. The LEA did not notify the parent of his or her obligation to notify the LEA prior to unilaterally placing the student in the private school or the LEA prevented the parent from providing that notice.
2. The LEA's proposed placement would likely result in physical harm to the student.

Reimbursement may not be reduced or denied at the discretion of a court or hearing officer for failure to provide this notice if:

1. The parents are not literate or cannot write in English, or
2. The LEA's proposed placement would likely result in serious emotional harm to the student.

Section 5. Dual Enrollment of Private School Students by Parents

According to Idaho Code, parents of private school students "shall be allowed to enroll the student in a public school for dual enrollment purposes." Private school students who are dually enrolled are nonpublic school students. The LEA shall allow private school students qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a Section 504 Plan, if needed.

Private school students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a nonpublic school student with a disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

The reporting of attendance for private school students in the LEA is allowed under dual enrollment. The Idaho Department of Education's Public School Finance Department's procedures will be followed to calculate the funding for dually enrolled students.

Dually enrolled private school students could also be eligible to receive services that have been agreed upon through the LEA and private school consultation process. These services would be delivered through a Services Plan.

Section 6. Out-of-State Students Residing in Residential Facilities

For school-age special education students from outside the state of Idaho who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities within the state of Idaho, the LEA in which the residential facility is located will provide education services to such students if requested by the licensed public or private residential facility and an agreement is entered into with the residential facility. The LEA will be given the opportunity to provide input on any federally required education programs or plans for such students.

A. Contract for Education Services

The contract with a residential facility will include the following provisions:

1. The education services to be provided by the LEA.
2. The amount to be paid by the licensed public or private residential facility to the LEA.

The amount paid will be equal to the LEA's full cost of providing the education services delineated by the contract as determined by the LEA. Such students will be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the LEA.

In the event a residential facility fails to sign a contract with the LEA agreeing to pay the full cost for providing education services, the LEA in which the residential facility is located will not be responsible for providing education services to the out-of-state students residing in the residential facility.

B. Determining Residency

In determining whether a student is from outside the state of Idaho, the LEA in which the residential facility is located will determine the primary residency of the student's parent or guardian. Proof of Idaho residency will be established by showing a current Idaho motor vehicle driver's license, payment of Idaho state income taxes, utility bill from a primary residence, or other documentation evidencing residency within the state of Idaho.

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CHAPTER 10: HOMESCHOOL STUDENTS

In Idaho, private school students and homeschool students are both types of "nonpublic school students." For the purposes of this chapter, "nonpublic school student" refers to a homeschool student. A homeschool student is not enrolled in a private school and is not considered a private school student. A student who is enrolled in a virtual public school or a home learning program through a public school is not considered a homeschooled student for the duration that they attend that virtual public school or home learning program.

A homeschool student does not have an individual right to receive the special education and related services they would receive if enrolled in a public school.

Section 1. Definitions

Homeschool. Homeschool means an education program delivered by parents who have decided to provide instruction in the home and not in a public or private school. A homeschool is a nonpublic school but is not considered a private school. A virtual public school is not a homeschool.

Homeschool Student. A homeschooled student is one whose parents have decided to provide an educational program in the home with instruction provided by the parents. A homeschool student is considered a nonpublic school student but is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

Section 2. District Responsibility

A. Child Find Requirements

The district shall have an ongoing child find system to locate, identify, and evaluate all students with disabilities ages three (3) to twenty-one (21) residing within the district's geographic boundaries. This includes students whose parents/guardians have chosen to homeschool their children.

The child find process will be designed to encompass the following:

1. Child find activities for homeschool students will be similar to child find activities for public school students.
2. The district shall offer to conduct an evaluation of a homeschool student identified through the child find process who may need special education and related services. An evaluation will be conducted only after receiving written parental consent.

See Chapter 3 for more information about child find and Chapter 4 for more information about evaluation procedures.

B. Provision of Special Education Services

Parental Consent for a Special Education Evaluation

If a parent of a child who is homeschooled does not provide written consent for an initial evaluation or reevaluation, or the parent fails to respond to a request to provide written consent, the district may not use mediation or due process procedures in order to gain consent and the district is not required to consider whether the child is eligible for services.

Eligibility for Services

When a student is determined to be eligible for special education and related services, the district in which the student resides must develop an IEP that outlines FAPE for the student so that the parent can make an informed decision regarding enrollment in the public school district or continuing with homeschooling. This district may not require that the student enroll in the public school before an offer of FAPE is made.

If a parent is unsure of their intention to accept an offer of FAPE and enroll the student in public school or continue with homeschooling, the district of residence is required to develop an IEP that offers the student FAPE, to be implemented upon the student's enrollment in the district.

The district has no obligation to implement the IEP unless the student enrolls in the public school.

If a parent makes clear their intention to continue homeschooling their child, the district of residence is not required to develop an IEP that offers the student FAPE.

Withdrawal of Student from LEA

Whenever a parent elects to homeschool their child and withdraws the student from a public school, the LEA shall provide the parent with written notice of the change in the LEA's obligation to provide FAPE to the student and indicate willingness to resume providing services to the student upon reenrollment in the LEA.

C. Dispute Resolution

Due process hearings are available to parents of homeschool students only on the issue of child find and evaluation. Parents may challenge decisions regarding the provision of services by utilizing the state complaint process provided by the Idaho Department of Education.

Section 3. Dual Enrollment of Homeschool Students

Idaho law permits parents of homeschool students to enroll the student in any public school, including a public charter school, for dual enrollment purposes. Homeschool students who are dually enrolled are nonpublic school students. The LEA shall allow homeschool students qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a Section 504 Plan, if needed.

Homeschool students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a nonpublic school student with a disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

The reporting of attendance for homeschool students in the district is allowed under dual enrollment. The Idaho Department of Education's Public School Finance Department's procedures will be followed to calculate the funding for dually enrolled students.

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CHAPTER 11: DISCIPLINE

LEAs are encouraged to address challenging student behavior through tiers of positive behavior support to ensure that all students, including students with disabilities, are proactively taught explicit behavioral expectations. Within the tiered system, the LEA should ensure a consistent system is in place to reinforce and re-teach these expectations or otherwise respond to behavioral errors. If a student with a disability engages in challenging behavior that is physically dangerous or otherwise significantly interferes with the learning of self or others and it cannot be addressed through schoolwide and classroom systems alone, the IEP team shall consider the need for more intensive behavior supports, including but not limited to, an individualized behavior intervention plan (BIP). Note that the most effective behavior plans are developed using data gathered during some form of functional behavior assessment (FBA) process. Behavior interventions, whether initial or revised based on changes in behavioral need, shall be documented in and implemented as part of the IEP.

Students with disabilities who violate the LEA Code of Conduct and are subject to exclusionary disciplinary action are entitled to all due process rights afforded to students *without* disabilities under Section 33-205, Idaho Code and other State and local policies. Exclusionary discipline includes a school's removal of a student from their regular education setting, including but not limited to in/out of school suspension, expulsion, detention, bus removal, removal from extracurriculars, shortened days, informal removals, placement in an alternative location, and other disciplinary responses that remove students from general education instruction, services, or peers. The IDEA provides ***additional*** protection through special discipline procedures for students with a disability when the disability has or will result in a change of the student's placement. Even though Idaho Code allows LEA personnel to "temporarily" suspend students for up to twenty (20) school days, all students with disabilities for whom educational services have ceased for more than ten (10) school days, consecutive or cumulative, in a school year retain the right to FAPE.

This chapter outlines the procedural requirements for the discipline of students with disabilities to ensure that the impact of the disability on the student's behavior is considered when a change of placement may take place as a result of a violation of the code of conduct and to ensure that students with disabilities continue to receive FAPE.

Section 1. Supporting Challenging Behavior

A. Tiered Behavior Supports

Given the negative outcomes associated with, and the disparities in the use of, exclusionary discipline, LEAs should minimize its use. There may be instances when a student's behavior, such as causing physical harm to self or others, warrants temporary exclusionary disciplinary action. Preventing challenging behavior before the need for discipline arises is the most effective way to address problem behavior. A responsive tiered system of supports is a comprehensive *prevention* framework designed to improve developmental, social, emotional, academic, and behavioral outcomes using a continuum of evidence-based strategies and supports. Within a tiered framework, educators implement:

1. universal strategies and supports designed for all students;
2. targeted strategies and supports for students with additional needs; and
3. intensive strategies and supports to meet the specific needs of individual students.

Evidence-based, tiered systems of intervention and behavioral supports use systematic tiered approaches to create positive, predictable school climates that prevent most challenging behavior at the schoolwide and classroom levels. The focus of instruction is to explicitly teach and practice desired, prosocial skills to ensure student access to the general education environment. LEAs should implement intentional, structured systems to reinforce or reteach behaviors. The intensity of interventions should be individualized and tailored to be proportionate to the intensity of behavioral skill deficits.

B. Individualized Behavior Planning

Behavioral challenges in schools are often the result of a mismatch between a student's current skill set and the expectations of the environment.

When behavioral challenges are not sufficiently addressed through schoolwide and classroom interventions and the behavior of a student with a disability significantly impacts the student's learning and/or the learning of others, the IEP team shall determine the extent to which additional services or supports are needed to enable the student to continue to participate in the general education curriculum and to progress towards meeting IEP goals. The team shall consider:

1. preventative, individualized positive behavior supports;
2. a functional behavioral assessment; and/or
3. a behavior intervention plan (BIP) and services designed to address the behavior so that it does not recur.

C. Essential Components of a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP)

Functional Behavior Assessment (FBA). An FBA is not necessarily a specific form or tool. It is a process of analyzing the *function* or purpose of the challenging behavior. An effective FBA includes the following components:

1. A specific, physically observable definition of the prioritized challenging behavior(s);
2. Information gathered from multiple sources including, but not limited to, interview of educational partners/caregivers, review of data collected over multiple days, and direct observation;
3. An analysis of the pattern of the most frequent *antecedents*, or events that precede the behavior;
4. An analysis of the most frequent *consequences*, or events that follow the behavior and most likely are reinforcing or maintaining the challenging behavior; and
5. A culminating summary of the pattern of events preceding and following a behavior which informs its function and drives intervention.

Behavior Intervention Plan (BIP). The purpose of a BIP is to use information about the function of the behavior to *change the behavior patterns* through pre-determined strategies. A BIP is composed of plans to:

1. prevent the challenging behavior;
2. teach to skill deficits by identifying replacement behaviors based on the function of the challenging behavior; and

3. respond effectively to either reinforce desired behaviors or re-teach in response to challenging behaviors.

Note: LEAs are only required to conduct and/or review FBAs and BIPs in certain circumstances, such as when a student is subjected to a disciplinary change of placement. For more information, see Section 3 "Change of Placement" below.

Section 2. Educational Services and Types of Removal

For students with disabilities, free appropriate public education (FAPE) means that educational services cannot cease for more than ten (10) days, consecutive or cumulative, in a school year as a result of removals imposed unilaterally by the LEA. "Unilateral" means that an action was taken outside of the special education process, and the action was not the result of an IEP team decision. In the case of discipline for students with disabilities, unilateral removal from educational services means that the LEA, without the agreement or participation of the IEP team, denies the provision of educational services to a student. This typically happens through some type of exclusionary discipline.

Educational services for a student include:

1. the opportunity to continue to participate appropriately in general education instruction and curriculum;
2. services outlined in the student's IEP; and
3. participation with nondisabled peers to the same extent as the student participates with nondisabled peers in the current placement.

Unilateral removal by the LEA that results in the discontinuation of any one of the three components of educational services is considered a disciplinary removal. There are several types of removal that schools use to address challenging behavior or impose discipline that result in the discontinuation of educational services.

1. **Suspension.** Suspension means a temporary stop, delay, interruption, or discontinuation of educational services due to a violation of the student code of conduct.
2. **In-school suspension (ISS).** ISS means removal from the IEP-determined placement within the school setting. ISS is considered a disciplinary removal unless all three components of educational services are provided to the student. These include:
    a. participation in general education instruction and curriculum;
    b. access to services outlined in the student's IEP; and
    c. participation with nondisabled peers to the same extent as the student participates with nondisabled peers in the current placement.
    d. If one or more of these components is not provided, then the ISS must be counted in the ten (10) consecutive or cumulative removals leading to change in placement.
3. **Out-of-school suspension (OSS).** OSS means removal from the school and the IEP-determined placement for all or part of a school day. OSS is always considered a disciplinary removal as it, by definition, ceases one or more of the required components of educational services. OSS must be counted in the ten (10) consecutive or cumulative removals constituting a change in placement.
4. **Informal Removal.** Informal removal includes action taken outside of IDEA's discipline

provisions by school personnel in response to student behavior which results in the student being excluded for all or part of a school day or for an indefinite period of time. Examples of informal removals include:

a. Removal for a portion of a school day that a student has been suspended;

b. Removal of the student from class;

c. Removal from LEA-provided transportation;

d. Sending the student home early;

e. Repeated reliance on law enforcement or school resource officer (SRO) intervention to manage behavior; or

f. Calling a parent/guardian to pick up a student.

g. Informal removals are considered disciplinary removals and must be counted in the ten (10) consecutive or cumulative removals leading to change in placement.

Note: The use of a shortened school day or homebound instruction in a student's IEP to manage or minimize behavior are strategies that should be used only in extremely rare circumstances and should never be used for administrative convenience.

5. **Transportation Suspension.** Transportation suspension means suspension or removal from LEA-provided transportation as a disciplinary measure. When a student's IEP lists transportation as a related service, removal or suspension of transportation services is considered a disciplinary removal and must be counted in the ten (10) consecutive or cumulative removals leading to change in placement.

   a. If the IEP team determines that special transportation is required as a related service, it must be included in the IEP, and all procedural safeguards under the IDEA shall be afforded to the student in matters concerning transportation. Whether a suspension from the bus counts as a suspension from school depends on whether bus transportation is identified on the IEP.

   b. If bus transportation is on the IEP, a suspension from the bus would be treated as a suspension from school (unless the LEA provides transportation services in some other way, such as "transportation in lieu of") because transportation is necessary for the student to obtain access to the location where all other services will be delivered.

   c. If bus transportation is not on the IEP, a suspension from the bus would not be counted as suspension from school. In this case, the student and the parent would have the same obligation to get to and from school as a student without a disability who had been suspended from the bus.

   d. If the student's behavior on the bus results in a suspension from the bus, the IEP team shall consider whether the behavior should be addressed in the IEP through a Behavior Intervention Plan (BIP).

Section 3. Change of Placement

A student's educational placement describes the setting where the student's educational services are provided. Educational placement is determined by the IEP team after considering the student's needs, setting goals, and identifying the services required to meet those needs. Teams are obligated to make placement decisions that ensure the student is educated with nondisabled peers in the least restrictive environment to the maximum extent appropriate.

Educational placement does not necessarily refer to the physical location where services will be provided. Rather, "placement" refers to the continuum of educational settings and the overall amount of time the student will spend in the general education setting. Types of educational placements include:

1. General education setting
2. Special education setting
3. Home/hospital
4. Correctional facility
5. Parentally-placed in private school
6. Public/private residential setting
7. Public/private separate day school

A student's educational placement changes when the amount of time the student is served in a general education setting, including the amount of time the student participates with non-disabled peers, increases or decreases.

A. Disciplinary Actions Resulting in a Change of Placement

Educational services cannot cease for more than ten (10) school days, consecutive or cumulative, as a result of unilateral disciplinary removal. A disciplinary change of placement occurs when:

1. The student is unilaterally removed by the LEA from the IEP-determined placement for disciplinary reasons for more than ten (10) consecutive school days; or
2. The student is unilaterally removed by the LEA for more than ten (10) cumulative school days when the removals constitute a pattern. Disciplinary removals constitute a pattern:
    a. when the series of removals, including instances of OSS, ISS, bus suspension when transportation is listed as a related service on the IEP, and other informal removals, totals more than ten (10) school days in a school year;
    b. when the student's behavior is substantially similar to behavior in previous incidents included in the series of removals; and/or
    c. when additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another are substantially similar to previous removals.
    d. There are two primary considerations when determining whether a pattern of removals has occurred:
    e. Consider the behavior itself, and whether the behavior is substantially similar to previous behavior that has resulted in removal. Consider whether behaviors are similar in terms of the antecedents, or triggers, leading to the behavior, and the type of behavior displayed.
    f. Consider the school's response to behavior and whether removal as a response to challenging behavior has resulted in a pattern of removal.

Removals such as being sent to the office from class, missing lunch or recess, being "kicked out" of class, detention, removal from extracurriculars, or other removal from general education instruction and curriculum, special education services, or access to nondisabled peers as a result

of disciplinary action shall be considered when determining whether there is a pattern of removals leading to a change in placement.

The LEA shall ensure that each instance of disciplinary removal, whether formal or informal and whether imposed for a full day or partial day, is documented. LEAs should intervene with challenging behavior leading to disciplinary removals as early as possible to implement measures to prevent continued removals.

See Section 4 of this chapter for more information about Manifestation Determination.

B. Change of Placement Ordered by a Hearing Officer

The LEA may ask a hearing officer to place a student with a disability in an appropriate Interim Alternative Educational Setting (IAES) through an expedited due process hearing. In seeking an order from a hearing officer to place a student in an IAES, the LEA must:

1. prove that maintaining the current placement is substantially likely to result in injury to the student or others; and
2. indicate whether the request is for an *initial* period of not more than forty-five (45) school days or an *additional* period of not more than forty-five (45) school days.

In determining whether to grant an LEA's request to place a student in an IAES, the hearing officer must determine that the IAES proposed by the IEP team is appropriate.

Section 4. Manifestation Determination

A. Determining the Need for Manifestation Determination

Whenever disciplinary action results in a change in placement the LEA shall:

1. notify the parent/adult student of the disciplinary action to be taken on the date of the decision to take the disciplinary action and provide a copy of the *Procedural Safeguards Notice*;
2. conduct a manifestation determination immediately, if possible, but not later than ten (10) school days after the date on which the decision to take the disciplinary action is made.
    a. Teams should not wait until the need for a Manifestation Determination arises to address challenging behavior and determine whether additional supports including preventative, individualized positive behavior supports, an FBA, and/or a BIP are needed. The IEP team should continually monitor the student's educational performance, which includes behavior, and convene to address challenging behaviors as they arise.
    b. Educational services cannot cease for more than ten (10) school days; educational services must be provided on the eleventh (11^{th}) day and beyond, even while scheduling the Manifestation Determination.

