Procedure - Special Education and Related Services for Eligible Students

Code: 2161P
Section: WSSDA Model Policies
Section: 2000 - Instruction

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

The state regulations governing implementation of special education services pursuant to the Individuals with Disabilities Education Improvement Act (IDEA) of 2004 are addressed in Chapter 392-172A WAC. These procedures do not address all of the requirements established in the regulations. District personnel who are not familiar with the regulations need to contact the special education department director if there are questions regarding special education. These procedures describe how the district implements its special education program.

Free Appropriate Public Education (FAPE)
The district will apply annually for Federal Part B and state special education funding to assist in the provision of special education and any necessary related services. This funding is in addition to students' basic education funding and state special education funding.

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

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

Services to eligible special education students, ages three to 22, will be provided without charge to the student. This does not include incidental fees that are normally charged to all students. Special education services will include preschool, elementary, and secondary education and are provided in conformance with the student's Individualized Education Program (IEP).

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

Students Covered by Public or Private Insurance
The district may use Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required to provide a FAPE, as permitted by the public insurance program. However, the district will not:

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

B. Require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount, incurred in filing a claim;

C. Use a parent or student's benefits under a public insurance program if that use would:

1. Decrease available lifetime coverage or any other insured benefit;

2. Result in the family paying for services required after school hours that would otherwise be covered by the public insurance program;

3. Increase premiums or result in discontinuation of insurance; or

4. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

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

A. Obtain parent consent in accordance with Chapter 392-172A WAC each time the district wishes to access benefits for a new procedure; and

B. Inform the parents that their refusal to permit the district to access their insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost to the parents.

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

A. A statement of the parental consent provisions;

B. A statement of the "no cost" provisions;

C. A statement that the parents may withdraw their consent to disclose personally identifiable information to the agency responsible for administering the state's public benefits or insurance, and

D. A statement that a parent's withdrawal or refusal to consent does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

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

A. The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to the student;

B. The purpose of the disclosure;

C. The agency to which the disclosure will be made; and

D. That the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under the act.

To avoid financial cost to parents who would otherwise consent to use private insurance, or public benefits if the parent would incur a cost such as a deductible or co-pay, the district may use its Part B funds to pay the cost the parents would incur.

The Special Education Director is responsible for providing the required notices and requests for consent to

parents under this section.

Parent Participation in Meetings
The district encourages parental involvement and sharing of information between the district and parents to support the provision of appropriate services to its students. As used in these procedures, the term "parent" includes biological and adoptive parents, legal guardians, persons acting in the place of a parent, such as relatives and stepparents, foster parents, persons appointed as surrogate parents, and adult students.

Parents (and as appropriate, students) will be provided the opportunity to participate in any meetings with respect to the identification, evaluation, educational placement, and provision of a FAPE, including IEP team meetings, school discipline, and truancy meetings.

When a meeting is scheduled, parents will be:

A. Notified of the meeting early enough that they will have an opportunity to attend;

B. Notified of the availability of interpretation and translation services at no cost to the parents;

C. Notified of the purpose, time, and location of the meeting and who will be in attendance;

D. The parent will be notified that the district or the parent may invite others who have knowledge or special expertise of the student; and

E. The meetings will be scheduled at a mutually agreeable time and place.

The district will take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including but not limited to, arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English. The district will maintain documentation of the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided.

The staff person responsible for inviting the parents to meetings will keep documentation of the information provided and the methods used to notify the parents of the meeting. The district may proceed with a meeting if the district is not able to convince the parent to attend. In this case, the district will document its attempts to arrange the meeting. This documentation will include records of telephone calls and the results, copies of correspondence sent to the parent, and/or other means used to contact the parent.

This documentation will be kept in the student's special education file.

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

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

Identification and Referral (Child Find)

A. **Identification**
The purpose of Child Find is to locate, evaluate, and identify children with suspected disabilities in

need of special education services, including those who are not currently receiving special education and related services and who may be eligible for those services. Activities are to reach:

1. Children residing in the school district boundaries, including preschool-aged children;

2. Children attending approved, nonprofit private elementary and secondary schools located within the district boundaries.

3. Highly mobile children (such as children experiencing homelessness, in foster care, and living in migrant conditions);

4. Children who have a disability and may need special education services, even though they are advancing from grade to grade; and

5. Children at home or home-schooled.

The district will consult with parents and representatives of private school students to ensure its Child Find activities are comparable in approved, nonprofit private schools located within district boundaries. These consultations will occur *annually* by *contacting the Special Education Director.*

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

1. Notification to parents of child find activities in its annual informational packet;

2. Notification to parents district-wide through local papers or other media;

3.

4. Notification to private schools located in the district's boundaries;

5. District informational mailings;

6. Posting notices regarding screening and referral in school buildings and public locations

7.