See Section 3 above for information related to disciplinary actions resulting in a change of placement.

B. Manifestation Determination Manifestation Determination Process

A manifestation determination is the process used to review and determine the relationship between the student's disability and the behavior subject to disciplinary action. The results of the manifestation determination dictate the LEA's options and obligations related to further

disciplinary action.

1. Team Members Included in the Manifestation Determination The parent/adult student and relevant IEP team members shall conduct the manifestation determination. When determining which IEP team members will participate in the manifestation determination review, consider the following:
    a. The parent/adult student shall be included;
    b. An LEA administrator shall be included; and
    c. Other relevant team members, including the following, shall be included:
        1) Individual(s) able to speak to the known impact of the student's disability, including current and past performance. This may include:
            i. School psychologist;
            ii. School counselor;
            iii. Speech language pathologist; and/or
            iv. Other individuals who are qualified to interpret assessment results, review student records, and/or help the team understand the impact of the disability on behavior.
        2) Individual(s) able to speak to the implementation of the IEP. This may include:
            i. Special education teacher;
            ii. Related services professionals;
            iii. General education teacher;
            iv. Behavior interventionist; and/or
            v. Other individual(s) knowledgeable about the IEP and how it is implemented.
2. Manifestation Determination Review
    a. The parent/adult student will be notified of the disciplinary action and provided with a copy of the *Procedural Safeguards Notice* not later than the date on which the decision to take disciplinary action is made.
    b. A manifestation determination meeting will be held no later than ten (10) school days of any decision to change the placement of a student with a disability for disciplinary reasons. The team will consider:
        1) the student's disability, which includes the student's identified disability or disabilities, areas of concern noted by the team or served through the IEP or BIP, history of behavior, and other relevant information;
        2) whether the conduct in question is similar to or consistent with behavior previously demonstrated by the student;
        3) teacher observations and input;
        4) all relevant information in the student's file, including the student's IEP and historical records of behavior, discipline, and interventions provided; and
        5) any relevant information provided by the parent/adult student;

c. In light of this information, the team will determine whether the conduct in question was:

1) caused by or had a direct and substantial relationship to the student's disability;

i. The team will consider the student's disability, which includes the student's identified disability or disabilities, areas of concern noted by the team or served through the IEP or BIP, history of behavior, and other relevant information. The team will consider whether the conduct in question is similar to or consistent with behavior previously demonstrated by the student.

ii. The team is NOT considering a specific eligibility category or disability and making general statements about how that disability might affect a student. The team must consider how the known disability or disabilities of the student have been known to manifest for this student; or

2) the direct result of the LEA's failure to implement the IEP.

i. The team will review the student's IEP, and any current FBA, and BIP and determine whether the student has been provided the services and supports as outlined in the IEP and existing BIP.

ii. The team will also consider such factors as:

a. whether the student received all required services as listed in the IEP;

b. whether the student received accommodations and adaptations outlined in the IEP;

c. whether the student received the level of support and supervision agreed upon by the IEP team; and

d. whether all aspects of a current BIP were implemented consistently and correctly, including preventative, teaching, and response strategies.

Note: The team should consider more than whether the IEP was being implemented at the time that the behavior occurred. The team should also consider whether the IEP has been implemented correctly and consistently over time, and whether any failure to do so may have contributed to the behavior.

d. If the LEA, parent, and relevant IEP team members find that either *c. 1)* or *c. 2)* above is true, the student's behavior shall be determined to be a manifestation of the student's disability.

3. Manifestation Determination Review Consensus

a. All members of the team are expected to work toward consensus regarding manifestation determination to ensure the student receives a free appropriate public education (FAPE).

b. Consensus means a commitment of all team members to support the decision of the team, which requires that all members of the team have an opportunity for meaningful participation.

c. If the parent/adult student, school personnel, and other team members are unable to reach consensus regarding a decision, then school personnel on the team should seek consensus within the school team and provide written notice to the parent/adult student.

d. If school personnel are unable to reach consensus, then the LEA representative on the team shall make the decision and provide written notice to the parent/adult student.

e. The parent/adult student will be made aware of their procedural safeguards, including due process rights.

Section 5. Actions following a Manifestation Determination

The results of the Manifestation Determination Review determine what steps must be taken next and what disciplinary options are available to the LEA.

A. When the Behavior is a Manifestation of the Disability

If a student's behavior is determined to be a manifestation of the student's disability the IEP team shall:

1. conduct an FBA and implement a BIP for the student if the LEA had not conducted such an assessment prior to the behavior that resulted in a change in placement; or
2. review the BIP if one had previously been developed and modify it as necessary to address the behavior; and
3. return the student to the placement from which the student was removed, unless the parent and LEA agree in writing to a change of placement as part of the modification of the BIP.

B. When the Behavior is Not a Manifestation of the Disability

If the relevant members of the IEP team, which includes parents/adult students, determine that the student's behavior was not a manifestation of the disability, the same disciplinary procedures applicable to students without disabilities, including long-term suspension or expulsion, may be applied to the student with a disability. LEAs should consider whether the student is eligible for protections under Section 504 of the Rehabilitation Act before taking disciplinary action.

Even if the disciplinary action is to suspend or expel, the following provisions shall be met:

1. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability to continue to participate in the general education curriculum and the opportunity to advance toward achieving the goals set out in student's IEP.

   See Section 6C of this chapter for more information about FAPE during expulsion.

2. An IEP team shall convene to develop an IEP that specifies what special education and related services will be provided during the period of suspension or expulsion and the setting where the services will be provided.

C. Interim Alternative Education Setting (IAES)

Placement in an IAES for forty-five (45) school days may occur regardless of whether the behavior is a manifestation of the disability when the criteria for such placement are met. If there were grounds to place a student in an IAES, the student may remain in the IAES even if the behavior is found to be a manifestation of the disability.

1. The LEA may remove a student to an Interim Alternative Educational Setting (IAES) for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:

   a. Carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of a State Education Agency (SEA) or a Local

Education Agency (LEA); or

1) ***Dangerous 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 pocketknife with a blade of less than 2½ inches in length.

b. knowingly possesses or uses illegal drugs *or* sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

1) ***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)].

2) ***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.

c. has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

1) ***Serious bodily injury*** means bodily injury which involves:

i. a substantial risk of death;

ii. extreme physical pain;

iii. protracted and obvious disfigurement; or

iv. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

To qualify for an IAES on this basis, the injury must be severe. Minor injuries are not sufficient.

D. Request for Expedited Hearing

An expedited hearing is a hearing that occurs within twenty (20) school days of the request for a hearing, with a decision rendered within ten (10) school days of the hearing. The party requesting the hearing bears the burden of proof.

1. The parent/adult student may request an expedited due process hearing if the parent/adult student:

a. disagrees with the determination that the behavior was not a manifestation of the student's disability;

b. disagrees with any decision of the IEP team regarding a change of placement for disciplinary reasons, including a decision regarding the student's placement in an IAES during a disciplinary proceeding; or

c. disagrees with the decision regarding the student's placement in an IAES.

2. The LEA may request an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.

3. When an expedited hearing is requested (by the parent/adult student to challenge the

disciplinary action or by the LEA to seek removal to an interim setting), and the student was placed in an IAES, the student remains in the IAES pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first, unless the parent/adult student and LEA agree otherwise.

4. A resolution session shall occur within seven (7) days of receipt of an expedited due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation. Timelines are firm and may not be waived by either party.
5. The due process hearing shall proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the hearing request, or the hearing request is withdrawn. There is no process for challenging the sufficiency of an expedited due process hearing request. Timelines are firm and may not be waived by either party.
6. A decision of a hearing officer in an expedited hearing is final. The decision may be appealed to either federal district court or state court or court of competent jurisdiction.

See Chapter 13 for an explanation of regular and expedited due process hearing rights and procedures.

Section 6. FAPE Considerations

A. Protections for Students Not Yet Eligible for Special Education

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the LEA may assert the protections of the IDEA *if* the LEA had knowledge that the student was a student with a disability before the behavior occurred that precipitated the disciplinary action.

1. **Basis of knowledge**

   With limited exceptions, which are described in item 2 below, the LEA will be deemed to have knowledge that an individual is a student with a disability if, before the behavior that precipitated the disciplinary action occurred, one or more of the following is true:

   a. The parent or adult student has expressed concern to a teacher or LEA administrator that the student may need special education and related services;

   b. The parent/adult student has requested that the student be evaluated for special education; or

   c. The student's teacher or other LEA personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other LEA supervisory personnel in accordance with the LEA's established Child Find system or special education referral system.

2. **No basis of knowledge**

   The LEA will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

   a. An evaluation was conducted and a determination was made that the student did not have a disability;

   b. The parent/adult student did not give written consent for an evaluation; or

   c. The parent/adult student refused special education services.

If the LEA did not have a basis of knowledge that a student was a student with a disability prior

to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

B. Parent Request for Evaluation

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner. Pending the results of the evaluation, the student will remain in the educational placement determined by LEA officials, which can include suspension or expulsion without educational services.

1. If the student is subsequently determined eligible for special education, the LEA shall:
    a. Convene an IEP team meeting to develop an IEP.
    b. Conduct a manifestation determination.
        1) If the behavior is caused by or had a substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the least restrictive environment (LRE).
        2) If the behavior is neither caused by nor had a substantial relationship to the student's disability, the student is subject to the disciplinary placement that had been determined, but the student is still entitled to receive FAPE, which is determined by the IEP team.
            i. Educational services cannot cease for more than ten (10) school days in a school year.
            ii. Educational services shall be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
        3) If there were grounds to place a student in an IAES, the student may remain in the IAES for up to forty-five (45) school days even if the behavior is found to be a manifestation of the disability.

            See Section 5 of this chapter for information about placement in an IAES.
2. If the evaluation team determines that the student is not eligible for special education, the student will be subject to the same disciplinary actions as all other students. LEAs should consider whether the student is eligible for protections under Section 504 of the Rehabilitation Act before taking disciplinary action.

C. FAPE during IAES and Expulsion

Students with disabilities continue to have the right to FAPE during the period of expulsion or placement in an IAES. This means that educational services must be provided. In the case of expulsion, services may be provided in a different location than outlined in the student's current IEP and may limit or eliminate access to nondisabled peers during the expulsion period. During the period of expulsion or IAES placement, services shall be provided to the extent necessary to:

1. allow the student to continue to participate in the general education curriculum;
2. provide an opportunity to advance toward achieving the goals set out in the student's IEP; and

3. allow the student to receive, as appropriate, a functional behavior assessment (FBA) and behavioral intervention services and modifications that are designed to address the behavior so that it does not recur.

It is not sufficient to provide only special education and related services during an expulsion period. The student must continue to have access to the general education curriculum and to progress toward grade-level standards that apply to all students. Behavior needs and goals must also continue to be addressed, regardless of the location of services and for the duration of the expulsion.

The primary difference in the provision of FAPE for a student during expulsion is the location of services and access to peers, the school environment, and other curricular and non-curricular activities. The IEP team determines what services will be provided and the location of the service provision. The IEP team cannot decide to provide less than what is required for the student to receive a FAPE.

The LEA that expels the student is responsible for the provision of FAPE for the duration of the expulsion period or until the student enrolls in another public school. The LEA is also responsible for ensuring that the expelled student participates in all required State and Federal testing, such as the ISAT, IRI, and Access testing. Although Idaho Code indicates that expelled students are considered exited students for the purpose of participation in required State assessments, this provision does NOT apply to IDEA-eligible students who have been expelled.

Section 7. Restraint and Seclusion

A. Definitions

The following definitions apply to the use of restraint and seclusion:

1. **Corporal Punishment.** Knowingly and purposely inflicting physical pain on a student as a disciplinary measure.
2. **Chemical Restraint.** Using drugs or medication to control behavior; not including those prescribed by and administered in accordance with the directions of a qualified health professional.
3. **Mechanical Restraint.** The use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:
    a. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
    b. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
    c. Restraints for medical immobilization; or
    d. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.
4. **Physical Escort.** Temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of directing a student to a safe location. Physical escorting that involves methods used to immobilize a student's movement should be considered a

physical restraint.

5. **Physical Restraint.** Personal restriction that immobilizes or reduces the ability of a student to move the student's torso, arms, legs, or head freely. The term physical restraint does not include a physical escort.
6. **Seclusion.** The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

B. Use of Restraint and Seclusion

1. Corporal punishment shall not be used.
2. Chemical restraint shall not be used.
3. Restraint and/or seclusion:
   a. shall not be used as forms of discipline or methods of classroom governance;
   b. may be deployed only in circumstances where a student's conduct has placed self, employees, or any other individual in imminent danger of serious bodily harm; and
   c. shall be terminated immediately once it is determined that the student is no longer an immediate danger to self or to any other individual or when a parent or legal guardian has taken custody of the student.

Section 8. Other Considerations

A. Referrals to and Action by Law Enforcement and Judicial Authorities

1. The LEA may report a crime committed by a student with a disability to appropriate authorities. The IDEA does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.
   a. Referral to law enforcement does not take the place of IDEA-required procedures outlined in this chapter. The LEA continues to have the obligation to ensure that disciplinary procedures for students with disabilities are in place and that students continue to receive FAPE.
   b. Overreliance on an SRO or law enforcement intervention as a means of managing challenging behavior may result in a denial of FAPE.
2. If a student brings a firearm to school, law enforcement shall be contacted pursuant to the Gun-Free Schools Act.
3. If the LEA reports a crime, it will ensure that copies of the special education and disciplinary records of the student are given to the appropriate law enforcement authorities for their consideration, to the extent the release of records is permitted by the Family Educational Rights and Privacy Act (FERPA). Generally, the release of records requires consent, but exceptions are listed in Chapter 12.

B. Court Actions Resulting in a Change of Placement by Court Order (Honig Injunction)

If the LEA believes that a student is too dangerous to remain in the student's current placement, the LEA may seek a court order (commonly called a Honig injunction) changing the student's placement or barring the student from attending school. The LEA may seek a Honig injunction in lieu of requesting an IAES from a hearing officer. To receive a Honig injunction, an LEA and its attorney need the following two critical items:

1. In-depth documentation establishing the serious danger posed by the student—not only documentation of the action causing the request for the injunction, but also documentation of the student's previous actions; and
2. Documentation of the actions taken by the school to prevent problem behavior, such as implementing a functional behavioral assessment, behavioral intervention plans, safety plans, and positive behavioral interventions and supports and other strategies.

If a Honig injunction is granted, the student must receive a FAPE, including services necessary to enable the student to participate in the general curriculum and progress toward meeting the student's IEP goals. Courts have given schools broad discretion in selecting the setting in which the services will be provided.

See Legal Citations for more information.

C. Transfer of Discipline Records

Section 33-209, Idaho Code, requires that whenever a student transfers to a new school and a school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information shall be included in the transfer of records to the new school. The transmission of the student's record shall include the student's current IEP, including the FBA and BIP, and any current or previous disciplinary action taken. This information will be contained in a sealed envelope marked to indicate the confidential nature of the contents and addressed to the principal or other administrative officer of the school.

When the LEA initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities shall be given to authorized LEA personnel for their consideration in making the final determination regarding the disciplinary action.

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CHAPTER 12: PROCEDURAL SAFEGUARDS

Section 1. Procedural Safeguards Notice

The IDEA provides specific procedural safeguards to the parent/adult student. The Idaho Department of Education has developed and made available a document known as the *Procedural Safeguards Notice* which contains a full explanation of special education rights. The *Procedural Safeguards Notice* includes a full explanation of the procedural safeguards, written in an easily understandable manner. The LEA shall provide the *Procedural Safeguards Notice* in the native language of the parents (unless it is clearly not feasible to do so).

A. Procedural Safeguards Notice Contents

The following list names various topics contained in the *Procedural Safeguards Notice*.

1. Parental consent
2. Written notice
3. Access to educational records
4. Independent educational evaluation (IEE)
5. The opportunity to present and resolve complaints, including:
    a. The time period in which to make a complaint
    b. The opportunity for the LEA to resolve the complaint
    c. The availability of Idaho Department of Education mediation
    d. The differences between a due process hearing complaint and state complaint
6. The student's placement during pendency of due process proceedings
7. Procedures for students who are subject to placement in an interim alternative educational setting (IAES)
8. Requirements for unilateral placement by parents of students in private schools at public expense
9. Due process hearings, including requirements for disclosure of evaluation results and recommendations
10. Civil actions, including the time period in which to file such actions
11. Attorney fees

B. When the Procedural Safeguards Notice Is Offered

The LEA shall offer the *Procedural Safeguards Notice* that includes a full explanation of the special education rights afforded the parent/adult student:

1. at least once annually
2. upon an initial referral or parent/adult student request for evaluation;
3. upon the first occurrence of a filing of a due process hearing or a state complaint in a school year;

4. when a decision is made to take a disciplinary action that constitutes a change of placement; and
5. upon request by the parent.

The *Procedural Safeguards Notice* suitable for copying can be found in the Appendix of this Manual, and on the Idaho Department of Education's Dispute Resolution webpage under Chapter 12 of the Idaho Special Education Manual.

Section 2. Domestic Considerations

A. Parent

1. Definition

The term "parent" means:

a. a biological, adoptive, or foster parent of a child;
b. a guardian (but not the state if the child is a ward of the state);
c. an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives;
d. an individual who is legally responsible for the child's welfare;
e. an adult student, if rights have transferred; or
f. a surrogate parent who has been appointed by the LEA.

2. Determining Who Has Parental Rights

In determining who has parental rights, individuals should be considered in the following order of priority:

a. a biological or adoptive parent; unless a Court orders a specific person to act as the parent or to make educational decisions on behalf of the student;
b. a person who has legal documentation (guardianship, power of attorney, custody agreement) of being responsible for the student's welfare;
c. a grandparent, stepparent, other relative, or foster parent with whom the student lives and who is acting as a parent; or
d. a surrogate parent appointed by the LEA to represent the student's interests in educational decisions.

B. Surrogate Parent

1. Definition

A "surrogate parent" is an individual assigned by the LEA to assume the rights and responsibilities of a parent under the IDEA in any of the following circumstances:

a. No parent can be identified or located for a particular student.
b. The student is a ward of the state.
c. The student is an unaccompanied homeless youth.

The surrogate parent has the same rights as a biological parent throughout the special education decision-making process.

2. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination as to the student's need for a surrogate parent to the LEA's special education director or an appropriate LEA administrator. The LEA's special education director or an appropriate LEA administrator will appoint a surrogate parent in any of the following circumstances:

a. A parent cannot be identified.

b. A parent cannot be found after reasonable efforts to locate the parent.

c. The student is a ward of the state. If a state judge has appointed a surrogate parent to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student's education, including special education, provided he or she meets the criteria for an LEA-appointed surrogate parent.

d. The student is a homeless youth who is unaccompanied.

The LEA will make a good faith effort and maintain records of attempts to locate a parent. The LEA cannot appoint a surrogate parent when the biological parent is available but chooses not to participate. When a surrogate parent is needed for a student, the LEA will appoint a surrogate parent who meets the conditions set forth in item 3, below. The LEA will make reasonable efforts to assign a surrogate parent within thirty (30) calendar days after it determines that the student needs a surrogate parent.

3. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement, and the provision of FAPE. The surrogate parent shall:

a. Have knowledge and skills that ensure adequate representation.

b. Have no personal or professional interest that conflicts with the interest of the student.

c. Meet the following conditions:

1) is not an employee of the Idaho Department of Education, the LEA, or any other agency that is involved in the education or care of the student; and

2) is not an employee of a nonpublic agency that provides educational care for the student.

Note: A person who otherwise qualifies to be a surrogate parent is not an employee of the LEA or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate parent can be appointed that meets all the requirements.

C. Adult Students and the Transfer of Rights

An "adult student" is a student who is at least eighteen (18) years of age to whom special education rights have transferred under the IDEA and Idaho Code.

1. Discussion of the Transfer of Rights: Not later than the student's seventeenth (17^{th})

birthday, the IEP team shall discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns eighteen (18) years of age unless:

a. the IEP team determines that the student does not have the ability to provide informed consent with respect to the student's educational program; or

b. a parent has obtained legal guardianship from a Court including the scope of educational matters.

2. Basis for Denial of Transfer: During the IEP team meeting to discuss the transfer of rights, the IEP team will use the following as the basis for any denial of the transfer:

   a. Evaluation data, test results, written reports, teacher observation, education records, and parent input, including whether the parent intends to seek guardianship.

   b. Answers to the following questions:

      1) Is the student capable of understanding their rights?

      2) Is the student capable of exercising their rights?

      3) Is the student capable of understanding the consequences and impact of their decisions?

3. Following a Determination Concerning the Transfer of Rights: The IEP shall contain a statement referring to the transfer (or not) of rights:

   a. If the team determines that there is no relevant information about the student to prohibit the transfer of rights at age eighteen (18), the student's IEP shall contain a statement that the student has been informed that special education rights will transfer to him or her. The parent retains the right to receive notices required by the IDEA until the student's special education rights transfer at age eighteen (18).

   b. If the IEP team determines that the student lacks the ability to provide informed consent with respect to his or her educational program, a statement will be included in the IEP indicating that the parent, or other individual if the parent is not available, will retain all special education rights after the student reaches age eighteen (18).

4. When the student's special education rights transfer at age eighteen (18), the parent and student will be informed that rights have transferred.

5. Revoking a Transfer of Rights: There is nothing in federal or state law that prohibits the IEP team from changing its decision later, based on new information and input. Under state law, a parent can provide legal documentation of a student's incompetence *after* the student reaches age eighteen (18).

D. Emancipated Minors

Idaho law provides that a student under the age of 18 is emancipated by either marriage, by legal proceeding, or in active military service. Minors who have been emancipated by a court of law in another state are considered adults in Idaho. Emancipated minors should be able to provide the legal court document awarding them the power and capacity of an adult. A student under age eighteen (18) who claims to be an emancipated minor but is unable to provide documentation should be assigned a surrogate parent by the LEA if a parent cannot be located.

Students under the age of eighteen (18) who are married are emancipated minors in Idaho and

have the power and capacity of an adult student.

E. Ward of the State

The term "ward of the state" means a child who, as determined by the state where the child resides, is a foster child, or a ward of the state *or* is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 2A.

F. Child Custody

1. Definitions of Custody

The following definitions of custody are used by Idaho courts in divorce proceedings:

a. **Joint custody** means an order awarding custody of a minor child to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child frequent or continuing contact with both parents. A court may award either joint physical custody or joint legal custody, or both. If the court has declined an order awarding joint custody, the court order shall state in the decision the reason for denial of joint custody.

b. **Joint physical custody** means by court order, each of the parents were awarded significant periods of time in which a child resides with or is under the care and supervision of each of the parents. The actual amount of time with each parent is determined by the court.

c. **Joint legal custody** is a judicial determination that the parents or parties are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of a child.

2. Conflicts Between Parents Who Have Joint Custody

a. **Custody questions**: When it is known that a custody question exists that involves the relevant custodial status of one or both parents of a student, the LEA will ask the parent(s) to furnish a copy of the pertinent court order or decree, if one exists, to clarify the question at issue. School personnel will abide by the most recent court order or decree.

b. When LEA personnel receive conflicting information about custody, they will (a) initially follow the instructions of the parent with whom the child currently resides and (b) request a certified court document to clarify the custody issue.

c. **Conflicting instructions**: When parents who have joint legal custody give conflicting instructions, the LEA's obligation is to inform the parents that any action proposed or refused will be based on the needs of the student and in accordance with the IDEA requirements. Both the LEA and either parent have options under the IDEA to resolve disagreements, including Idaho Department of Education Dispute Resolution processes such as mediation and due process hearings.

d. **Access to records**: A parent who does not have primary physical custody has the same right to access records and to participate in special education decision making as does the parent with primary physical custody, unless otherwise specifically stipulated by a court. The parent with primary physical custody may request in writing that a minor child's address be deleted from any record to prohibit the other parent from learning the child's address by having access to school records.

e. **Parental disagreement of consent:** When parents, both with legal authority to make educational decisions for their child, disagree on the revocation of consent for special education and related services, one parent may revoke consent in writing for his or her child's receipt of special education and related services at any time. The LEA must accept either parent's revocation of consent, and provide written notice to the parents. After revoking consent, a parent maintains the right to subsequently request an evaluation which shall be treated as an initial evaluation and not a re- evaluation for special education. A parent who disagrees with the other parent's revocation of special education services is not entitled to resolve the dispute through an IDEA due process hearing.

Section 3. Informed Consent

A. Definition

Consent is written approval given by a parent/adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information shall be provided in the native language or mode of communication of the parent/adult student, unless not feasible to do so. The parent/adult student shall be informed that the approval is voluntary and may be revoked at any time prior to the action. Consent is indicated by the parent's/adult student's signature.

B. Actions Requiring Consent

The following actions require the LEA to obtain written consent. Some of the actions that require written consent from the parent/adult student also require prior written notice from the LEA.

1. Informed written consent *and* written notice are required when:
   a. Conducting an initial evaluation of the student to determine whether the student qualifies for special education as a student with a disability. Written consent is required for initial evaluation even if the team determines no new assessments are necessary.
   b. Conducting any new assessment as part of a reevaluation. If, after written consent has been obtained, the team determines the need to assess another area, written consent shall be sought for that area. Written notice shall be provided when proposing to complete a reevaluation using only existing information. See section C.1, below.
   c. Conducting any new assessment that is not part of an initial evaluation or reevaluation process. Assessment results shall be reported in written notice.
   d. Initially providing special education and related services to a student with a disability.
2. Informed written consent is required when:
   a. Using an individual family service plan (IFSP) instead of an IEP for students ages three (3) through five (5).
   b. Disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations. The written consent shall specify the records that may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.

c. Accessing private insurance to pay for services listed in the IEP.

d. The LEA requests to bill Medicaid (with some exceptions). The parent/adult student shall be informed of the frequency, amount, and type of services that the LEA will be submitting to Medicaid for reimbursement as identified on the student's IEP.

e. Inviting outside agency representatives providing transition services to an IEP team meeting.

f. Sharing information between the LEA of location and the LEA of residence with a parentally placed elementary or secondary student.

g. Requesting the excusal of an IEP team member from an IEP team meeting.

C. When Consent Is Not Required

The LEA is not required to obtain informed consent when:

1. a review of existing information is part of an evaluation. In the case of a reevaluation, written notice shall be provided when proposing to complete the reevaluation using only existing information;
2. tests are administered to both general and special education students in a grade or class and consent is not required for all students;
3. teacher or related-service-provider observations, ongoing classroom evaluation, or criterion-referenced tests are used in determining a student's progress toward goals, objectives, and benchmarks on the IEP;
4. screening to determine appropriate instruction strategies for curriculum implementation;
5. disclosing personally identifiable information to persons authorized to have access under FERPA or the Idaho Student Data Privacy Act, Section 33-133, Idaho Code; **or**
6. an IEP team reviews and revises a student's IEP.

D. Refusal to Give Consent

A parent/adult student may refuse to give written consent for an assessment, initial special education services, or the release of information that the LEA believes is necessary to ensure FAPE during the reevaluation process.

If the parent refuses to provide consent for the reevaluation assessment, the LEA may choose not to pursue the reevaluation. If the LEA determines through a review of existing data, that the information does not continue to support the determination of eligibility for special education services the LEA shall provide the parent with written notice of the proposed action to discontinue the provision of FAPE to the student based on a review of existing data.

The LEA may also choose to pursue the reevaluation through Idaho Department of Education mediation and/or by requesting a due process hearing. If the hearing officer determines that the action is necessary, and the parent/adult student does not appeal the decision, the LEA may proceed with the proposed action. The LEA shall provide the parent with written notice of the proposed actions.

The LEA shall obtain written consent for the initial provision of special education and related services. There is no mechanism available to overturn a parent's/adult student's decision *not* to provide written consent for the initial provision of services. In the case of an initial evaluation or

initial provision of services, if a parent/adult student fails to respond to reasonable measures to gain consent or does not consent, the LEA cannot be charged with failing to provide FAPE to the student and is not required to convene an IEP team meeting or implement an IEP for special education or related services.

E. Failure to Respond to a Request for Consent Regarding Reevaluation Assessment

When a parent/adult student fails to respond to reasonable measures taken by the LEA to obtain written consent to determine continued eligibility, the LEA may proceed with the reevaluation. The LEA shall maintain a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, and/or visits made to the home or place of employment. Failure to respond is not the same as refusing consent for reevaluation.

F. Revoking Consent for Evaluation

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked, but a revocation of consent is not retroactive and does not negate any action that has occurred after the consent was given and before the consent was revoked. If consent is revoked for evaluation, the LEA may continue to pursue the action by requesting a due process hearing. If the hearing officer determines that the action for which consent is sought is necessary, and the decision is not appealed, the LEA may proceed with the action without the written consent of the parent/adult student. Consent must be revoked in writing.

See Chapter 4 for more information about consent.

Section 4. Written Notice

A. Definition

Written notice is the act of informing a parent/adult student in writing within a reasonable amount of time [a period of ten (10) calendar days unless exceptional circumstances apply; see Glossary for complete definition], before the LEA proposes to initiate or change, or refuses to initiate or change, the student's special education identification, the evaluation, educational placement, or provision of FAPE.

B. Criteria for Written Notice

1. Written notice must be provided within a reasonable amount of time before implementing the proposed action.
2. Written notice shall be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent/adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the LEA shall take steps to ensure the following:
    a. The notice is translated orally or by other means in the native language or other mode of communication.
    b. The parent/adult student understands the content of the notice.
    c. There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

When a parent/adult student disagrees with the LEA's written notice of a proposed or refused

action, he or she can attempt to remedy the dispute using Idaho Department of Education processes, such as IEP facilitation, mediation, formal complaint procedures, or due process hearing procedures afforded by the IDEA.

C. Written Notice Is Required

1. The LEA shall provide written notice within a reasonable amount of time in the following circumstances:
    a. before proposing or refusing to initiate or change the following:
        1) identification of the student;
        2) any assessments for initial evaluation or reevaluation;
        3) educational placement; or
        4) the provision of FAPE.
    b. If the LEA refuses to convene an IEP team meeting at the request of a parent/adult student.
    c. If the LEA makes a change in the IEP after an IEP team meeting to correct a typographical error which results in a change in the services provided to a student.
    d. When the evaluation team determines that additional assessments are not required during a reevaluation to determine whether the student continues to meet eligibility criteria, the LEA shall provide written notice to the parent/adult student of the decision and the reasons for that decision. The parent/adult student must also be informed of his or her right to request assessments, when necessary, to determine continued eligibility.
    e. If a parent files a due process hearing request. The LEA shall provide-written notice specific to the issues raised in the due process hearing request within ten (10) days.
    f. If the LEA has determined that the student is being removed for disciplinary purposes and the removal constitutes a change of placement.
    g. If the parent/adult student revokes consent for the continued provision of special education.

D. Written Notice is Not Required

The LEA is not required to provide written notice in the following situations:

1. when reviewing existing data as part of an evaluation;
2. when tests are administered to all students in a grade or class;
3. when teacher or related service provider observations, ongoing classroom evaluation, or criterion-referenced tests are used in determining a student's progress toward goals, objectives and benchmarks on the IEP; or
4. when a student is screened by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.

E. Content of Written Notice

The content of written notice is intended to provide the parent/adult student with enough

information so that the parent/adult student is able to fully understand the LEA's proposed action or refused action and to make informed decisions, if necessary.

The written notice shall include the following:

1. a description of the action proposed or refused by the LEA;
2. an explanation of why the LEA proposes or refuses to take the action;
3. a description of any other options the IEP team considered and the reasons why those options were rejected;
4. a description of each procedure, assessment, record, or report that the LEA used as a basis for the proposed or refused action;
5. a description of any other factors relevant to the proposed or refused action;
6. a statement that the parent/adult student has special education rights and a description of how to obtain a copy of the *Procedural Safeguards Notice*; and
7. sources to contact in obtaining assistance in understanding the *Procedural Safeguards Notice.*

F. Objection to LEA Proposal

If a parent/adult student disagrees with an IEP program change or placement change that is proposed by the IEP team, the parent/adult student may file a written objection to all or part of the proposed change.

The parties may resolve a disagreement using methods such as holding additional IEP team meetings or utilizing Idaho Department of Education Dispute Resolution processes, such as facilitation or mediation. If these attempts fail or are refused, the proposed IEP shall be implemented unless a due process hearing request is filed to obtain a hearing officer's decision regarding the proposed IEP, unless it is an initial IEP.

A parent's/adult student's written objection to an IEP or placement change cannot be used to prevent the LEA from unilaterally placing the student in an IAES in accordance with the IDEA procedures for discipline of a student or to challenge an eligibility/identification determination.

Section 5. Confidentiality and Access to Records

The LEA shall collect, use, and maintain information about a student to make appropriate decisions concerning special education and the provision of FAPE. A student's special education case manager, usually the special education teacher, should organize all relevant records specific to LEA guidelines and the IDEA requirements.

The IDEA and Family Educational Rights and Privacy Act (FERPA) contain provisions to protect the confidentiality of personally identifiable information (PII) in student special education records. These statutes also provide for the right to review and inspect records.

A. Definitions

A "record" is defined as personally identifiable information directly related to the student and maintained by the LEA or a party acting for the LEA. A student record can be written or electronic.

1. "Personally identifiable information" means information that contains:

a. The name of the student, the student's parent, or other family member;

b. The address of the student;

c. A personal identifier, such as the student's social security number or student number; or

d. A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

2. The term "record" may include, but is not limited to, the following:

a. identifying data (name, address, parents, siblings, social security number, list of personal characteristics making identification reasonably certain by a person in the school community);

b. academic work completed (courses taken, transcript);

c. level of achievement (grades, portfolios, performance assessments, scores on standardized achievement tests, etc.);

d. attendance data;

e. scores and protocols of standardized intelligence, aptitude, and psychological tests;

f. records of teachers, counselors, medical personnel, and psychologists working directly with a student if disclosed to others;

g. interest inventory results;

h. observations and verified reports of serious or recurring behavior patterns;

i. videotapes or audiotapes;

j. health data including medical assessments;

k. family background information;

l. transportation records;

m. student records maintained by agencies and individuals contracting with the LEA; and

n. email, text messages, or other written notes sent regarding the student or the student's family, to the extent these communications are maintained by the LEA.

3. The term "record" does not include:

a. records of instructional, supervisory, ancillary, and administrative personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

b. records created by law enforcement units of schools and maintained separately for non-educational purposes;

c. employment records about a student who is employed by a school or LEA. (Note: Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records);

d. records on a student who is eighteen (18) years of age or older, or is attending an institution of postsecondary education, that are:

i. made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

ii. made, maintained, or used only in connection with treatment of the student;

iii. disclosed only to individuals providing the treatment (Note: "treatment" does not include remedial educational activities or activities that are a part of the program of instruction); and

e. grades on peer-graded papers before they are collected and recorded by a teacher.

B. Protection of Records

The LEA shall prevent unauthorized disclosure of personally identifiable information pertaining to students with disabilities. "Disclosure" is the release, transfer, or other communication of education records or of personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic. LEAs must have a policy to protect personally identifiable information from security risk resulting from unsecured data transmittal or storage.

To ensure protection of records, the LEA shall do the following:

1. Obtain written and dated consent from the parent/adult student before disclosing personally identifiable information:
   a. to unauthorized individuals; or
   b. for any purpose except as authorized by law.
2. Designate and train a records manager to ensure security of confidential records for students with disabilities.
3. Maintain a log of requests for access to education records if the request is not from a:
   a. parent/adult student;
   b. school employee with a legitimate educational interest;
   c. party seeking designated directory information; or
   d. party receiving the records as directed by a federal jury or other subpoena ordering no one to disclose the existence of the request to access records.

   This log includes the name, agency affiliation, date, and purpose for accessing the records. A log documenting denials of records requests and partially fulfilled requests should also be maintained.
4. Maintain, for public inspection, a current listing of names and positions of employees who have access to personally identifiable information.
5. Establish procedures to ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
6. Ensure that, if any education record includes information on more than one student, a parent/adult student will only be allowed to inspect, review, or be informed about the record of the student at issue.
7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality.

All staff members, even those who do not have access to special education records, should be informed about what is considered appropriate and inappropriate access to and use of information within the records. The LEA should maintain a record of the training provided—including the name of the person or persons providing the training, dates of the training, those attending, and the subjects covered—for the purpose of documenting that new staff members have been trained as soon as possible after they have been hired.