8. Early childhood screenings conducted by the district;

9.

10. Written information provided to district staff on referral procedures;

11. Training teachers and administrators on referral/evaluation/identification procedures; and

12. Review of student behavior, discipline, and absentee information and information gathered from district-wide assessment activities.

When district staff have concerns that a student may have a suspected disability that could result in eligibility for special education services, they will notify *the Special Education Director.*

The district's special education department conducts early childhood screenings for children from birth to five . These occur monthly at the child's school. When parents or others inquire about screenings, the caller will be referred to the *Special Education Director.*

The screening process involves the following:

1. Parents are asked to provide information to assist in assessing their child.

2. Children are screened to assess cognitive, communication, physical, social-emotional, and adaptive development. Parents will be notified at the screening of the results, and

the parents will also be provided written notice of the results within ten days of the screening. If the screening supports evaluation, the district will obtain written consent for an evaluation at the exit interview, if possible, or will include consent forms with the written notice notifying the parents of the results. If the screening results indicate that the child does not need an evaluation, written notice will be sent to the parents within 10 days of the screening explaining the basis for the district's decision not to evaluate. Evaluation occurs in accordance with evaluation procedures.

B. **Referral**

A student, whether or not enrolled in school, may be referred for a special education evaluation by parents, district staff, or other persons knowledgeable about the student. Each building principal will designate a person responsible for ensuring that district staff understand the referral process and maintain the availability of the district's optional referral form. Referrals are required to be in writing unless the person referring is unable to write and/or communicate orally. A person who makes a referral orally must be provided with the optional district referral form in the requestor's native language and offered assistance in completing the referral with the support of a qualified interpreter when needed.

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

All certificated employees will document referrals immediately upon a referral being made to or by them. All other staff receiving a referral from another person will notify the Special Education Director or Building Principal. The special education department (a) records the referral; (b) provides written notice of the referral to the parent, including the date the request was received; and (c) advises the *Special Education Director* to collect and review district data and information provided by the parent to determine whether evaluation is warranted.

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

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

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

Recommendations regarding evaluation are forwarded to the special education department

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

If the determination is that the child should be evaluated, the reviewers will include information about the recommended areas of evaluation, including the need for further medical evaluation of the student. This information will assist the district in providing parents prior written notice and will assist the district in selecting appropriate evaluation group members. *The Special Education Director* is responsible for notifying parents of the results using prior written notice. When the determination

is that the child will be evaluated, parent consent for evaluation and consent for release of appropriate records will be sent with the notice.

District staff will seek parental consent to conduct the evaluation without any unnecessary delay. The district is not required to obtain consent from the biological parent if:

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

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

The parents and district agree in writing to extend the timeline;

The parent fails or refuses to make the student available for the evaluation; or

The student enrolls in another school district after the evaluation begins but before its completion, and the parent and new district agree to complete it.

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

Evaluation and Reevaluation

A. **Evaluation of Students Moving from Part C to Part B and Participation in Transition Planning Conferences**
The district will participate in transition planning conferences, arranged by the local lead agency as designee of the Part C lead agency for each student who may be eligible for preschool services. Transition plans will be designed to promote uninterrupted provision of appropriate services to the child.

1. *The Special Education Director* will serve as the point of contact with the family resource coordinator for timely execution of transition planning conferences that are arranged at least 90 days before the student's third birthday by the designee of the Part C agency;
2. Within 25 school days following the transition planning conference, a determination whether or not to evaluate the student for Part B services will be made;
3. The district will follow the procedures for obtaining consent and conducting an initial evaluation, and provide prior written notice of the decision, if it determines that the student will be evaluated to determine eligibility for Part B services;

The district will follow the procedures for timelines and evaluation requirements for students moving from Part C to Part B. However, students turning three, who were previously determined eligible for

early intervention services under Part C of the IDEA, will be evaluated for initial eligibility for special education services under Part B of the IDEA. The evaluation must be completed in enough time to develop an initial IEP by the date of the student's third birthday.

B. **Evaluation Requirements**

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

The evaluation must be an individual assessment designed to determine:

1. Whether the student is eligible for special education and any necessary related services; and,

2. The nature and extent of special education and related services needed by the student, including information related to enabling the child to be involved in and progress in the general education curriculum.

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

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

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

1. Review of existing data, including corresponding response to intervention (RTI) documentation;

2. Relevant functional and developmental information;

3. Information from parents;

4. Information from other providers;

5. Information related to enabling access to and progress within the general education curriculum and assisting in determining whether there is a disability and the content of the IEP;

6. Current classroom-based evaluations, using criterion-referenced and curriculum-based methods, anecdotal records, and observations;

7. Teacher and related service providers' observations; and

8. Testing and other evaluation materials, which may include medical or other evaluations when necessary.

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

This review of existing data may be in the form of a meeting of IEP team members, or may be conducted without a meeting. It includes data provided by parents, data gathered in the general education classroom, or data from state and district level assessments. The data may provide information about the student's physical condition, social or cultural background, and adaptive behavior.