C. Access to Records

The LEA shall:

1. Annually notify the parents of all students, including students with disabilities currently in attendance, of their rights under FERPA. The notice shall include all of the following:
   a. procedures for exercising the right to inspect and review education records;
   b. procedures for requesting amendment of records; and
   c. a specification of criteria for determining who constitutes a school official or employee in the LEA and what constitutes a legitimate educational interest.
2. Permit a parent/adult student, or his or her representative, to inspect and review any record relating to educational matters that is collected, maintained, or used by the LEA. The LEA will presume that a custodial or non-custodial parent has the authority to inspect and review a record relating to his or her child unless there are legal documents limiting access to those records under state law that have been provided to the LEA. A minor student's address will be deleted from any record if requested in writing by a custodial parent to prohibit a non-custodial parent from learning the address simply by having access to the school records.

   The LEA will make records available to a parent/adult student for review:

   a. without delay but no later than forty-five (45) days after the request;
   b. before any meeting regarding an IEP;
   c. before a resolution session; and
   d. before any due process hearing.

   If the LEA maintains test protocols that include personally identifiable information, these may be considered part of a student's educational record. Test publishers require LEAs to maintain the integrity and validity of tests. Parents or others authorized by the parent/adult student interested in a student's test results are allowed to view the student's responses to test items, but only if the information is shared in the presence of a person qualified to explain the results and meaning of the various items and data contained in the protocol.
3. Upon request, provide a parent/adult student with a list of the types of education records the school collects, maintains, or uses and where they are kept.
4. Respond to any reasonable request made by a parent/adult student for an explanation and interpretation of a record.
5. Provide a copy of education records if a parent/adult student would otherwise be unable to effectively exercise his or her right to inspect and review those records. A fee may be charged for the copies, unless the imposition of a fee effectively prevents a parent/adult student from exercising the right to inspect and review the student's records. A fee may

not be charged to search for or retrieve information. The LEA shall publish a schedule of fees it intends to charge.

6. Always provide a parent/adult student a copy of the IEP and any documentation of identification and eligibility.

D. Disclosures Not Requiring Consent

Consent is generally required to disclose personally identifiable information to others. However, consent is not required in certain circumstances, including, but not limited to:

1. A school official or employee has a legitimate educational interest to access the records. A contractor, consultant, volunteer or other party may be considered a school official if that individual performs a function for which the LEA would otherwise use employees, is under the direct control of the LEA regarding the use and maintenance of education records, and is subject to the same requirements regarding the use and redisclosure of personally identifiable information from education records.
2. A representative of the Federal Comptroller General, the United States Department of Education, or the Idaho Department of Education -accesses records necessary for an audit or evaluation of a federal program or for enforcement or compliance with federal regulations.
3. The disclosure is to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer. A reasonable attempt to notify the parent/adult student of the record disclosure at the last known address shall be made unless the disclosure was initiated by the parent/adult student, or the LEA, in its annual notification, includes a notice that records will be forwarded.
4. The disclosure is in connection with a health or safety emergency under specified FERPA criteria.
5. The disclosure is to state and local officials and concerns the juvenile justice system's ability to effectively serve the student as specified in state law.
6. The disclosure is to an organization that conducts studies on behalf of education agencies or institutions under specified FERPA criteria.
7. The disclosure is in connection with an application for financial aid and is necessary to determine eligibility for the aid, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid ("financial aid" means a payment of funds to an individual that is conditioned on the individual's attendance at an education agency or institution).
8. The disclosure is to accrediting organizations to carry out their accrediting functions.
9. The disclosure is to the parent of an adult student who is claimed by the parent as a dependent for IRS purposes.
10. The disclosure is to comply with a judicial order or lawfully issued subpoena. The LEA must make a reasonable effort to notify the parent of the court order in advance of compliance, unless the subpoena specifically states that it is not to be disclosed.
11. The LEA has designated information as "directory information" under the specified

FERPA criteria.

E. Destruction of Records

The LEA will maintain education records, including eligibility documentation and IEPs, for at least five (5) years after a student's disenrollment from the LEA to demonstrate fiscal accountability and program compliance with the IDEA requirements. If maintained by the LEA, test protocols containing personally identifiable information are considered education records. Assessment results shall be maintained during the period in which any report that utilizes such information is in effect. Electronic copies will be treated as the original so long as those copies adequately capture any handwritten notes and signatures.

Medicaid-related records, specifically expenditure documentation, cost allocation process, all student records related to the Medicaid billing and service delivery (e.g., data sheets, IEPs, health care plans, physician recommendations for assessments and IEP services, evaluation recommendations, documented supervision of paraprofessionals), and revenue documentation, must be kept for a period of six (6) years.

The LEA shall inform a parent/adult student when records containing personally identifiable information collected, maintained, or used is to be destroyed because the records are no longer needed to provide educational services to the student. The parent/adult student must be informed of the records containing personally identifiable information that the LEA intends to destroy and that the records will be destroyed no earlier than forty-five (45) calendar days from the date of the notice. The parent/adult student must also be informed of the procedure to follow if he or she wishes to formally object to the destruction of the records and wants the records sent to him or her.

Written and electronic records of individual students are confidential. The LEA will ensure the complete destruction of the records, which may include but is not limited to shredding, permanently deleting, or burning, under supervision of the staff member responsible for the records if not released to the parent/adult student. The records manager shall maintain a log that documents the date of destruction or release of records.

A permanent record of the student's name, address, phone number, grades, classes attended, immunization records, test scores, attendance record, grade level, and year completed may be maintained by the LEA without a time limitation. Any other personally identifiable information shall be destroyed at the request of the parent/adult former student. When informing the parent/adult student of his or her rights, the LEA should remind the parent/adult student that the records might be needed for Social Security benefits or other purposes in the future.

A. Request for Amendment of Records

A parent/adult student may request that the LEA amend the student's records if he or she believes that information collected, maintained, or used in the education record is inaccurate, misleading, or in violation of the privacy or other rights of the student. The LEA will use the following procedure:

1. The LEA, without unnecessary delay and within forty-five (45) calendar days of receipt of the request, must decide whether to amend the record. If the LEA refuses to amend the record, the parent/adult student must be informed of the refusal and be advised of the opportunity for a hearing conducted by the LEA to challenge the content of the student's education records. The hearing shall follow the procedures set forth in the LEA's FERPA policy. A hearing conducted by an LEA is an informal hearing that does not have all the

requirements of a due process hearing.

2. If an LEA hearing is requested and the LEA decides that the information is inaccurate, misleading, or in violation of the student's rights, the LEA shall amend the record and inform the parent/adult student in writing.
3. If an LEA hearing is requested and the LEA decides the information is accurate and does not violate the student's rights, the LEA shall inform the parent/adult student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the LEA's decision, or both. Any statement placed with a record shall accompany the record for as long as the LEA maintains the record. If the LEA discloses the record to any person, the LEA shall also disclose the statement.

B. LEA Hearings on Procedures for Records

Each LEA shall have a FERPA policy which includes the rights to request a hearing challenging the accuracy of records.

C. Students' Rights

When special education rights transfer to a student under the IDEA and Idaho law, the FERPA rights regarding education records also transfer to the student. The LEA shall inform the parent/adult student that both the IDEA and FERPA rights regarding education records transfer although FERPA gives the parent of a student who is claimed to be a dependent for IRS purposes the right to request access without the consent of the student.

Section 6. Independent Educational Evaluations

A. Definition

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the LEA responsible for the education of the student in question.

B. Right to an IEE

1. A parent/adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the LEA, unless the LEA initiates a due process hearing, as discussed below.
2. The parent/adult student is entitled to only one IEE at public expense for each LEA evaluation, unless the LEA initiates a due process hearing, as discussed below.
3. The parent/adult student has the right to an IEE at his or her own expense at any time, and the IEP team shall consider the results within a reasonable amount of time after receiving a copy of the IEE, if the IEE meets the LEA's criteria.
4. The parent/adult student may request an IEE at public expense if he or she disagrees with the results of the evaluation provided by the LEA.
    a. If the IEE request is to challenge the existing results of the LEA's evaluation findings, the LEA must fund the IEE or file a request for a due process hearing.
5. If the request is for additional testing that has not been completed by the LEA for an evaluation, this request is not considered a request for an IEE. It is a request for additional testing. The LEA shall consider the request and then provide written notice of

its decision. Upon receiving a request for an IEE, an LEA may initiate a due process hearing, without undue delay, to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court's decision on an appeal, is that the evaluation conducted by the LEA was appropriate, the parent and/or adult student still has the right to an IEE but at his or her own expense.

6. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the LEA was not appropriate.

C. Procedures for Requesting an IEE

If a parent/adult student requests an IEE at public expense, the LEA may ask why he or she disagrees with the evaluation obtained by the LEA, but the LEA cannot require an explanation as a condition of providing an IEE. The LEA shall give the parent/adult student the criteria under which an IEE can be obtained. The LEA's IEE criteria shall be the same criteria used by the LEA when conducting an evaluation and shall include the following information:

1. the location for the evaluation;
2. the required qualifications of the examiner;
3. the eligibility requirements for the specific disability categories; and
4. reasonable cost containment criteria applicable to personnel for specified assessments to eliminate unreasonably excessive fees.

Except for the criteria listed above, the LEA may not impose other conditions or timelines if doing so would be inconsistent with the parent's/adult student's right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

A parent/adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the LEA's cost criteria. If an IEE that falls outside the LEA's cost criteria is justified, that IEE will be publicly funded.

D. LEA Responsibilities Following IEE Requests

1. If a parent/adult student requests an IEE at public expense, the LEA shall do one of the following without unreasonable delay:
    a. Provide the LEA's IEE criteria and information about where an IEE may be obtained and ensure that an IEE is provided at public expense; or
    b. Request a due process hearing to show that the LEA's evaluation is appropriate. If the final hearing decision is that the LEA's evaluation is appropriate, the parent/adult student may pursue an IEE, but at his or her own expense.
2. If a parent/adult student asks the LEA to pay for an IEE that has already been obtained, the LEA shall pay for the IEE if it meets the criteria for publicly funded IEEs unless the LEA initiates a due process hearing. If the LEA believes that its evaluation was appropriate, but agrees to pay for the IEE, the LEA should state this in writing within the same document in which it agrees to pay. The LEA may also request Idaho Department of Education mediation.

E. Consideration of the IEE Results

If a parent/adult student obtains an IEE and makes that evaluation available to the LEA, the

results must be considered by the LEA in any decision made with respect to the provision of FAPE. The results may also be presented as evidence at a hearing regarding the student.

The results of an IEE cannot be the sole determining factor for eligibility. The evaluation team has the responsibility to use the LEA's evaluation results and other existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA.

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CHAPTER 13: DISPUTE RESOLUTION

On occasion, conflicts arise between LEAs and families. Several mechanisms are available through the Idaho Department of Education to assist in resolving a dispute. The processes are facilitation, mediation, state complaints, due process hearings, and expedited due process hearings. This chapter contains information on each of these processes. The information contained within this chapter is not intended to limit in any manner the procedural due process/dispute resolution rights provided by federal or state law.

In addition to providing general information and support concerning IDEA related issues, the Idaho Department of Education accepts requests for facilitation, and mediation by telephone and e-mail. State complaints and due process hearings are accepted via mail, personal delivery, or may be scanned and attached to an email. All state complaints and due process hearing requests must include the signature of the filing party.

The Dispute Resolution (DR) office is an impartial office that provides general information, support, and resources about the IDEA and available dispute resolution processes; and connects constituents with other special education partners. DR staff do not advise parties on the actions they should take or provide legal advice.

Requests for dispute resolution should be directed to the DR office at:

Special Education Dispute Resolution Idaho Department of Education

P.O. Box 83720

Boise, ID 83720-0027

(208) 332-6914

(800) 432-4601

TT: (800) 377-3529

disputeresolution@sde.idaho.gov

For further assistance in matters relating to dispute resolution, you may contact:

Disability Rights Idaho

Website: disabilityrightsidaho.org

(208) 336-5353 (phone number)

(866) 262-3462 (statewide toll-free)

Idaho Parents Unlimited (IPUL)

4619 Emerald, Ste. E

Boise, ID 83706

(208) 342-5884

(208) 342-1408 (fax)

(800) 242-IPUL (4785) (toll-free)

Parents@ipulidaho.org
V/TT: 208-342-5884

Section 1. Facilitation

A. Definition of Facilitation

Facilitation is a voluntary process during which a dispute resolution contractor facilitates an IEP team meeting or other IDEA-related meeting. The role of the facilitator is to help the team members, including the parents/adult student and the student (when appropriate), communicate more effectively and efficiently. Facilitation supports early dispute resolution by providing assistance to the team before a conflict develops into a formal dispute. A facilitator is trained to help teams collaboratively plan for the team meeting, focus on key issues, and move toward productive outcomes. The facilitator is not a member of the team and acts as a neutral and impartial third party, providing balance, offering a neutral perspective on the process, and helping parties to be heard and understood by the rest of the team. A facilitator will not be responsible for creating or documenting decisions made by the IEP team or in any special education-related meeting.

Facilitation is offered at no cost to the LEA or the parent/adult student.

B. Facilitation Requests

A request for facilitation may be made by either a parent/adult student or a designated district representative, such as the director of special education. Facilitation may be requested for any IDEA-related meeting including eligibility meetings, annual or amended IEP team meetings, due process hearing meetings such as resolution sessions or settlement meetings, and manifestation determination meetings.

To ensure the availability of a facilitator, requests for facilitation should be made at least two weeks in advance of the meeting. Upon the request for facilitation, the DR office will contact the other party for approval. As facilitation is voluntary, both parties must agree to facilitation for the process to go forward. The DR office will contact both the parent/adult student and the district representative, notifying them who the facilitator will be. The facilitator will contact the parties to conduct pre-facilitation interviews to help build an agenda for the facilitation. The LEA is responsible for scheduling the meeting and sending out the *Invitation to a Meeting*.

C. Facilitator Role

The role of the facilitator is to lead the team meeting and guide parties through the process. The facilitator may work with parties to establish the agenda and identify issues that are important to each party and will be covered in the meeting.

Facilitators may ask pertinent questions of parties, providing occasional clarification or perspective, and work to ensure that parties are able to participate in a productive and balanced meeting. Facilitators do not make decisions for teams, serve as definitive experts on IDEA processes or legal matters, record meeting minutes, or finalize documents. However, they may assist in crafting language that parties include in a student's IEP. Facilitators cannot compel parties to act or refrain from acting, do not maintain educational records, and are not responsible for ensuring compliance.

Facilitators shall not be called to testify in due process hearings or civil proceedings regarding facilitated meetings they have conducted, nor shall they be compelled to disclose the substance of any discussion that occurred during the facilitation process.

D. Dispute Resolution Facilitators

Facilitators are trained in effective conflict resolution processes, communication, negotiation, problem-solving, and in laws and regulations relating to the provision of special education and related services. While a facilitator in this context will not offer advice on a particular course of action, they will help the parties explore the soundness of any assumptions or agreements. The DR Coordinator may appoint one or two individuals to serve as facilitator(s) of a meeting.

In all cases, a facilitator shall not:

1. be an employee of the LEA involved in the dispute;
2. have children enrolled in the LEA involved in the dispute;
3. have a personal or professional interest that may affect the ability to remain impartial or neutral; or
4. be used if either party rejects the facilitator(s) based on a perceived inability to be neutral or impartial.

Section 2. Mediation

A. Definition of Mediation

Mediation is a confidential and voluntary process where a qualified, neutral, and impartial mediator trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of special education and related services is assigned to assist special education teams. Mediation provides structure for parents/adult students and district personnel to identify areas of agreement and work to resolve points of disagreement concerning the identification, evaluation, educational placement, or provision of FAPE. Mediation aims to build positive working relationships, encourage mutual understanding, and help the parties focus on their common interest—the student.

Discussions in mediation are not discoverable in pending or subsequent due process hearings or civil proceedings. Parties are provided a *Notification of Mediation Confidentiality* form. Written agreements produced in mediation are legally binding and enforceable in state or federal court. With the agreement of all parties in the mediation, an IEP may be amended as part of a written agreement.

Mediation may be appropriate when parties are in disagreement and seem unable to move forward without assistance, or they, after making a good-faith effort, face an impasse in an attempt to resolve the disagreement. Mediation can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state complaint.

B. Mediation Requests

1. A request for mediation may be made in person, writing, or via telephone by either a parent/adult student or a district representative at any point when a disagreement occurs about the student's educational program. The DR office will screen all mediation requests to determine the appropriateness of the mediation process for each individual case.
2. Mediation is automatically offered when a state complaint involving an individual student or a request for a due process hearing has been filed. Mediation cannot be used to delay the state complaint or due process hearing timelines. An extension must be agreed upon in writing by the parent/adult student and the LEA. The state complaint timeline cannot be extended beyond 90 days.

3. Upon request for mediation, the DR office will contact all parties to assign the mediation. Because mediation is voluntary, both parties must agree to mediation for the process to go forward. Mediators are selected by the DR office from a list of trained professionals.
4. Mediation is provided at no cost to the LEA or to the parent/adult student.

C. Mediation Procedures

1. The mediation shall be conducted in compliance with the IDEA.
2. No video or audio recording of the mediation proceedings will be made.
3. Each party is limited to no more than three participants who have the authority to make final resolution decisions. The mediator may exercise discretion to increase this number with the agreement of all parties.
4. The district shall have at least one representative present who has the authority to commit resources.
5. Because mediation is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during a mediation session is discouraged. A district may not have legal representation present if a parent/adult student does not.
6. The Dispute Resolution office will retain copies of the *Notification of Mediation Confidentiality* form. No other records of the mediation will be kept by the DR office.
7. If an agreement is reached, the mediator will provide signed copies of the agreement to each party.
8. If additional mediation is requested or required by a mediated agreement,the same mediator may mediate again if both parties approve.
9. Mediators shall not be called to testify in due process hearings or civil proceedings regarding the mediations they have conducted, nor shall they be compelled to disclose the substance of any discussions that occurred during the mediation process.

   A due process hearing requested prior to mediation may be canceled by the requesting party as a result of the mediation agreement. The requesting party will immediately provide the hearing officer with documentation of the voluntary withdrawal of the due process hearing request. The mediator will immediately inform the DR office of the decision to withdraw the due process hearing request.
10. If for any reason the mediation does not end in a written agreement, the mediator will provide each party and the DR office with a statement certifying that mediation occurred, but no agreement was reached.
11. Either party has the option to end the mediation at any time.

D. Dispute Resolution Mediators

Dispute resolution mediators are trained in effective conflict resolution processes, communication, negotiation, problem-solving skills, and in laws and regulations relating to the provision of special education and related services. While a mediator will not offer advice on a particular course of action, a mediator will help the parties explore the soundness of any agreement. Mediators are assigned on a rotational basis with consideration for geographical location.

In all cases a mediator shall not:

1. be an employee of the Idaho Department of Education or LEA involved in the education of the student;
2. have a personal or professional interest that conflicts with the mediator's objectivity; or
3. be used if either party rejects the mediator based on a perceived inability to be neutral or impartial.

E. Mediator Role

The mediator has the responsibility to contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation. The mediator also establishes the ground rules for all parties to follow, guides the process, encourages open and honest communication, ensures that each party is heard, paraphrases information, summarizes issues, and facilitates the writing of the agreement. The mediator does not determine the terms of a mediated agreement but may act as a scribe. Mediators will not make decisions for teams or serve as definitive experts on IDEA processes or matters of law.

F. Mediation Timelines

To ensure the availability of a mediator, requests for mediation should be made by the parties in a timely manner. Once a request is received, the DR office will assign a mediator in a timely manner. The mediation will be held at a mutually convenient time and location.

G. Confidentiality

Discussions that occur during the mediation process cannot be used as evidence in any subsequent due process hearing or civil proceeding. Parties in the mediation process will be provided a copy of the *Notification of Mediation Confidentiality* form.

H. Mediation Agreement

An agreement reached by the parties through mediation shall be set forth in writing and is enforceable in state and federal courts.

An effective mediation agreement should identify:

1. What action(s) will be taken and when the action(s) will begin.
2. When the action(s) will be completed.
3. Who is responsible for taking the action(s).
4. Who is responsible for making sure the action(s) is taken.
5. The time period of the agreement.
6. A process for review when the actions are completed.
7. A plan for making changes to the agreement, if needed.
8. What to do if a participant thinks the terms of the agreement are not being completed.
9. A statement of confidentiality.
10. The date of the agreement and the signatures of the participants.

Section 3. State Complaints

1. Definition of State Complaint

State complaints can be filed by any individual or organization alleging any violation of the IDEA, including an alleged failure to comply with a previous due process hearing decision. State complaint procedures are outlined in IDEA regulations requiring, in part, that a complaint must allege a violation that occurred no more than one year (365 days) prior to the date the complaint was received.

The filing party must provide a written complaint that includes the name and contact information of the complainant, the name, address, and the student's school of attendance (if applicable), description and facts of the alleged problem to the extent known and available to the complainant at the time, and a proposed resolution. The party filing the complaint must forward a copy of the complaint to the LEA at the same time the party files the complaint with the DR office. The Idaho Department of Education will appoint a complaint investigator.

IDEA allows sixty (60) days to resolve the complaint with mediation, investigation, and final report, unless an exception applies.

2. Filing a State Complaint

The state complaint will be accepted if received by mail, hand delivery, or scanned and attached to an email with the complainant's signature included. Reasonable accommodations will be provided to individuals who need assistance in filing complaints. A state complaint must be signed and must include all of the information indicated on the *Form for Filing a State Complaint*.

3. State Complaint Procedures

Upon receipt of a written state administration complaint, the DR office will ensure the following procedures are followed:

1. Verify proper filing procedures were followed and determine if the complaint meets established criteria, including sufficient allegations of violation of IDEA (as developed by the DR office from the submitted complaint) and facts within five (5) business days.
2. The complainant will be notified if a submission is insufficient to process as a complaint. The complainant will be given the opportunity to submit additional information about the allegations, whereas upon receipt of the additional information, the sixty (60) day timeline for completion will start.
3. The DR office will appoint a complaint investigator. Complaint investigators shall not be called to testify in due process hearings or civil proceedings regarding the investigations they have conducted, nor shall they be compelled to disclose the substance of any discussions that occurred during the investigative process.
4. In collaboration with the assigned complaint investigator, the DR office will identify the alleged IDEA violations to be investigated based on the submitted complaint and will inform the parties of the finalized allegations.
5. The complaint investigator is responsible for managing the timelines of the investigation and may submit a final report at any point within the 60-day timeline. The 60-day timeline may be extended if exceptional circumstances exist, or the parties agree to extend the timeline in order to engage in mediation.

6. The LEA (specifically the superintendent, the special education director, and the school board chair) will be notified by the DR office within ten (10) business days of receiving the complaint that the complaint has been received and what, if any, allegations have been accepted for investigation. The LEA is given an opportunity to respond to the complaint. Mediation can be requested by either party at any time and must be offered for complaints regarding an individual student. While parties are generally encouraged to resolve complaints collaboratively, choosing not to participate in mediation will not be considered relevant in an investigation. If parties engage in mediation, it will not delay the timelines required for resolving a complaint unless all parties agree.
7. Provide the parent/adult student a copy of the *Procedural Safeguards Notice*.
8. All parties will be given an opportunity to provide additional information about the allegations, either orally or in writing.
9. The complaint investigator will conduct a fact-finding investigation of all relevant information, which may, at the discretion of the complaint investigator, include interviews and reviews of files, correspondence, and other information. An onsite investigation may occur, as deemed appropriate.
10. The LEA may propose corrective actions to address the allegations in the complaint. In resolving a complaint in which the DR office found a failure to provide appropriate services, the DR office, pursuant to its general supervisory authority, may accept, reject, or negotiate the proposed corrective actions, or require other corrective actions or timelines to ensure the LEA will achieve compliance for each allegation stated in the complaint.
11. All or any part of the written complaint will be set aside if the allegation is being addressed in a pending due process hearing or a hearing decision which has already been rendered. Any issue not a part of a due process action will be resolved following the state complaint procedures and timelines.
12. The complaint investigator will submit his or her findings of fact, conclusions, and, in coordination with the DR office, identify appropriate corrective actions, if required. The Idaho Department of Education shall make an independent determination, based on the review of all relevant information, as to whether the LEA violated a requirement of the IDEA and issue a written decision that addresses the allegations in the complaint.
13. A final report of the investigation will be issued to the complainant and LEA superintendent, board chairperson, and special education director. The report shall include but is not limited to the findings of fact, conclusions, reasons for the decision, and any necessary corrective action(s) for each allegation within sixty (60) calendar days of receipt of a sufficient complaint. This time period may be extended, but only under exceptional circumstances, which shall be documented by the DR office or if the complainant and LEA agree to extend the time to engage in mediation or other alternative dispute resolution procedures.
14. If a violation of the IDEA is verified by the complaint investigator, the report shall include corrective actions addressing, as appropriate:
    a. A remedy to address any denial of FAPE, which may include compensatory services, monetary reimbursement, or other corrective action as appropriate to meet the needs of the student;

b. Appropriate future provision of services for all students with disabilities; and

c. The provisions of technical assistance, including training, documentation of compliance, or written assurances, if needed.

15. The Idaho Department of Education will ensure the LEA takes the corrective action set forth in the final report no later than one year after the identification of non-compliance.

16. The Dispute Resolution office ensures any findings of noncompliance found as the result of a state administrative complaint investigation are corrected and verifies through review of documentation or interviews, or both, the corrective actions were implemented no later than one year (365 days) after the determination of noncompliance. If necessary, the Idaho Department of Education will use appropriate enforcement mechanisms such as the provision of technical assistance, conditions on funding, a corrective action, an improvement plan, and/or withholding funds, in whole or in part.

17. A complaint investigation report is final as of the date set forth in the report and is not subject to an appeal. A parent or LEA may file for a due process hearing regarding any concerns related to the identification, evaluation, educational placement, or provision of free appropriate public education (FAPE). Any corrective action requirements and timelines set forth in the complaint investigation report will continue to run even if a due process hearing is filed on the same issue(s).

4. Resolving State Complaints through Mediation

State complaints are a formal mechanism for addressing potential violations of the IDEA. While filing a state complaint initiates an investigation process, it does not preclude teams from continuing to collaborate and seek resolution. In fact, teams are strongly encouraged to work toward consensus whenever possible, maintaining open communication and a shared focus on the student's needs.

When the complainant is the parent of an individual student, even after a complaint is filed, parties may opt to engage in mediation—a voluntary process that supports problem-solving outside of a formal investigation.

1. Mediation will automatically be offered by the DR office to the parent and the LEA when the complaint involves an individual student.

2. The parent and the LEA may resolve all, part or none of the allegations in mediation. If an agreement is reached, the complainant will notify the DR office in writing of the parties' agreement. If an agreement is reached, the complainant may withdraw all or part of the complaint pursuant to the mediated agreement. The parent will inform the DR office of the withdrawal. When the DR office receives this notification, any resolved allegations will be dismissed from the state complaint. If all of the state complaint allegations are not resolved, the DR office will investigate the remaining allegations.

3. If mediation is not accepted by the parties or fails to resolve some or all the allegation(s) that gave rise to the complaint, the complaint investigation will continue as described above in Section C, State Complaint Procedures.

Section 4. Due Process Hearings

The Idaho Department of Education shall administer a single-tier due process administrative hearing system to resolve disputes between public agencies and parents/adult students. Idaho's

due process system has two types of due process hearings: a regular due process hearing and an expedited due process hearing. A regular due process hearing request involves an allegation or a series of allegations by either a parent/adult student or a public agency (typically an LEA) on issues relating to the identification, evaluation, educational placement, or the provision of FAPE to a student. An expedited due process hearing request involves an allegation concerning discipline and/or placement related to discipline and results in an administrative hearing with an expedited timeline.

Once a request for a due process hearing is filed with the Idaho Department of Education the DR office will not provide any information regarding the pending due process hearing to the parent/adult student or the public agency involved other than general information which accompanies the notification to the parties that a hearing officer has been assigned. The DR office will refer all inquiries or correspondence received from either party to the assigned hearing officer. Mediation is offered in an effort to resolve issues, and parties may request mediation at any time.

A. Definitions

All terms used in this section shall be interpreted in accordance with the definitions set forth in the Individuals with Disabilities Education Act (IDEA).

Administrative Hearing. A formal legal proceeding conducted by a government agency or an appointed official (called a hearing officer) to resolve disputes involving rules, regulations, or laws overseen by that agency.

Expedited Due Process Hearing. An administrative hearing provided on an expedited timeline that is only available to resolve disputes concerning discipline and/or placement related to discipline.

Hearing Officer. The individual assigned to conduct the impartial due process hearing procedures consistent with the IDEA.

Individuals with Disabilities Education Act (IDEA). The federal law that requires that all children with disabilities have available to them a free appropriate public education.

Local Education Agency (LEA). Idaho public school districts and charter schools are the LEAs within Idaho that oversee public elementary and secondary public schools.

Public Agency. The SEA and LEAs, including Idaho school districts and public charter schools and any other public subdivisions of Idaho that are responsible for providing education to children with disabilities.

Regular Due Process Hearing. An administrative hearing provided on a regular timeline that is available to resolve issues related to the identification, evaluation, educational placement, or the provision of FAPE to a student.

State Education Agency (SEA). The Idaho Department of Education is the SEA and is primarily responsible for the State supervision of public elementary and secondary schools.

B. General Administrative Hearing Procedures for Regular and Expedited Due Process Hearings

The following procedures shall be followed whenever a regular or expedited due process hearing is requested:

1. In the case of any conflict between these procedures and the IDEA, the IDEA shall

supersede these procedures.

2. Where no provision is made by statute, rule, or these procedures, proceedings in due process hearings shall be in accordance with the practice usually followed in similar administrative cases, or as may be prescribed by the hearing officer or stipulated to by the parties. The assigned hearing officer shall apply the principles of fundamental fairness and due process to each situation.
3. The hearing procedures shall be liberally construed to secure the just, speedy, and inexpensive determination of IDEA due process hearings.

Single-Tier System

The Department shall administer a single-tier due process hearing system to resolve disputes between public agencies and parents/adult students.

Computation of Time

In computing any period of time set by the IDEA, the day of the event from which the period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday.

The number of days identified shall be *calendar days*, unless otherwise specified.

Hearing Officer Assignment and Qualifications

Once a due process hearing request is received by the DR office, a hearing officer will be assigned in a timely manner. Hearing officers are selected from a list of specially trained, neutral, and impartial professionals. A list of qualifications for each hearing officer is kept by the DR office.

A hearing officer:

1. Shall not be an employee of the Idaho Department of Education or the LEA involved in the education or care of the student;
2. Shall not have a personal or professional interest that conflicts with the person's objectivity in the hearing;
3. Shall possess knowledge of, and the ability to understand, the provisions of the IDEA and federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts;
4. Shall possess the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and
5. Shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a due process hearing is not an employee of the Idaho Department of Education or a LEA solely because he or she is paid by the LEA to serve as a hearing officer.

Assigned hearing officers may discuss any procedural matter related to a proceeding, including interpretation and application of IDEA provisions, with any other hearing officer not assigned to the matter.

The hearing officer will be compensated at rates set by the Idaho Department of Education. The public agency (typically an LEA) that is a party to the hearing shall be responsible for compensating the assigned hearing officer and paying for the cost of a verbatim transcript of the hearing.

Hearing officers shall not be called to testify in due process hearings or civil proceedings regarding the due process hearings they have conducted, nor shall they be compelled to disclose the substance of any discussions that occurred during the due process hearing process.

Communications with an Assigned Hearing Officer

All communications that are intended to be part of an official record for a decision in a due process hearing must be filed with the assigned hearing officer, with a copy provided to the opposing party. Unless otherwise provided by statute, rule, order, or notice, documents are considered filed when received by the hearing officer, not when mailed or otherwise transmitted.

Disqualification of an Assigned Hearing Officer

No party shall have the right to disqualification of the assigned hearing officer without cause. If a hearing officer's disqualification is sought for cause, the assigned hearing officer's written decision shall include facts and reasons for the hearing officer's ruling on the motion to disqualify.

Assigned Hearing Officer's Scope of Authority

Assigned hearing officers have broad discretion to ensure that due process hearing procedures provide fundamental fairness to all parties involved in the hearing and are conducted in an orderly fashion. Additionally, assigned hearing officers have the following scope of authority pursuant to the IDEA:

1. Schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing;
2. Compel the attendance of witnesses at the request of the either party;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the opposing party at least five (5) business days before the hearing;
4. Discretion to bar any party that fails to comply with the disclosure of all evaluations completed at least five (5) business days prior to the hearing from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party;
5. Authority to preside over and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing;
6. Open the hearing to the public at the request of the parent/adult student;
7. Upon the conclusion of a hearing, issue a written decision, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and final order.

Assigned hearing officers do not have the authority to:

1. Order or grant discovery as may be provided for under the Idaho Administrative

Procedure Act or the Idaho Rules of Civil Procedure.

2. Declare a statute or regulation unconstitutional.
3. Hear or decide issues beyond the scope of the IDEA.
4. Award costs or attorney fees.
5. Review or reconsider final orders made in other hearings.

Burden of Proof

The burden of proof is on the party requesting the due process hearing. A preponderance of evidence standard applies.

Attorney Representatives

Attorneys representing a party must have an active license to practice law in the state of Idaho. Attorneys not licensed in Idaho, but who are licensed in one or more other states, may request admission to the proceeding on a *pro hac vice* status by the assigned hearing officer consistent with Idaho State Bar Commission Rules.

Professional Conduct Required

Parties and their representatives are expected to conduct themselves in a professional, civil, and nondisruptive manner during the due process hearing proceedings. The hearing officer may take reasonable action to maintain order during the proceeding which in their judgment is necessary to ensure an expeditious, fair, and impartial proceeding.

Final Order Personally Identifiable Information

It is recommended that the hearing officer refer to witnesses by title or in some other fashion so as not to include the witnesses' names in the body of the decision. For convenience and to permit redaction of the decision for ultimate publication by the Idaho Education Department, a Personally Identifiable Information (PII) coversheet may be utilized to identify the witnesses by name and by the title or manner in which the witness is identified in the hearing officer's decision. The coversheet can then be removed from the hearing officer's decision by the DR Coordinator.

Final Order Content

The hearing officer's final order and decision shall include findings of fact and conclusions of law.

Notice of Appeal Rights

A final order issued by a hearing officer shall contain the following paragraph or substantially similar paragraph:

> *This is a final order. Any party aggrieved by the findings and decision herein has the right to bring a civil action with respect to the due process complaint notice requesting a due processing hearing under 20 USC 1415(i)(1). The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. See 20 USC 1415(1)(2). An action for state court review or federal district court review shall be filed within forty-two (42) days from the date of*

issuance of the hearing officer's final decision and order.

Final orders must be served by the assigned hearing officer on all parties contemporaneously with the issuance of the final order.

Maintaining and Transmitting the Hearing Record

The hearing officer is responsible for maintaining the administrative record developed as a result of the request for a hearing.

The hearing record shall include all of the documents submitted by the parties, including the request for the due process hearing; responsive written notice; sufficiency objections; any prehearing motions and orders; proposed exhibit lists and exhibits, including exhibits offered or identified even if not made part of the record; proposed witness lists; transcript prepared by a court reporter; and any prehearing orders, rulings and final decision issued by the hearing officer.

The hearing officer shall prepare a transmittal of the record certifying that the record is complete and transmit the record to the DR Coordinator with the hearing officer's final decision. The transcript prepared by a court reporter may be transmitted separately.

The Department shall maintain the Transmittal of the Record, including the record and the transcript of each due process hearing.

Petition for Judicial Review

Any party aggrieved by the findings and decision made by the hearing officer has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing. The action may be brought in any Idaho court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

An action for state court review shall be filed within twenty-eight (28) days from the date of issuance of the hearing officer's decision. Any action in federal district court shall be filed within forty-two (42) days from the date of issuance of the hearing officer's final decision and order.

C. Regular Due Process Hearings

Requirements for Filing a Regular Due Process Hearing

Regular due process hearing requests must include a complete and signed copy of the *Due Process Hearing Request Form* or a signed document providing all of the general information, issue(s), and resolution(s) information required in the *Due Process Hearing Request Form*. This includes the following information:

1. The name of the student.
2. The address of the residence of the student.
3. The name of the school the student is attending.
4. In the case of a homeless student, available contact information for the student, and the name of the school the student is attending.
5. A description of the nature of the problem related to the student regarding the proposed or refused initiation or change, including relevant facts; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

Reasonable accommodations will be provided for individuals who need assistance in filing a written request for a due process hearing.