When additional assessments are necessary, the group members have the responsibility of selecting, administering, interpreting, and making judgments about evaluation methods and results, and ensuring that the tests and assessments are administered by qualified personnel in accordance with the instructions of the test producer. The gathering of additional data in combination with existing data must be sufficiently comprehensive to address all areas of the suspected disability and any special education needs, whether linked to the disability category or not. If the IEP Team determines that no additional data are needed, the IEP team will notify the student's parent of that determination and the reasons for it, and inform them of their right to request additional assessments. The district will complete the evaluation using existing data.

Parents and district staff are encouraged to work towards consensus, but the school district has the ultimate responsibility to determine whether the student has a disability or not. The *Special Education Director* will provide the parent with prior written notice of the eligibility decision, as well as a copy of the evaluation report. If the parent disagrees with the eligibility decision they will be informed of their dispute resolution options described in the procedural safeguards.

C. **Specific Learning Disability (SLD)**

1. *The district uses a combination of severe discrepancy and a process based on a student's response to scientific, research-based intervention in determining the identification of students with a specific learning disability.*

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

1. *A physical, mental, emotional, cultural or environmental factor or limited English proficiency; or*

2. *Inadequate instruction in reading or mathematics.*

The district must act promptly on a referral. Anyone, including parents and teachers, can make a referral at any time. A student cannot be required to progress through all levels of intervention before being evaluated if evidence exists to suspect a disability.

D. **Evaluation of Transfer Students**
If a student transfers into the district while an evaluation process is pending from the other district, the *Special Education Director* is responsible for determining the status of evaluations conducted to date and making a determination as to whether the evaluation can be completed within the 35 school day timeline from the date the parent provided consent. If the determination is that additional time will be needed, *the Special Education Director* will notify the parent and obtain the parent's agreement to establish a new timeline.

E. **Eligibility**
The evaluation group and the parent will determine whether or not the student is eligible for special education services.

1. A student is not eligible if the determinant factor is lack of appropriate instruction in reading or math, based upon the state's grade level expectations or limited English proficiency; and

2. Eligibility may be determined by documented professional judgment when:

    a. Properly validated tests are unavailable; or

    b. Corroborating evidence indicates that results were influenced due to measuring a disability.

The parent will be provided with a copy of the evaluation report and the documentation of the eligibility determination.

Parents will also be provided with prior written notice of the eligibility decision. The special education department is responsible for sending the notice.

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

1. The student is determined through a reevaluation to no longer be eligible for special education;

2. The student has met the district's high school graduation requirements;

3. The student has reached the age of 22. A special education student whose 22nd birthday occurs during the current school year will continue to be eligible for special education and any necessary related services for the remainder of the school year; or

4. The student no longer receives special education services based upon a parent's written revocation of services.

    When a special education student is expected to graduate prior to age 22, or when graduation is part of the transition plan, the IEP team will document a student's progress towards achieving course credits towards graduation on the transition portion of the IEP. The district will provide prior written notice to parents and adult students that the student is expected to graduate and will no longer be eligible for special education services. The district will also provide the parents and student with a summary of academic achievement and functional performance and recommendations to assist the student with postsecondary goals.

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

The evaluation group will determine who is most appropriate to develop the evaluation report

reflecting the evaluation information. The evaluation report will, at a minimum:

1. Identify the disability that requires special education and related services, if a disability exists;

2. Discuss assessments and review data supporting conclusions regarding eligibility;

3. Include the additional information required for the specific learning disability eligibility category;

4. Describe how the disability or disabilities affect the student's involvement and progress in the general curriculum;

5. Make recommendations to the IEP team with respect to special education and related services needed, materials or equipment, instructional and curricular practices, student management strategies, the need for extended school year services beyond 180 school days, and location of services;

6. Include other information, as determined through the evaluation process and parent input;

7. Include the additional information required for the specific learning disability eligibility category;

8. Provide any necessary professional judgments and the facts or reasons in support of the judgments; and

9. Be signed and dated by the evaluation group members certifying their agreement. Any group member who disagrees with the conclusions of the report will prepare a separate statement representing their own conclusion.

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

The district will provide the parent with a copy of the evaluation report no later than the 35th school day following the receipt of consent.

The evaluation report must be provided in a written or electronic format that allows the parent or guardian to access, review, and retain the report. Providing the evaluation report solely through screen sharing or solely by review during a meeting is not allowed.