A parent/adult student or public agency (or their attorney authorized to practice law in the state of Idaho) filing a due process hearing request must provide the request for due process hearing to the other party and to the Dispute Resolution office. The request shall be mailed, hand-delivered, or scanned and attached to an email with a signature of the filing party. All applicable timelines will start when the request has been received by the non-requesting party and the Idaho Department of Education.

Due Process Hearing Request from Parent/Adult Student

A due process hearing may be requested relating to the identification, evaluation or educational placement of a student with a disability, or the provision of FAPE to the student.

1. A due process hearing shall be initiated within two (2) years of the date the parent/adult student knew or should have known about the alleged action that forms the basis of the request for a due process hearing. The two-year timeline will not apply if the parent/adult student was prevented from requesting a hearing due to specific misrepresentations or the withholding of information by the public agency required to be provided by the IDEA.
2. If a parent/adult student disagrees with an IEP or placement change by the LEA a request for a due process hearing may be filed by the parent/student during which time the student shall remain in the current placement (stay put) unless otherwise agreed to by the LEA and parent/student.
3. Filing for a due process hearing cannot be used to delay the LEA from placing a student in an Interim Alternative Educational Setting (IAES).

Due Process Hearing Request from a Public Agency

If a public agency (typically a school district or charter school) initiates a hearing request, the public agency must inform the parent/adult student and the Idaho Department of Education. A public agency may initiate a due process hearing within two years of the alleged action. The public agency may not use the due process hearing procedures to override a parent's refusal to consent to initial placement of his or her child in special education.

Regular Due Process Prehearing Procedures

After a due process request is filed by the parent/adult student or a public agency:

1. The Dispute Resolution office offers mediation as a voluntary option to both parties. Parties may request mediation at any time. Participation in mediation shall not alter or delay the timeline of the due process hearing.
2. The receiving party may challenge the sufficiency of the due process hearing request if the receiving party believes the request for due process hearing does not meet all requirements. A challenge must be filed within fifteen (15) days of the receipt of the hearing request by filing a written sufficiency objection with the hearing officer. Challenges to the sufficiency of the request for due process hearing must be in writing and provided to all parties. A response to the sufficiency objection is not required and may not be considered by the hearing officer.
3. The hearing officer shall render a decision regarding the sufficiency of the allegation(s) in the request for a due process hearing within five (5) days and shall immediately notify

the parties of the decision in writing.

a. If the request for a due process hearing is found insufficient, the party may amend its due process complaint only if the other party consents in writing to the amendment and has the opportunity to resolve the complaint through a resolution meeting, or the hearing officer grants permission to amend no later than five (5) days before the due process hearing begins.

b. Timelines for amended due process hearings begin again on the filing date of the amended request.

4. If the LEA has not previously sent written notice (as outlined in the IDEA) regarding the subject matter in the parent's/adult student's due process hearing request, the LEA must send the written notice to the parent/adult student (with a copy to the hearing officer) within ten (10) days of receiving the request for due process hearing, explaining the reasons why the LEA proposed or refused to take the action raised in the complaint, a description of other options the IEP team considered, and reasons why those options were rejected, a description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action and a description of the other factors relevant to the LEA's proposed or refused action. The written notice provided by the LEA does not preclude the LEA from asserting that the parent's due process hearing request was insufficient, where appropriate.

5. The party receiving a request for due process hearing must, within ten (10) days of receiving the due process complaint, send to the other party a response with a copy to the hearing officer that specifically addresses the issues raised in the due process complaint. A written notice provided by the LEA to the parent within ten (10) days of receiving a parent's hearing request shall suffice as the LEA's response so long as the written notice specifically addresses all issues raised in the due process hearing request.

6. The public agency shall inform a parent/adult student of any free or low-cost legal or other relevant services available to him or her and provide a copy of the Procedural Safeguards when a due process hearing is requested or if the parent/adult student requests such information.

7. Within fifteen (15) days of receiving a request for due process hearing, the LEA shall convene a pre-hearing resolution session, unless both parties agree in writing to waive the resolution meeting, both parties agree to participate in mediation, or the LEA initiated the hearing.

   a. A resolution meeting includes the parent/adult student, a representative of the public agency who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties.

   b. The LEA's attorney shall not attend the resolution session unless the parent/adult student is accompanied by an attorney eligible to practice in Idaho.

   c. The DR office will provide a meeting facilitator or mediator, if requested. Participation in facilitation or mediation requires consent by both parties.

   d. The purpose of the resolution meeting is for the parent/adult student to discuss the due process hearing request, and the facts that form the basis of the request, so that the LEA has the opportunity to resolve the dispute that is the basis of the due process

hearing request.

1) If a resolution is reached regarding some or all of the issues raised in the request for a due process hearing, the LEA representative and the parent/adult student will sign a settlement agreement, which is a legally binding document enforceable in state and federal court. The parties will immediately forward to the hearing officer signed documentation of the voluntary withdrawal of some or all of the issues set forth in the due process hearing request by the requesting party.
2) Either party may void the settlement agreement within three (3) business days of signing the agreement. In the event a settlement agreement reached through the resolution process is timely voided by a party, the due process hearing timelines continue to run.

e. A due process hearing will be scheduled if a resolution was not reached on some or all of the hearing issues within thirty (30) days of receiving the request for a due process hearing, or earlier if the parties waived resolution.

f. If the LEA is unable to obtain the participation of the parent/adult student in the resolution meeting after reasonable efforts have been made and documented, at the conclusion of the thirty (30) day resolution period the LEA may request that the hearing officer dismiss the parent's/adult student's due process hearing request.

g. A parent/adult student may request an immediate due process hearing from the hearing officer if the LEA has not scheduled or participated in a resolution session within fifteen (15) days of the request.

h. The LEA must report to the DR office and to the hearing officer when the resolution meeting is to be held, or provide documentation indicating it was waived by both parties, or provided documentation of attempts to reach the other party, within fifteen (15) days of the Idaho Department of Education receiving the due process hearing request.

i. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within forty-five (45) days. The 45-day timeline for issuance of a written decision starts the day after one of the following events:

1) Both parties agree in writing to waive the resolution meeting;
2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible; or
3) If both parties agree in writing to continue the mediation at the end of the 30- day resolution period, but later, the parent/adult student or public agency withdraws from the mediation process; or
4) The LEA files a due process hearing request which does not require the parties to participate in a resolution meeting.

All of the above events must be documented, including dates of determination, and provided to the DR office and the hearing officer immediately.

Regular Due Process Hearing Procedures

1. Hearing Preparation

a. Prior to a resolution session or a due process hearing, a parent/adult student, or their representative, shall be allowed to inspect and review any education records related to the student that have been collected, maintained or used by the public agency. A public agency may charge a fee for copies of records if the fee does not effectively prevent a parent/adult student from exercising his or her right to inspect and review those records. A public agency may not charge a fee to search for or retrieve records.

b. Not less than five (5) business days prior to a due process hearing, each party will disclose to all other parties: evaluations completed by that date and recommendations based on those evaluations intended to be used at the hearings; copies of exhibits to be introduced; and a list of witnesses each party intends to call at the hearing.

c. The hearing officer shall provide notification as to the time and place of the due process hearing to the parent/adult student, public agency officials, and the Idaho Department of Education. The hearing shall be conducted at a time and place reasonably convenient to the parent/adult student.

d. Parties shall cooperate with the hearing officer in any business or communication and the planning for a location, date and time for the hearing.

2. The Due Process Hearing

a. All parties to a due process hearing have the right to be accompanied and advised by legal counsel properly licensed in Idaho.

b. A parent/adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.

c. Each party has the right to present evidence and to confront, cross-examine, and compel the attendance of witnesses.

d. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

e. Any party may prohibit the introduction of any evidence at the hearing that was disclosed less than five (5) business days before the hearing.

f. During the hearing the public agency will provide reasonable accommodations as required by federal law.

g. The parent/adult student has the right to the record of the hearing and the findings of fact and decisions of the hearing officer provided at no cost to the parents. The LEA shall be responsible for the cost of the verbatim transcript and a copy of the transcript will be included in the record of the hearing.

3. Decision of the Hearing Officer

a. The decision made by the hearing officer will be made on substantive grounds based on the record established at the hearing.

b. In matters alleging a procedural violation, the hearing officer may find that a student did not receive FAPE only if there is evidence that the procedural inadequacies:

1) impeded the student's right to FAPE;

2) significantly impeded a parent's/adult student's opportunity to participate in the

decision-making process; or

3) caused a deprivation of educational benefit.

c. If a hearing officer finds that there is a procedural deficiency that did not deny FAPE, he or she may order the LEA to comply with the procedural requirements.

d. At the conclusion of a hearing, the hearing officer's decision shall be a final decision and shall include findings of fact and conclusions of law. In addition, the decision shall include an order of relief, if appropriate, and notice of the right to appeal.

e. The hearing officer's written final decision shall be mailed, which may include postal or electronic, to the parties within forty-five (45) days after the expiration of the 30-day resolution process; or from the date both parties agreed in writing to waive the resolution meeting, or from the date both parties agreed to go to mediation, or from the date the public agency initiated the hearing. The hearing officer may grant specific extensions of time for the hearing officer's decision beyond the forty-five (45) day period upon the request of a party. The hearing officer shall issue a written decision in response to each request.

f. The findings of fact and decision shall be mailed, which may include postal or electronic, at no cost. Copies will also be mailed to the public agency, superintendent, the DR Coordinator and other appropriate representatives of the public agency.

g. A hearing officer's decision will be enforceable in state and federal court. It will be implemented not later than fourteen (14) days from the date of issuance unless:

1) the decision specifies a different implementation date; or

2) the parent/adult student or the LEA appeals the decision by initiating civil action in state or federal district court within applicable appeal periods.

h. An appeal for judicial review of a hearing officer's decision shall be served on the Department. Within forty-two (42) days after receipt of an appeal for judicial review, or within further time allowed by the reviewing court, the Department shall transmit to the court a certified copy of the due process hearing record, as transmitted by the hearing officer.

Nothing in this section prevents a parent/adult student from filing a separate due process hearing request on an issue separate from the request already filed. The Idaho Department of Education may consolidate multiple hearing requests involving the same student.

4. Placement During a Regular Due Process Hearing

a) During the pendency of any due process hearing, the student shall remain, or "stay put," in his or her current educational placement unless the LEA and parent/adult student agree otherwise.

b) The stay put placement continues during any subsequent appeals unless a hearing officer agrees with a parent/adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer's decision becomes the stay-put placement.

c) If the dispute involves an application for initial admission to public school in Idaho, the student, with the written consent of his or her parent, shall be placed in the public school until the completion of all the proceedings.

d) If a student has been placed in an interim alternative educational setting (IAES) for disciplinary reasons, the student will remain in the IAES pending the decision of the hearing officer or until the expiration of the IAES time period, whichever occurs first, unless the parent and the LEA agree otherwise.

e) Stay put does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B services [preschool to grade twelve (12)] because the student has turned three (3).

   i) With written consent of the parent, the student shall be placed in the public school until completion of all the hearing proceedings. If the parent does not give written consent for the provision of special education and related services, the student will not receive services until completion of the hearing proceedings.

   ii) If the student is eligible for special education and related services, and the parent consents, the LEA shall provide those special education and related services which are not in dispute.

D. Expedited Due Process Hearing

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline. Expedited due process hearings must occur within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing.

Requirements for Filing an Expedited Hearing Request

Parties filing expedited due process hearing requests must include a complete and signed copy of the *Expedited Due Process Hearing Request Form* or a signed document providing all of the general information, issue(s), and resolution(s) information required in the *Expedited Due Process Hearing Request Form*. This includes the following information:

1. The name of the student.
2. The address of the residence of the student.
3. The name of the school the student is attending.
4. In the case of a homeless student or youth, available contact information for the student, and the name of the school the student is attending.
5. A description of the nature of the problem related to student regarding the proposed or refused initiation or change, including relevant facts; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

Reasonable accommodations will be provided to individuals who need assistance in filing a written request.

All applicable timelines for an expedited due process hearing will start when the request has been received by the non-requesting party and the Department of Education.

Expedited Due Process Hearing Request from Parent/Adult Student

A parent/adult student may request an expedited hearing if:

1. They disagree with a determination that the student's behavior was not a manifestation of

the disability; or

2. They disagree with the LEA's discipline decision which resulted in a change of placement.

Expedited Due Process Hearing Request from Public Agency

An LEA may request an expedited hearing if the LEA believes maintaining the current placement or returning the student to the prior placement is substantially likely to result in injury to the student or others. These hearing procedures may be repeated, if the LEA believes that returning the student to the original placement is substantially likely to result in injury to the student or others.

Expedited Due Process Hearing Procedures and Decision

An expedited hearing will be conducted in a fair and impartial manner. In the event a request for a due process hearing includes both issues for a regular due process hearing and issues for an expedited due process hearing, the hearing officer will separate any non-disciplinary issues from the disciplinary issues which require an expedited decision.

A separate hearing considering the non-disciplinary issues will comply with the regular due process hearing timelines. The hearing officer may consider the appropriateness of including the expedited hearing testimony in the regular due process hearing.

The procedures for an expedited hearing will be the same as those in a regular due process hearing, except for the following:

1. The DR Coordinator will appoint a hearing officer within five (5) business days of a request.
2. A resolution session shall occur within seven (7) days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or participate in mediation.
3. A due process hearing shall proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the expedited due process hearing request.
4. There is no process for challenging the sufficiency of the due process hearing request in an expedited case.
5. The hearing shall occur within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing. No extensions of time may be granted by the hearing officer.
6. A party may appeal the decision in an expedited due process hearing following the same procedures for decisions in regular due process hearings.

Placement During an Expedited Due Process Hearing

When a hearing has been requested by either the parent/adult student or the LEA regarding placement decisions, the student shall "stay put" during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

1. the student will remain in the interim alternative educational setting (IAES) until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first; and/or

2. upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if LEA personnel maintain that it is dangerous for the student to return to that placement, the LEA may request an expedited hearing to continue the IAES for up to an additional forty-five (45) school days. This procedure may be repeated if determined necessary by the LEA.

If the hearing officer findings rule on behalf of the parent/adult student, the proposed change of placement cannot occur. The IEP team must determine the extent of services appropriate to meet the student's individual needs, as well as address the student's behavior. If the hearing officer finds for the LEA, the LEA may use the same disciplinary procedures, including expulsion, available for any other student, except that FAPE must be provided according to the disciplinary requirements outlined in IDEA.

See Chapter 11 for more information on disciplinary requirements under the IDEA.

If an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot remain in Part C services when he or she is over the age of three (3). If the child is found eligible for special education and related services under Part B [beginning at age three (3)] and the parent consents to the initial provision of special education and related services, then the LEA shall provide those special education and related services that are not in dispute between the parent and the LEA until completion of all the hearing proceedings. If the parent does not give written consent for the special education or related services, the student will not receive services until completion of the hearing proceedings.

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CHAPTER 14: IDAHO DEPARTMENT OF EDUCATION'S GENERAL SUPERVISION SYSTEM REQUIREMENTS

This chapter identifies the Idaho Department of Education's responsibilities for supervising and monitoring LEAs' implementation of the IDEA. These responsibilities include focusing on improving educational results and functional outcomes for all students with disabilities, analyzing and reporting data to the public, and ensuring that personnel who work with students with disabilities are qualified.

Section 1. Department's General Supervision System

The Idaho Department of Education is responsible for the general supervision and oversight of IDEA compliance in Idaho. The Idaho Department of Education is responsible for ensuring that IDEA provisions are carried out, and that each educational program for students with disabilities administered within Idaho, including each program administered by other State agencies or LEAs, is under the general supervision of the persons responsible for educational programs for students with disabilities and meets Idaho educational standards.

The Idaho Department of Education is responsible for creating and implementing a general supervision system, which includes, at a minimum, the following eight (8) integrated components:

1. Integrated monitoring activities;
2. Data on processes and results;
3. The State Performance Plan/Annual Performance Report (SPP/APR);
4. Fiscal management;
5. Effective dispute resolution;
6. Targeted technical assistance and professional development;
7. Policies, procedures, and practices resulting in effective implementation; and
8. Improvement, correction, incentives, and sanctions.

Idaho has established and maintains an advisory panel, known as the Special Education Advisory Panel (SEAP), for the purpose of providing policy guidance with respect to special education and related services for students with disabilities. Members of SEAP serve at the discretion of the State Superintendent of Public Instruction. Membership requirements are defined by IDEA and a majority of members (51%) of the panel shall be individuals with disabilities or parents of students with disabilities [birth through age twenty-six (26)].

Section 2. Integrated Monitoring Activities

In fulfilling its general supervision responsibilities, and as a condition of receiving IDEA funds, the Idaho Department of Education must monitor LEAs in each of the following priority areas:

1. The provision of FAPE in the least restrictive environment (LRE);
2. General supervision, including effective monitoring within the LEA;
3. Child find;

4. A system of transition services, including for early child and secondary transition;
5. The use of resolution meetings as part of due process hearings;
6. Mediation; and
7. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

Monitoring of all LEAs will occur within a reasonable period of time and at least once within a six-year period. However, when the Idaho Department of Education becomes aware of an "area of concern" or credible allegation regarding an IDEA policy, practice or procedure within an LEA, it must conduct due diligence in a timely manner to address the area of concern and reach a conclusion in a reasonable amount of time.

If the Idaho Department of Education determines that an LEA is out of compliance with an applicable IDEA requirement, a written notification of noncompliance will be issued, unless the LEA immediately corrected the noncompliance, and the Idaho Department of Education is able to verify the correction before it issues a finding.

The Idaho Department of Education must use the threshold of 100 percent compliance when determining an LEA's compliance with IDEA requirements. Compliance and verification of compliance must occur as soon as possible, but no later than one year (365 days) after the Idaho Department of Education's written notification of noncompliance. Compliance includes addressing the extent and cause of the identified noncompliance, in addition to ensuring student-specific and systemic corrections occur.

In those instances when the Idaho Department of Education has identified student-specific noncompliance, it will verify correction by reviewing each individual case (not a subset or sample) of previously noncompliant files, records, data files or whatever data source was used to identify the original noncompliance, to verify correction by the LEA of student-specific noncompliance, unless the student is no longer within the jurisdiction of the LEA, and no outstanding corrective action exists under a State complaint or due process hearing decision for the student.

In some cases, monitoring activities may require system-level verification. System-level verification refers to the process of ensuring that an LEA has addressed and improved its practices related to the identified area(s) of noncompliance. This is done through a review of subsequent evidence and documentation to demonstrate that the LEA has implemented corrective actions and improved practices across their system. The purpose of system-level verification is to confirm that the LEA has made necessary adjustments to prevent recurrence within the system.

A. Results Driven Accountability (RDA) Monitoring System

The activities under the Idaho Special Education Results Driven Accountability (RDA) Monitoring System monitor LEAs for results and compliance. Based on educational partner input, the monitoring system includes a focus on providing supports to LEAs to meet the requirements of IDEA.

The Guiding Principles of the Results Driven Accountability Monitoring System are:

1. Improving educational results and functional outcomes for all students with disabilities, and ensuring that Idaho meets the requirements of IDEA, with emphasis on those requirements that are most closely related to improving education results for students with disabilities.
2. The RDA Monitoring System provides the framework for the Idaho Department of Education to partner with LEAs to be mutually responsible for improving educational results and functional outcomes for all students with disabilities, and is designed to guide and support-LEAs in their pursuit of preparing students with disabilities to persevere in life and be ready for postsecondary opportunities.
3. The LEA is required to submit timely and accurate data from which the LEA's performance will be calculated based on the indicators in the Idaho Department of Education's State Performance Plan, posted online annually on the Idaho Department of Education website.

B. LEA Determinations

To meet general supervision requirements, the Idaho Department of Education annually reviews each LEA's performance on a preidentified set of results, compliance indicators, and special conditions areas. Data from the annual review is compiled into the LEA Determination Report.

Idaho has developed four Differentiated Levels of Support to meet the needs of LEAs and improve educational results and functional outcomes for all students with disabilities. LEAs are placed into one of four Differentiated Levels of Support according to the LEA's score on their LEA Determination Report:

1. Meets Requirements: Level 1 – Supporting and Guiding,
2. Needs Assistance: Level 2 – Assisting and Mentoring,
3. Needs Intervention: Level 3 – Directing, and
4. Needs Substantial Intervention: Level 4 – Intervening.

The Idaho Department of Education is required to take certain enforcement actions based on the level of determination each LEA receives. These actions may include technical assistance; a corrective action plan; conditions on funding of an LEA; and/or withholding funds, in whole or in part. The determination process includes:

1. ensuring the data provided and reported by LEAs to the Idaho Department of Education is timely and accurate;
2. measuring performance on goals for the State and the LEAs;
3. monitoring based on LEA result and compliance data with the IDEA, and progress made toward meeting State goals;
4. identifying LEAs in one of the following Determination categories: Meets Requirements, Needs Assistance, Needs Intervention, or Needs Substantial Intervention;
5. identifying LEAs in of the following Differentiated Levels of Support categories: Supporting and Guiding, Assisting and Mentoring, Directing, or Intervening;

6. providing professional development and technical assistance statewide and targeted technical assistance to LEAs demonstrating the highest needs;
7. reporting to the public on the State's and LEAs' performance on State goals; and
8. developing and submitting an Annual Performance Report/State Performance Plan, as needed, to address State performance on required goals.

C. Fiscal Monitoring

The Idaho Department of Education's IDEA general supervision responsibility must be read with other Federal monitoring requirements, including fiscal monitoring. The Idaho Department of Education IDEA Part B Fiscal Accountability Office conducts federal fiscal grant subrecipient monitoring and compliance reviews and implements related corrective actions for associated noncompliance. The Fiscal Accountability Office incorporates best practices and standards and follows the requirements set forth in 2 CFR Part 200 Uniform Grant Guidance, 34 Part 76 Education Department General Administrative Regulations (EDGAR) and 34 CFR Part 300 Assistance to States for the Education of Children with Disabilities.

The Fiscal Accountability Office conducts an annual fiscal risk assessment in conjunction with a cyclical monitoring cohort of LEAs. Monitoring staff employ a thorough rubric to determine and issue findings. Each LEA is subject to fiscal monitoring no less than once every five years. Reimbursement requests for IDEA Part B funding require documentation for review and cost allocability throughout the year for all LEAs. MOE eligibility and compliance testing, excess cost reporting, supplement not supplant crosscutting measures, applicable Private School Proportionate Share, and CEIS and CCEIS compliance reporting are conducted annually through the IDEA Part B Application for funding.

As a condition for receiving IDEA Part B funds, the LEA shall provide assurance in the IDEA Part B Application that the school board or board of trustees has adopted the most current version of this Manual.

Section 3. Comprehensive Early Intervening Services (CEIS)

Coordinated early intervening services (CEIS) are services to help students who need additional academic or behavioral support to be successful in school. The activities for CEIS must align with allowable uses under IDEA and adhere to the regulations outlined in the Office of Management and Budget (OMB) Uniform Grant Guidance. Under the OMB Uniform Grant Guidance, costs must be necessary, reasonable, allocable, and adequately documented. LEAs must use generally acceptable accounting principles to document expenditure of funds.

A. Voluntary Coordinated Early Intervening Services (CEIS)

Under the IDEA, the LEA may use up to 15% of its IDEA Part B allocation in any fiscal year to provide coordinated early intervening services (CEIS) for students in kindergarten through grade twelve (12), with a particular emphasis on students in kindergarten through grade three (3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

These funds may be used for activities that include:

1. Professional development for teachers and other school staff to enable such personnel to deliver evidence-based academic and behavioral interventions, including evidence-based

literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

2. Providing educational and behavioral evaluations, services, and supports, including evidence-based literacy instruction.

B. Fiscal Requirements for CEIS

If the LEA chooses to use IDEA Part B funds in any fiscal year to provide voluntary CEIS, the LEA will budget the amount used to provide these services, up to a maximum of 15% of the total allocation, in the Part B budget that is submitted annually to the Idaho Department of Education as part of the Part B and Preschool Application.

LEAs taking the Maintenance of Effort (MOE) adjustment may be limited in the amount of CEIS funds they can reserve. The combined amount taken for both voluntary CEIS and the LEA MOE adjustment cannot exceed the maximum amount available for CEIS or the maximum amount available for the LEA MOE adjustment.

C. Reporting Requirements for CEIS

Fiscal and LEA student data must be reported by states to the U.S. Department of Education for CEIS. LEAs must be able to collect and report the data according to federal and State requirements when planning for and implementing CEIS services.

When the LEA uses IDEA Part B funds to provide CEIS, an annual report shall be submitted through the IDEA Part B Application for funding to the Idaho Department of Education including:

1. The number of students who received CEIS; and
2. The number of students who received CEIS and subsequently receive special education and related services during the preceding two (2) year period.

D. Relationship between FAPE and CEIS

CEIS provided by the LEA shall not be construed to either limit or create a right to FAPE under the IDEA or to delay appropriate evaluation of a student suspected of having a disability.

Section 4. Comprehensive Coordinated Early Intervening Services (CCEIS)

The Idaho Department of Education must determine annually whether each LEA has a significant racial or ethnic disproportionality in the identification of students for special education services, including the identification of students as students with disabilities in one of six common categories; the placement of those students; and the disciplinary removal of those students from their placements. LEAs with significant disproportionalities must reserve 15 percent of their total IDEA Section 611 and Section 619 funds to implement CCEIS. These CCEIS funds must be used to identify and address the root causes of the LEA's disproportionalities. CCEIS can be used for students with and without disabilities from age three (3) through grade twelve (12), particularly, but not exclusively, students in those racial/ethnic groups who were significantly overrepresented with respect to identification, placement, or discipline.

A. Fiscal Requirements for CCEIS

Should an LEA be found to have significant disproportionality as provided under Part B, the

LEA shall use fifteen (15) percent of its IDEA Part B allocations to provide comprehensive coordinated early intervening services (CCEIS). Exactly fifteen (15) percent of the LEA's total Section 611 and Section 619 subgrants shall be calculated, reserved, and used. The Idaho Department of Education calculates the amount to be reserved for CCEIS, capturing the total LEA allocation (Sections 619 and 611) and multiplying by fifteen (15) percent. The funds may be reserved from either or both subgrants, but the total reserved must equal exactly fifteen (15) percent of the total of those two subgrants. The reserved funds must be used only for CCEIS for the full period of their availability.

Under IDEA's LEA MOE requirement, LEAs are required to maintain their level of year-to-year expenditures on special education and related services, using local-only funds or state and local funds. IDEA includes a provision that allows eligible LEAs to reduce their required level of effort by 50 percent of the increase (if any) in their annual Section 611 allocation. However, there are restrictions on this flexibility. LEAs implementing CCEIS cannot take an MOE adjustment to their state and local spending in a fiscal year in which they are required to use CCEIS funds.

CCEIS funds must be used to identify and address the factors and any policy, practice, or procedure that the LEA identifies as contributing to its significant disproportionality. It is the LEA's responsibility to determine the contributing factors, or root causes, for its situation. IDEA lists some possible factors, including:

1. a lack of access to evidence-based instruction;
2. economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings;
3. inappropriate use of disciplinary removals;
4. lack of access to appropriate diagnostic screenings;
5. differences in academic achievement levels; and
6. policies, practices, or procedures that contribute to the significant disproportionality.

A root cause analysis and the action planning process should be conducted and can be supported with CCEIS funds.

B. Reporting Requirements for CCEIS

Fiscal and LEA student data must be reported by states to the U.S. Department of Education for CCEIS. LEAs must be able to collect and report the data according to federal and state requirements when planning for and implementing CCEIS services.

When the LEA uses IDEA Part B funds to provide CCEIS, an annual report shall be submitted through the IDEA Part B Application for funding to the Idaho Department of Education including:

1. The number of students who received CCEIS; and
2. The number of students who received CCEIS and subsequently receive special education and related services during the preceding two (2) year period.

Section 5. Personnel

The LEA shall ensure that personnel working with students with disabilities meet the

qualifications established by the Idaho Department of Education and have the content knowledge and skills to meet the needs of these students.

A. Appropriate Certification or Licensure

Public school personnel shall meet the appropriate certification or licensure requirements for position assignments. Complete certification standards for personnel providing special education or related services may be found by visiting the Certification and Professional Standards webpage of the Idaho Department of Education's website.

Some special education and related services positions may require individuals to be certificated by the Idaho Department of Education and meet additional licensure requirements in their area of expertise, to be certificated by the Idaho Department of Education, or to meet licensure or certification requirements in their respective professions or areas of expertise without a requirement for certification by the Idaho Department of Education.

An emergency provisional certificate and the public charter school-specific teacher certificate cannot be used as an alternative for individuals to become certificated special education teachers in Idaho. The LEA shall use the alternative authorization options to request alternative endorsement/certification when a professional position cannot be filled with someone who holds the appropriate endorsement/certification.

B. Shortage of Personnel

If there is a shortage of qualified personnel, the LEA shall take measurable steps to recruit and hire qualified personnel to provide special education and related services to students with disabilities. However, when a professional position cannot be filled with an individual who has the appropriate certification, vacant positions may be filled with personnel on an approved alternate pathway to teaching. Information regarding pathways to certification/endorsement is available on the Certification and Professional Standards webpage of the Idaho Department of Education's website.

Nothing in the IDEA creates a right of action on behalf of a student or class of students for failure to employ qualified staff.

C. Paraprofessionals

The LEA may employ paraprofessionals who are appropriately trained and supervised to assist in the provision of special education and related services to students with disabilities if they meet standards established by the Idaho Department of Education.

Paraprofessionals may assist in the provision of special education and related services to students with disabilities by providing small-group or other individualized services for students as specified in the students' IEPs.

Paraprofessionals may assist in the provision of services only under the direct supervision of a certified teacher or related service provider. A teacher/related service provider shall plan instruction and assess student progress. The paraprofessional shall work in collaboration with the teacher or related service provider as provided for in the student's IEP.

Paraprofessionals assisting in the provision of special education and related services to students with disabilities shall have a high school diploma or its recognized equivalent. They shall also meet at least one of the following requirements:

1. Complete two (2) years of study at an institution of higher education; or
2. Obtain an associate's (or higher) post-secondary degree; or
3. Meet a rigorous standard of quality and be able to demonstrate, through a formal, State-approved academic assessment, knowledge of and the ability to assist in instructing reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness).

D. Educational Sign Language Interpreters

The LEA may only employ an individual as an educational sign language interpreter if they have met the State qualifications identified in Idaho Code.

E. Supervision of Staff

A teacher and/or a related service provider with appropriate certification or licensure who has been informed of his or her specific responsibilities related to a student's IEP has the primary responsibility to ensure the appropriate implementation of the IEP. The LEA shall have policies and procedures for the supervision and evaluation of all certificated/licensed or contracted employees.

The certificated/licensed teacher and/or related service provider will generally be responsible for the supervision of all staff who provide direct services to students with disabilities.

F. Professional Development

The LEA shall take measures to ensure that all personnel necessary to provide special education and related services according to the IDEA are appropriately and adequately prepared. Personnel may use a variety of opportunities for technical assistance and training activities to further develop professional knowledge and skills to meet the needs of students with disabilities.

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Appendix I. **Procedural Safeguards Notice**

Idaho Department of Education

Procedural Safeguards Notice for Students with Disabilities and their Parents Under the Individuals with Disabilities Education Act

Revised 2026

IDEA Part B Procedural Safeguards Notice

Revised: 2026

Dear Parent,

This document provides you with the required notice of the procedural safeguards available under the Individuals with Disabilities Education Act (IDEA) and U.S. Department of Education regulations. The IDEA, the Federal law concerning the education of students with disabilities, requires schools to provide the parent(s) of a child with a disability a notice containing a full explanation of the procedural safeguards available. A copy of this notice must be given only one time per school year, except that a copy must also be given:

1) Upon initial referral or upon your request for evaluation;
2) Upon receipt of your first State complaint and upon receipt of your first due process complaint in a school year;
3) When a decision is made to take a disciplinary action against your child that constitutes a change of placement; and
4) Upon your request.

Please contact the school district or charter **for more information on these rights. For further explanation you may also contact:**

Special Education Dispute Resolution Idaho Department of Education
P.O. Box 83720
Boise, ID 83720-0027
Phone: (208) 332-6914
Toll-free: (800) 432-4601
V/TT: (800) 377-3529
Web: www.sde.idaho.gov disputeresolution@sde.idaho.gov

For further assistance in matters relating to dispute resolution, you may contact:

Disability Rights Idaho
Phone: (208) 336-5353
Toll-free: (866) 262-3462
Web: disabilityrightsidaho.org

Idaho Legal Aid Services
1447 Tyrell Lane
Boise, ID 83706
Phone: (208) 746-7541
Fax: (208) 342-2561
Web: idaholegalaid.org

Idaho State Bar Association
P.O. Box 895
Boise, ID 83701
Phone (208) 334-4500
Fax: (208) 334-4515
Web: isb.idaho.gov

Idaho Parents Unlimited, Inc. *(IPUL)*
4619 Emerald St., Ste. E
Boise, ID 83706
Phone: (208) 342-5884
Toll-free: (800) 242-IPUL (4785)
V/TT: (208) 342-5884
Fax: (208) 342-1408
Web: ipulidaho.org

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GENERAL INFORMATION

Prior Written Notice

34 CFR §300.503

Notice
Your school district or charter must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1) Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
2) Refuses to initiate or to change the identification, evaluation, educational placement of your child, or the provision of FAPE to your child.

Content of notice
The written notice must:

1) Describe the action that your school district or charter proposes or refuses to take;
2) Explain why your school district or charter is proposing or refusing to take the action;
3) Describe each evaluation procedure, assessment, record, or report your school district or charter used in deciding to propose or refuse the action;
4) Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
5) Tell you how you can obtain a description of the procedural safeguards if the action that your school district or charter is proposing or refusing is not an initial referral for evaluation;
6) Include resources for you to contact for help in understanding Part B of IDEA;
7) Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; **and**
8) Provide a description of other reasons why your school district or charter proposed or refused the action.

Notice in understandable language
The notice must be:

1) Written in language understandable to the general public; **and**
2) Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.
3) If your native language or other mode of communication is not a written language, your school district or charter must ensure that:
    a) The notice is translated for you orally or by other means in your native language or other mode of communication;

b) You understand the content of the notice; **and**

c) There is written evidence that the requirements in paragraphs 1 and 2 have been met.

Native Language

34 CFR §300.29

Native language, when used regarding an individual who has limited English proficiency, means the following:

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 deafness or blindness, 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

If your school district or charter offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1) Prior written notice;
2) Procedural safeguards notice; **and**
3) Notices related to a due process complaint.

Parental Consent - Definition

34 CFR §300.9

Consent
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 about 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 that you may withdraw your consent at any time.

If you wish to revoke (cancel) your consent after your child has begun receiving special

education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the school district or charter is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

Parental Consent

34 CFR §300.300

Consent for initial evaluation

Your school district or charter cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings ***Prior Written Notice*** and ***Parental Consent.***

Your school district or charter must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

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

Your school district or charter may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school district or charter to do so.

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 failed to respond to a request to provide consent for an initial evaluation, your school district or charter may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district or charter will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Special rules for initial evaluation of wards of the State

If a child is a ward of the State and is not living with his or her parent —

The school district or charter does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1) Despite reasonable efforts to do so, the school district or charter cannot find the child's parent;
2) The rights of the parents 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 the parent and that individual has provided consent for an initial evaluation.

Ward of the State, as used in IDEA, means a child who, as determined by the State where the child lives, is:

1) A foster child;
2) Considered a ward of the State under State law; **or**
3) In the custody of a public child welfare agency.

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a *parent* as used in IDEA.

Parental consent for services

Your school district or charter must obtain your informed consent before providing special education and related services to your child for the first time.

The school district or charter must make reasonable efforts to obtain your informed consent to provide 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 or later revoke (cancel) your consent in writing, your school district or charter may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the school district or charter does not provide your child with the special education and related services for which it sought your consent, your school district or charter:

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

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district or charter may not continue to provide such services, but must provide you with prior written notice, as described under the heading ***Prior Written Notice***, before discontinuing those services.