The district will convene an eligibility determination meeting to review the results in the evaluation report and discuss and determine the student's eligibility or continuing eligibility for special education services no sooner than 5 school days after the evaluation report is provided to the student's parent or guardian but no later than the 40th school day following the receipt of consent. If the timeline for completing the evaluation is extended, the eligibility determination meeting will not be held sooner than 5 school days after the evaluation report is provided to the student's parent or guardian.

A parent may voluntarily waive, in writing, the requirement that the eligibility determination meeting be held no sooner than 5 school days after the evaluation report is provided to the student's parent. A waiver is valid only if it applies to the specific eligibility determination meeting for which it is given.

G. **Reevaluations**

A reevaluation of a student receiving special education or related services is conducted if academic achievement and functional performance has improved to warrant a reevaluation, if the IEP team suspects that the student may no longer be a student with a disability, or if the child's parent or teacher requests a reevaluation. A reevaluation does not occur more than once per year, unless the parent and the district agree otherwise. A reevaluation must occur at least once every three years,

unless the parent and the district agree that a reevaluation is unnecessary. An agreement that an evaluation is unnecessary will be confirmed in writing to the parent. *The Special Education Director* will schedule a review of this determination and notify the special education department.

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

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

1. Evaluations and information provided by the parents;

2. Current classroom-based assessment, local or state assessments, and classroom based observations; and

3. Observations by other teachers and related services providers data.

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

1. Whether the student continues to be eligible for special education and any necessary related services;

2. The present levels of performance and educational needs; and

3. Whether any additions or modifications to the student's program are needed. This review can occur with or without a meeting or through individual review. If the IEP team members and any other persons reviewing the data determine that no further testing is necessary, the district will notify the parents of this determination, using written prior notice and will inform parents that they have the right to request assessments if they disagree with the determination that additional testing is not necessary. Parent consent is not required if the reevaluation does not require additional testing.

4. If additional testing is needed:

    a. The Special Education Director will request written parental consent for reevaluation and provide prior written notice identifying the areas of assessment;

    b. If the parents do not return the signed consent form, the district will send another letter explaining the need for reevaluation and parent consent and will enclose another consent form and a copy of the prior written notice. In addition, the district will document its reasonable attempts to obtain consent such as telephone calls, emails, personal contact, and other efforts to obtain consent;

    c. If the parents do not respond to the request for consent, and the district has documented its reasonable attempts to obtain consent, the district can proceed with the reevaluation; and

    d. If the parents refuse to consent to the reevaluation, the evaluation group will notify the *Special Education Director* so that the district can determine whether it will seek mediation in order to obtain consent or request a due process hearing to ask an administrative judge to override the parents' refusal to consent.

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

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

The special education department is responsible for sending the notice.

H. **Reevaluation and Graduation**
No reevaluation is required when special education eligibility terminates due to graduation from high school with a regular diploma or due to reaching the end of the school year during which the student turned 22. Instead, the district will provide prior written notice to the student and the parent *one month before the student's anticipated last day of school* and the IEP team will provide the student with a summary of academic achievement and functional performance including recommendations on how to assist the student in meeting post-secondary goals. The *Special Education Director* is responsible for assuring that the IEP team completes the summary of academic achievement and functional performance.

Independent Educational Evaluations (IEE)
Parents of students eligible for special education, students referred for special education and determined to not be eligible, or students determined not to need an evaluation have a right to obtain an IEE at public expense, each time the district has conducted or obtained an evaluation of the student.

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

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

If the parent obtains an IEE at either public or private expense, any results of the IEE must be considered by the district in any decision made with respect to providing FAPE to the student if the IEE meets the district's criteria. The IEE may also be presented as evidence at a hearing regarding the student.

The following criteria are established for the selection of an individual to conduct an IEE at public expense. These criteria are established in order to identify the knowledge, experience, and qualifications of individuals selected to conduct the evaluations. Any individual selected to conduct either a district evaluation or an IEE must be:

1. Licensed, credentialed, or otherwise qualified within the state of Washington or state of residence/practice to perform an evaluation in the specific professional discipline for which an independent evaluation is sought;

2. Knowledgeable and experienced in evaluating children with similar disabilities;

3. Geographically located within the state of Washington (districts may wish to specifically expand the criteria to include practitioners in other states/British Columbia); and

4. Available to the district at a maximum fee which does not exceed by more than 25% the prevailing average for similar evaluations within the state of Washington.

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

1. Make it impossible to identify anyone within the state of Washington who holds the appropriate credentials or experience necessary to conduct the evaluation; or

2. Require a specialized evaluator whose fee exceeds the prevailing average by more than 25%; or

3. Include factors that would warrant an exception in order to obtain an appropriate evaluation.

Individualized Education Programs (IEP)

A. **IEP Development**

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

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

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

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

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

Parents are members of the IEP team and will have the opportunity to participate fully. The district will make sure that the parents understand the proceedings, including arranging for an interpreter

for parents who are deaf or whose native language is other than English. The district will also ensure that meeting locations are accessible. The special education department is responsible for coordinating interpreters and making arrangements for the meeting location.

The district will provide parents/guardians with a copy of the district's Restraint and Isolation Policy *(Policy 3246)* with each initial and annual IEP.

B. **IEP Team**

The IEP team includes:

1. The parent(s) of the student;

2. Not less than one general education teacher (or preschool teacher) of the student if the student is, or will be, participating in the general education environment. The general education teacher will, to the extent appropriate, participate in development of the student's IEP, including determinations of appropriate positive behavioral interventions and supports for the student; and supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185 and WAC 392-172A-03110(2)(b);

3. Not less than one special education teacher, or if appropriate, not less than one special education provider of the student;

4. A representative of the district, who is qualified to provide or supervise the provision of special education and related services, is knowledgeable about general education curriculum, and is knowledgeable about the availability of district resources;

5. An individual who can interpret the instructional implications of the evaluation results;

6. Any other individuals who have knowledge or special expertise about the student. These individuals may be invited by both the district and the parents, at the discretion of the person making the invitation;

7. The student, when appropriate, or when required;

8. Students must be invited when the purpose of the meeting includes discussion of transition needs or services;

9. If another agency is or may be responsible for payment or provision of transition services, an agency representative will be invited, with the parent's consent. If the agency representative cannot attend the meeting, district personnel will keep the representative informed of the meeting and obtain agency information that will assist in the service provision; and

10. Parents will be notified of the participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead educational agency for Part C at the initial IEP meeting for a child previously served under Part C of IDEA.

The parent and district must agree in writing before any of the above team members are excused from all or part of a meeting. If a team member's area of the IEP is being discussed or modified, then the parent and district must consent to their excusal; and that specific team member must provide advance written input for their part of the IEP prior to the meeting.

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

Sometimes parents do not attend IEP meetings. There will also be times the parents do not agree

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

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

1. Have IEP members present sign the IEP (or document participation if any member is unwilling to sign);

2. Send a copy to the parent, and provide the parent prior written notice that the district intends to implement the IEP; and

3. Forward the documentation of actual or attempted contacts to the special education departmentfor processing when parents do not attend the meeting.

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

C. **IEP Preparation and Content**

IEP teams will consider the recommendations in the initial or most recent evaluation to develop the IEP. In developing each IEP, the team must consider:

1. The strengths of the student including the academic, developmental, and functional needs of the student and the concerns of the parents for enhancing the education of their child;

2. Whether positive behavioral interventions and supports, including a behavioral intervention plan, as defined by WAC 392-172A-01031, are needed to address the student's behavior;

3. The language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;

4. Whether Braille instruction is appropriate for a student who is blind or visually impaired;

5. The communication needs of the student (and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs), opportunities for direct communications with peers and professional personnel in the student's language and communication mode; academic level; and full range of needs, including opportunity for direct instruction in the student's language and communication mode; and

6. Whether assistive technology devices or services are needed.

IEP content must include:

1. The student's present levels of academic and functional performance with a description of how the disability(ies) affect the student's involvement and progress in the general curriculum or preschool activities;

2. Measurable academic and functional annual goals for the student (including benchmarks or short term objectives if the student is participating in alternate assessments) that will meet the student's needs resulting from the disability(ies) to enable involvement and

progress in the general curriculum or in preschool activities, and will meet the student's other educational needs;

3. A statement of special education services, any necessary related services, and supplementary aids and services based on peer-reviewed research to the extent practicable to be provided to the student and program modifications or supports for personnel so that the student may advance towards annual goals, progress in the general curriculum, and be educated and participate with other special education students and non-disabled students, and participate in extracurricular and other nonacademic activities;

4. A statement of the extent, if any, that the student will not participate with non-disabled students in general classroom, extra-curricular, and non-academic activities;

5. A statement of any individual appropriate accommodations in the administration of state or district-wide assessments of student achievement that are needed to measure academic achievement and functional performance of the child on state assessments. If the team determines that the student will not participate in a particular assessment, the IEP will address why the student cannot participate in the regular assessment(s), why the particular alternative assessment is appropriate for the child, and document (a) that the parents were informed that their student's academic achievement will be measured on alternate standards, and (b) how participation in an alternate assessment may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

6. The date for the beginning of services and the anticipated frequency, location, and duration of services and modifications;

7. A statement of how the student's progress towards goals will be measured, how the student's parents will be regularly informed of their child's progress towards the annual goals, and whether the progress is sufficient to enable the student to achieve the goal by the end of the year. Measurement of the student's progress will be based on the data collected as designated on the IEP. The individual responsible for implementing the goal is responsible for maintaining the data used to measure progress. Information to the parents can be provided at the same time the district issues progress reports or report cards, or other agreed times as identified in the IEP.