Parent's Right to Object

Once you consent to the initial start of services, the school district or charter is not required to obtain your consent to make changes to the IEP. However, you are a required member of the IEP team that makes decisions about your student's educational program. If you do not agree with changes to the IEP you may request facilitation or mediation, or file for a due process hearing.

Parental consent for reevaluations

Your school district or charter must obtain your informed consent before it reevaluates your child, unless your school district or charter 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 your child's reevaluation, the school district or charter may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district or charter does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

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, for a reevaluation, and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school's or charter'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 place of employment and the results of those visits.

Other consent requirements
Your consent is not required before your school district or charter may:

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

The school district or charter must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE). Also, your school district or charter may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district or charter to do so.

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 your child's reevaluation, or you fail to respond to a request to provide your consent, the school district or charter may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

Independent Educational Evaluations

34 CFR §300.502

General
As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district or charter.

If you request an independent educational evaluation, the school district or charter must provide you with information about where you may obtain an independent educational evaluation and about the school's or charter's criteria that apply to independent educational evaluations.

Definitions
Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district or charter responsible for the education of your child.

Public expense means that the school district or charter either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of the Act.

Right to evaluation at public expense
You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your school district or charter, subject to the following conditions:

1) If you request an independent educational evaluation of your child at public expense, your school district or charter must, without unnecessary delay, either: (a) File a for due process hearing to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district or charter demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's or charter's criteria.
2) If your school district or charter requests a hearing and the final decision is that your school's or charter's-evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3) If you request an independent educational evaluation of your child, the school district or charter may ask why you object to the evaluation of your child obtained by your school. However, your school district or charter may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school's or charter's evaluation of your child.

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

Parent-initiated evaluations
If you obtain an independent educational evaluation of your child at public expense or you share with the school district or charter an evaluation of your child that you obtained at private expense:

1) Your school district or charter must consider the results of the evaluation of your child, if it meets the school district's or charter's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
2) You or your school district or charter may present the evaluation as evidence at a due

process hearing regarding your child.

Requests for evaluations by hearing officers
If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

School district or charter criteria
If an independent educational evaluation 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 school district or charter uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, a school district or charter may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Confidentiality of Information

34 CFR §300.611

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, charter, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

Personally Identifiable

34 CFR §300.32

Personally identifiable means information that includes:

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

The State Educational Agency must give notice that is adequate to fully inform parents about

confidentiality of personally identifiable information, including:

1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3) A summary of the policies and procedures that participating agencies 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 children 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 activity to identify, locate, or evaluate children in need of special education and related services (also known as "child find"), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of these activities.

Access Rights

34 CFR §300.613

The participating agency must permit you, upon your request, to inspect and review any education records relating to your child that are collected, maintained, or used by your school district or charter under Part B of IDEA. The participating agency must comply with your request without unnecessary delay, and in no case more than 45 calendar days, to inspect and review any education records on your child before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline.)

Your right to inspect and review education records includes:

1) Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2) Your right to request that the participating agency 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.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Record of Access

34 CFR §300.614

Each participating agency must keep a record of parties obtaining access to education records

collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on More Than One Child

34 CFR §300.615

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

List of Types and Locations of Information

34 CFR §300.616

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

Fees

34 CFR §300.617

Each participating agency 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.

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

Amendment of Records at Parent's Request

34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

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

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading ***Opportunity for a Hearing***.

Opportunity for a Hearing

34 CFR §300.619

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate,

misleading, or otherwise in violation of the privacy or other rights of your child.

Hearing Procedures

34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Result of Hearing

34 CFR §300.620

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency 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 of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

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

Consent For Disclosure of Personally Identifiable Information

34 CFR §300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, 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.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

Safeguards

34 CFR §300.623

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency 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 your State's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each participating agency 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 of Information

34 CFR §300.624

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

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 COMPLAINT PROCEDURES

Differences Between the Procedures for Due Process Complaints and Hearings and for State Complaints

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district or charter, the State Educational Agency, or any other public agency. Only you or a school district or charter may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's or charter's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The State Educational Agency must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading ***Model Forms***.

Adoption of State Complaint Procedures

34 CFR §300.151

General
Each State Educational Agency must have written procedures for:

1) Resolving any complaint, including a complaint filed by an organization or individual from another State;
2) The filing of a complaint with the State Educational Agency; and
3) Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Remedies for denial of appropriate services
In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2) Appropriate future provision of services for all children with disabilities.

Minimum State Complaint Procedures

34 CFR §300.152

Time limit; minimum procedures
Each State Educational Agency must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1) Carry out an independent investigation, if the State Educational Agency determines that an investigation is necessary;
2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3) Provide the school district, charter, or other public agency with the opportunity to respond to the complaint, including, at a minimum:
    a) at the option of the agency, a proposal to resolve the complaint; **and**
    b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4) Review all relevant information and make an independent determination as to whether the school district or charter or other public agency is violating a requirement of Part B of IDEA; **and**
5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

a) findings of fact and conclusions; **and**

b) the reasons for the State Educational Agency's final decision.

Time extension; final decision; implementation
The State Educational Agency's procedures described above also must:

1) Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) you and the school district or charter or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
2) Include procedures for effective implementation of the State Educational Agency's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

A complaint investigation report is final as of the date set forth in the report and is not subject to an appeal. A parent, district, or charter may file for a due process hearing regarding any concerns related to the identification, evaluation, educational placement, or provision of free appropriate public education (FAPE). Any CAP requirements and timelines set forth in the complaint investigation report will continue to run even if a due process hearing is filed on the same issue(s).

State complaints and due process hearings
If a written State complaint is received that is also the subject of a due process hearing as described under the heading ***Filing a Due Process Complaint***, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the school district or charter), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's, charter's, or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

Filing a State Complaint

34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

1) A statement that a school district, charter, or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2) The facts on which the statement is based; and
3) The signature and contact information for the party filing the complaint.

If alleging violations regarding a specific child, the State complaint must also include:

1) The child's name and residential address;
2) The name of the school or charter the child is attending;
3) In the case of a homeless child or youth, available contact information for the child, and the name of the school or charter the child is attending;
4) A description of the nature of the problem related to the child, including facts relating to the problem; **and**
5) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures.***

The party filing the State complaint must forward a copy of the complaint to the school district, charter, or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

DUE PROCESS COMPLAINT PROCEDURES

Filing a Due Process Complaint

34 CFR §300.507

General
You, or the school district or charter, may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change 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 complaint must allege a violation that happened not more than two years before you, or the school district or charter, knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1) The school district or charter specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2) The school district or charter withheld information from you that it was required to provide you under Part B of IDEA.

Information for parents
The school district or charter must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district or charter file a due process complaint.

Due Process Complaint

34 CFR §300.508

General
In order to request a hearing, you or the school district or charter (or your attorney or the school district's or charter's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the State Educational Agency with a copy of the complaint.

Content of the complaint
The due process complaint must include:

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

Notice required before a hearing on a due process complaint
You, or the school district or charter, may not have a due process hearing until you or the school district or charter (or your attorney or the school district's or charter's attorney) files a due process complaint that includes the information listed above.

Sufficiency of complaint
In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district or charter) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the school district or charter) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above and notify you and the school district or charter in writing immediately.

Complaint amendment
You or the school district or charter may amend or make changes to the complaint only if:

1) The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading ***Resolution Process***; **or**

2) By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school district or charter) amends the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

School district or charter response to a due process complaint
If the school district or charter 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 complaint, the school district or charter must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

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

Providing the information in items 1-4 above does not prevent the school district or charter from asserting that your due process complaint was insufficient.

Other party response to a due process complaint
Except as stated under the sub-heading immediately above, ***School district or charter response to a due process complaint***, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

Model Forms

34 CFR §300.509

The State Educational Agency must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, your State or the school district or charter may not require the use of these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint.

Mediation

34 CFR §300.506

General
The school district or charter must develop procedures that make mediation available to allow you and the school district or charter to resolve disagreements involving any matter under Part B

of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint***.

Requirements
The procedures must ensure that the mediation process:

1) Is voluntary on your part and the school district's or charter's part;
2) Is not used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**
3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school district or charter may develop procedures that offer parents and schools or charters that choose not to use the mediation process an opportunity to meet, at a time and location convenient to you, with an impartial and 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 to you the benefits of, and encourage the use of, the mediation process.

The State must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the costs of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district or charter.

If you and the school district or charter resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1) States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); **and**
2) Is signed by both you and a representative of the school district or charter who has the authority to bind the school district or charter.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

Impartiality of mediator
The mediator:

1) May not be an employee of the State Educational Agency or the school district or charter that is involved in the education or care of your child; **and**
2) Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district, charter, or State agency solely because he or she is paid by the agency or school district or charter to serve as a mediator.

Resolution Process

34 CFR §300.510

Resolution meeting
Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district or charter must convene a meeting with you and the relevant member or members of the individualized education program (IEP) team who have specific knowledge of the facts identified in your due process complaint. The meeting:

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

You and the school district or charter determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district or charter has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

Resolution period
If the school district or charter has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading ***Hearing Decisions*** begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the school district or charter 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 the meeting is held.

If after making reasonable efforts and documenting such efforts, the school district or charter is not able to obtain your participation in the resolution meeting, the school district or charter may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district's or charter's attempts to arrange a mutually agreed upon time and place, 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 place of employment and the results of those visits.

If the school district or charter fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

Adjustments to the 30-calendar-day resolution period

If you and the school district or charter 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 school district or charter 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 school district or charter agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing.

However, if either you or the school district or charter withdraws from the mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written settlement agreement

If a resolution to the dispute is reached at the resolution meeting, you and the school district or charter must enter into a legally binding agreement that is:

1) Signed by you and a representative of the school district or charter who has the authority to bind the school district or charter; **and**
2) Enforceable in any 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 or by the State Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement review period

If you and the school district or charter enter into an agreement as a result of a resolution meeting, either party (you or the school district or charter) may void the agreement within 3 business days of the time that both you and the school district or charter signed the agreement.

HEARINGS ON DUE PROCESS COMPLAINTS

Impartial Due Process Hearing

34 CFR §300.511

General
Whenever a due process complaint is filed, you or the school district or charter involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

Impartial hearing officer

At a minimum, a hearing officer:

1) Must not be an employee of the State Educational Agency or the school district or charter 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 a hearing officer;
2) Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3) Must be knowledgeable and understand the provisions of IDEA, 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.

The State Educational Agency shall keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of due process hearing

The party (you or the school district or charter) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

You or the school district or charter must request an impartial hearing on a due process complaint within two years of the date you or the school district or charter knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

1) The school district or charter specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2) The school district or charter withheld information from you that it was required to

provide to you under Part B of IDEA.

Hearing Rights

34 CFR §300.512

General

You have the right to represent yourself at a due process hearing (including a hearing relating to disciplinary procedures) or an appeal with a hearing to receive additional evidence, as described under the subheading, ***Appeal of decisions; impartial review***. In addition, any party to a hearing has the right to:

1) Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2) Be represented at the hearing by an attorney who is eligible to practice law in Idaho;
3) Present evidence and confront, cross-examine, and require the attendance of witnesses;
4) 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;
5) Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
6) 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 school district or charter must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district or charter intend to use at the hearing.

A hearing officer 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 at the hearing;
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.

Hearing Decisions

34 CFR §300.513

Decision of the hearing officer

A hearing officer's decision on whether your child received a free appropriate public education

(FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1) Interfered with your child's right to a free appropriate public education (FAPE);
2) Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
3) Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district or charter 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

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Findings and decision provided to the advisory panel and general public

The State Educational Agency or the school district or charter (whichever was responsible for your hearing), after deleting any personally identifiable information, must:

1) Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; **and**
2) Make those findings and decisions available to the public.

APPEALS

Finality of Decision; Appeal; Impartial Review

34 CFR §300.514

Finality of hearing decision
A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district or charter) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions***.

Timelines and Convenience of Hearings and Reviews

34 CFR §300.515

The State Educational Agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings **or**, as described under the sub-

heading ***Adjustments to the 30-calendar-day resolution period,*** not later than 45 calendar days after the expiration of the adjusted 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.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the school district or charter).

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

The hearing officer's decision shall be implemented not later than fourteen (14) calendar days from the date of issuance unless a civil action is filed, as discussed below.

Civil Actions, Including the Time Period in Which to File Those Actions

34 CFR §300.516

General

Any party (you or the school district or charter) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) 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 without regard to the amount in dispute.

Time limitation

The party (you or the school district or charter) bringing the civil action shall have twenty-eight (28) calendar days from the date of issuance of the hearing officer's decision to file for a state court review, or forty-two (42) calendar days to file in federal district court, from the date of issuance of the hearing officer's decision.

Additional procedures

Computation of time: In computing any period of time set by the IDEA, the day of the event from which the period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday. The number of days identified shall be calendar days, unless otherwise specified.

In any civil action, the court:

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

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

Jurisdiction of district courts

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.

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 children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party 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 available administrative remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court, unless an exception applies.

The Child's Placement While the Due Process Complaint and Hearing are Pending

34 CFR §300.518

Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES,*** once a due process complaint 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 court proceeding, unless you and the State or school district or charter agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school including a charter school, your child, with your consent, must be placed in the public school until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of IDEA for a 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 the child has turned three, the school district or charter is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district or charter must provide those special education and related services that are not in dispute (those which you and the school district or charter both agree upon).

If a hearing officer in a due process hearing conducted by the State Educational Agency agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

Attorneys' Fees

34 CFR §300.517

General

In any civil 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 you, if you prevail (win).

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 State Educational Agency or school district or charter, 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 State Educational Agency or school district or charter, 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 (hearing).

Award of fees

A court awards reasonable attorneys' fees as follows:

1) Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2) 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 is made to you if:
    a) 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;
    b) The offer is not accepted within 10 calendar days; **and**
    c) The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

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

Fees may not be awarded relating to any meeting of the individualized education program (IEP) team unless the meeting is held as a result of an administrative proceeding or court action.

Fees also may not be awarded for a mediation as described under the heading ***Mediation***.

A resolution meeting, as described under the heading ***Resolution Process***, 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 reduces, 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 school district or charter the appropriate information in the due process request notice as described under the heading ***Due Process Complaint***.

However, the court may not reduce fees if the court finds that the State or school district or charter 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.

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

Authority of School Personnel

34 CFR §300.530

Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the 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 the heading ***Change of Placement Because of Disciplinary Removals*** for the definition).

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the school district or charter must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub- heading ***Services***.

Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the subheading ***Manifestation determination***) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under ***Services***. The child's IEP Team determines the interim alternative educational setting for such services.

Services

The school district or charter is not required to provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, ***Manifestation determination***) or who is removed under special circumstances (see the subheading, ***Special circumstances***) must:

1) Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2) 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 a child with a disability 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 a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

Manifestation determination

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district or charter, you, and other relevant members of the IEP Team (as determined by you and the school district or charter) must review all relevant information in the student's file, including the child's 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, the child's disability; **or**
2) If the conduct in question was the direct result of the school district's or charter's failure to implement the child's IEP.

If the school district or charter, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school district or charter, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school district's or charter's failure to implement the IEP, the school district or charter must take immediate action to remedy those deficiencies.

Determination that behavior was a manifestation of the child's disability

If the school district or charter, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

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

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

Special circumstances

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:

1) Carries 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 the State Educational Agency or a school district or charter;
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 the State Educational Agency or a school district or charter; **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 the State Educational Agency or a school district or charter.

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 has the meaning given the term ‘‘serious bodily injury’’ under paragraph

(3) of subsection (h) of section 1365 of title 18, United States Code.

Weapon has the meaning given the term ‘‘dangerous weapon’’ under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Notification

On the date it makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the school district or charter must notify you of that decision and provide you with a procedural safeguards notice.

Change of Placement Because of Disciplinary Removals

34 CFR §300.536

A removal of your child with a disability from your child’s 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 the child’s behavior in previous incidents that resulted in the series of removals; and
    c) Of such additional factors 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.

Whether a pattern of removals constitutes a change of placement is determined on a case-by- case basis by the school district or charter and, if challenged, is subject to review through due process and judicial proceedings.

Determination of Setting

34 CFR §300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional authority*** and ***Special circumstances***.

Appeal

34 CFR §300.532

General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

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

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

Authority of hearing officer

A hearing officer that meets the requirements described under the subheading ***Impartial hearing officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1) Return your child with a disability to the placement from which your child was removed if the hearing officer 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 your child's disability; **or**
2) Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated, if the school district or charter 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 a school district or charter files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints***, except as follows:

1) The State Educational Agency or school district or charter must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2) Unless you and the school district or charter agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. 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 complaint.
3) A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the school district or charter may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading ***Appeal***).

Placement During Appeals

34 CFR §300.533

When, as described above, you or the school district or charter file a due process complaint related to disciplinary matters, your child must (unless you and the State Educational Agency or school district or charter agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

Protections for Children Not Yet Eligible for Special Education and Related Services

34 CFR §300.534

General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district or charter had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

Basis of knowledge for disciplinary matters

A school district or charter will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1) You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
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 school district or charter personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district's or charter's director of special education or to other supervisory personnel of the school district or charter.

Exception

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

1) You have not allowed an evaluation of your child or have refused special education services; **or**

2) Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, a school district or charter does not have knowledge that your child is a child with a disability, 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 children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child 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 a child with a disability, taking into consideration information from the evaluation conducted by the school district or charter, and information provided by you, the school district or charter must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities

34 CFR §300.535

Part B of IDEA does not:

1) Prohibit an agency from reporting a crime committed by a child with a disability 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 a child with a disability.

Transmittal of records

If a school district or charter reports a crime committed by a child with a disability, the school district or charter:

1) Must ensure that copies of the 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 the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

General

34 CFR §300.148

Part B of IDEA does not require a school district or charter to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district or charter made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

Reimbursement for private school placement

If your child previously received special education and related services under the authority of a school district or charter, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district or charter, a court or a hearing officer may require the responsible agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the State Educational Agency and school districts or charters.

Limitation on reimbursement

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

1) If:
    a) At the most recent individualized education program (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 school district or charter 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 or charter, you did not give written notice to the school district or charter of that information;
2) If, prior to your removal of your child from the public school, the school district or charter 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 the 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 or charter prevented you from providing the notice; (b) You had not received notice of your

responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**

2) May, in the discretion of the court or a hearing officer, 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.