8. The projected beginning date for the special education and related services;

9. With an IEP that is in effect when the child turns 16, or sooner if the IEP team determines it is appropriate, a statement of needed transition services and any interagency responsibilities or needed linkages. The transition component must include appropriate measurable postsecondary goals based on age appropriate transition and assessments related to training, education, employment, and independent living skills where appropriate; the transition services (including courses of study) needed to assist the child in reaching those goals; and a description of how the postsecondary goals and transition services align with the high school and beyond plan (HSBP);

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

11. A behavioral intervention plan (BIP), if determined necessary by the IEP team for a student to receive FAPE. The BIP must meet the requirements stated in WAC 392-172A-01031;

12. The procedures by which parents/guardians will be notified of the use of isolation or restraint on their student *(see Procedure 3246)*. If a student is placed in an authorized entity under RCW 28A.155.060, the IEP will specify any additional procedures required to ensure the authorized entity fully complies with state restraint and isolation laws.

13. A statement regarding transfer of rights at the age of majority. *The Special Education Director* will provide prior written notice to the student one year prior to student turning 18 years of age; and

14. Extended school year (ESY) services. The consideration for ESY services is a team decision, based on information provided in the evaluation report and based on the individual needs of a student. ESY services are not limited by categories of disability, or limited by type amount or duration of the services. If the need for ESY services is not addressed in the IEP and ESY services may be appropriate for the student, the IEP team will meet to address the need for ESY. Factors for the team to consider when determining the need for ESY may include, but are not limited to: 1) Evidence of regression or recoupment time based on documented evidence; or 2) A documented determination based on the professional judgment of the IEP team including consideration of the nature and severity of the student's disability, the rate of progress, and emerging skills.

The district will follow Policy 3246 and 3246P (Restraint and Isolation) regarding the use of restraint or isolation.

Transfer Students

Students who transfer from one district to another within the state continue to be eligible for special education and any necessary related services. When an eligible student transfers into the district, the building principal will notify the special education department. The special education department and principal in consultation with parents will review the student's IEP to ensure the district provides services comparable to those in the previous IEP until the district adopts the previous IEP or develops, adopts, and implements a new IEP.

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

The district must take reasonable steps to obtain records promptly, including IEP supporting documents and any other records related to special education or related services from the previous school.

Placement

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

consent. The notification will also inform parents that the district has no FAPE obligation to the student when parents refuse to provide consent.

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

1. In the school the disabled student would normally attend; and
2. With non-disabled students in the general educational setting to the maximum extent possible.

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

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

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

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

Within the nonacademic setting, students will be provided nonacademic and extracurricular activities with non-disabled students. These include athletics, transportation, and clubs. Limits on nonparticipation or conditions of participation must be designated in the IEP.

The district will also make opportunities available for students eligible for special education to participate with non-disabled students in the district’s art, music, , computer, consumer classes, and home economics classes.

Within the district, a continuum of alternative placement options exists, spanning from a general education class or regular early childhood program, resource room, self-contained, home-bound, and out-of-district provisions. These options are intended to address the individual needs of students, including preschool students with disabilities, and they are considered according to the following process:

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

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

1. Data-based judgments in IEP development;
2. Judgments (data-based) in determining LRE;

3. The reasonable probability of the placement option(s) assisting the student to attain annual goals and objectives and the quality of services needed; and

4. The consideration of potentially harmful effects upon the student or on the quality of services needed.

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

Students Unilaterally Enrolled in Private Nonprofit Schools by Parents
Between October 1 and the district will conduct an annual count of the number of private elementary and secondary school students eligible for special education who are unilaterally enrolled by their parents in a private school located within district boundaries. The district *Special Education Director* will have timely and meaningful consultation with appropriate representatives of private schools and representatives of parents of private school students and make determinations about who will receive services and what services will be provided. The purpose of the child count is to determine the proportionate amount that the district must spend on providing special education and related services, including transportation, to private elementary or secondary school students in the next fiscal year.

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

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

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

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

Equipment and/or supplies may be placed on private school premises for the period of time necessary for the services plan program, but the district will retain and exercise title and administrative control of said equipment/supplies. The district will keep records and make an accounting, ensuring that said equipment/supplies is/are used solely for the services plan program. Said equipment/supplies will be removed if necessary to avoid its/their use for other purposes or if no longer needed for the services plan program. No district funds will be used for repairs, minor remodeling, or construction of private school facilities.

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

Contracts with Authorized Entities

The district may contract with private schools approved by the state board of education under RCW 28A.305.130, other private in-state entities, and any out-of-state entities authorized by the office of superintendent of public instruction to provide special education and related services to students with disabilities. The district must enter into a written contract with the authorized entity that establishes the responsibilities of the district and authorized entity and sets forth the rights of students with disabilities placed in the authorized entity. This contract must include the following:

1. The names of the parties and the name of the student placed in the authorized entity;
2. The locations and settings of the education and related services to be provided;
3. A description of the opportunities for the student to meet a program for basic education that meets the goals of RCW 28A.150.210;
4. When applicable, a description of the opportunities for the student to either meet high school graduation requirements under RCW 28A.230.090 or to earn a high school equivalency certificate under RCW 28B.50.536 or laws of the state in which the authorized entity is located;
5. A schedule, of at least once per academic term, for the authorized entity to provide to the district student progress reports describing how the student is meeting personalized learning outcomes;
6. The total contract cost and applicable charge and reimbursement systems, including billing and payment procedures;
7. Acknowledgement that the authorized entity is responsible for full reimbursement of any overpayments determined to have been made by the district;
8. Acknowledgement that the authorized entity has a list of staff members providing the education and related services and a copy of the license that qualifies each staff member to provide the service;
9. Agreement by the authorized entity to employ or contract with at least one licensed teacher with special education endorsement;
10. Acknowledgement that the staff of the authorized entity are regularly trained on the following:
    - The constitutional and civil rights of students in schools;
    - Child and adolescent development;
    - Trauma-informed approaches to working with children and youth;
    - Cultural competency, diversity, equity, and inclusion, including best practices for interacting with students from particular backgrounds including English learner, LGBTQ, immigrant, female, and nonbinary student;
    - Student isolation and restraint requirements under RCW 28A.600.485;
    - The federal Family Educational Rights and Privacy Act, Title 20 U.S.C. Sec. 1232g requirements regarding access to and dissemination of student information;
    - Recognizing and responding to student mental health issues; and
    - Educational rights of students with disabilities, the relationship of disability to behavior, and best practices for interacting with students with disabilities.

11. Acknowledgement that the district and the authorized entity have clearly established their respective responsibilities and processes for student data collection and reporting;
12. Acknowledgement that the authorized entity will promptly submit to the district any complaints it receives;
13. Acknowledgement that the authorized entity will submit other information required by the district or OSPI;
14. Acknowledgement that the authorized entity must comply with student isolation and restraint requirements under RCW 28A.600.485;
15. Acknowledgement that the authorized entity will notify OSPI and every district with which it contracts of:

- Any major program changes that occur during the authorization period, including adding or eliminating the type of programs available to students; and
- Of any complaints it receives regarding services to students, as well as any law enforcement incident reports involving the authorized entity and its enrolled students.

16. Acknowledgement that the authorized entity must comply with all relevant Washington state and federal laws applicable to school districts;
17. Acknowledgment that the district must provide OSPI with the opportunity to review the contract and related documentation upon request.

The district will conduct an annual on-site visit to any authorized entity it contracts with to confirm that the health and safety of the facilities, the staffing qualifications and levels, and the procedural safeguards are sufficient to provide a safe and appropriate learning environment for students. The district may arrange for another school district to complete the annual on-site visit on its behalf, so long as the other school district conducting the visit provides a written report documenting the results of the visit and any concerns about the learning environment.

The district will provide the following documents to the parents or guardians of each student placed in the authorized entity:

1. A summary of the district's and authorized entity's responsibilities and processes for reporting incidents of restraint and isolation under RCW 28A.600.485; and
2. A copy of the complaint procedure developed by OSPI.

The district shall report to OSPI and the office of the Washington state auditor any concerns the school district has about overbilling by the authorized entity.

Procedural Safeguards

A. **Notice of Procedural Safeguards**
In addition to protections provided to parents of eligible students, parents also have procedural safeguard protections when a student's identification, evaluation, or placement is at issue. The school district *Special Education Director* will provide a copy of the procedural safeguards notice to the parents and adult students once a year and:

1. Upon initial referral or parent request for evaluation;

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

3. Upon a disciplinary action that will result in a disciplinary change of placement; and

4. Upon request by the parent.

The procedural safeguard notice used by the district includes a full explanation of all the procedural safeguards relating to independent educational evaluation, prior written notice, parental consent, access to educational records, discipline procedures for students who are subject to placement in an interim alternative educational setting, requirements for unilateral placement by parents of children in private schools at public expense, state complaint procedures, mediation, the child's placement during pendency of due process proceedings including requirements for disclosure of evidence, due process hearings, civil actions and attorney's fees. Copies of the district's special education procedural safeguards are available at *each school building office or by contacting the Special Education Director.*

B. **Consent**

The district will obtain informed, written parental consent before:

1. Conducting an initial evaluation;

2. Providing initial special education and related services to a student; and

3. Conducting a reevaluation if the reevaluation includes administration of additional assessments.

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

Informed consent means that the parent or adult student:

1. Has been fully informed of all information that is relevant to the activity for which the district is asking consent, and that the information is provided in his or her native language or other mode of communication;

2. Understands and agrees in writing to the activity for which consent is sought and the consent describes the activity and lists any records which will be released and to whom; and

3. Understands that the granting of consent is voluntary and may be revoked at any time. If consent is revoked, the revocation does not negate an action that has occurred after the consent was given and before the consent was revoked.

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

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

C. **Revocation of Consent**

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

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

Discontinuation of special education and related services in response to the parent's written revocation will not be in violation of FAPE and eliminates the district's requirement to convene an IEP meeting or develop an IEP. However, the district does have a continuing Child Find duty, and staff will follow referral procedures if they believe the student should be referred for special education. In

addition, parents may request that the district conduct an initial evaluation for eligibility for special education services after they have revoked consent for continued services.

D. **Prior Written Notice**

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

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

The prior written notice will include:

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

2. A description of the action proposed or refused by the district;

3. An explanation of why the district proposes or refuses to take the action and a description of other options that the district considered and the reasons why the options were rejected;

4. A description of any other factors which are relevant to the district's proposal or refusal;

5. A description of each evaluation procedure, test, record, or report the district used as a basis for the proposal or refusal; and

6. A description of any evaluation procedures the district proposes to conduct and sources for parents to contact for assistance in understanding the procedural safeguards provision of this chapter.

Prior written notice and the notice of procedural safeguards must be provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the district will take steps to ensure that the notice is translated orally or by other means to the parent. This may involve:

1. Arranging for an interpreter if English is not the native language of the parent or if the parent has a hearing impairment; or

2. Providing notice orally if the written language is not a native language.

The district will document in writing how this information was provided and that the parent understands the content of the notice.

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

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

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

Appointment of an Educational Representative
A student over the age of eighteen is presumed to be capable of making educational decisions and able to provide informed consent unless he or she is determined to be "incapacitated" through a legal guardianship proceeding. If a parent, another interested party, or the district believes that a student over the age of eighteen is unable to provide informed consent or to make educational decisions, and the student does not have a legal guardian, the parent or other interested party may ask the district to appoint an educational representative. This determination will only be made if two separate professionals, as defined by WAC 392-172A-05135(5)(a), state that they conducted an examination and interviewed the student, and concluded the student is incapable of providing informed consent. The district will inform the student of the decision and appoint the spouse, the student's parents, another adult, or a surrogate educational representative to represent the student. The appointment of the educational representative will continue for one year.

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

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

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

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

If parents believe that information in an education record is inaccurate or misleading or violates the privacy or rights of the student, they may request that the district amend the information. Policy and Procedure 3231, Student Records, describes the process and timelines for challenges and hearings regarding student records.

The district follows the guidelines for records retention outlined in the Secretary of State's, *General Records Retention Schedule and Records Management Manual*. The district will inform parents or adult students when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student. The information will be destroyed at the request of the parent(s) or adult student, or will be provided to the parent or adult student upon their request. However, a permanent record of the student's name, address and phone number, his or her grades, attendance, record, classes attended, grade level completed and year completed will be maintained without time limitation.

Records management is also governed by Policy and Procedure 4040, Public Access to District Records.

A. **Surrogate Parents**

A surrogate parent is a person appointed by the school district to act on behalf of a student to help ensure the rights of the student to a FAPE when a parent cannot be identified, the whereabouts of the parent are unknown or the student is a ward of the state and does not have a foster parent.

The *Special Education Director* is responsible for determining the need for appointment of a surrogate parent.

Natural or adoptive parents, foster parents, persons acting in the place of a parent, such as stepparents or relatives, and persons with legal custody or guardianship are considered parents. Students who are homeless and not living with a parent may need a surrogate parent.

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

1. In cases where the student is in and out of home care the district must determine the legal custodial status of the child.

2. Parents who have voluntarily placed their child in state placement still retain legal custody of the child and retain the right to make educational decisions. In this situation, the student is not a ward of the state.

3. Parents whose children are placed in group care, pending a determination of "dependency" may still retain rights to make educational decisions unless otherwise ordered by the court.

4. When a disposition order and order of dependency is issued, the state becomes the legal as well as physical custodian of the child. Parents may no longer have the right to make educational decisions during this stage of dependency.

5. Parents whose parental rights are terminated no longer have the right to make educational decisions on behalf their child.

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

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

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

The person selected as a surrogate:

1. Must have no interest that conflicts with the interests of the student he or she represents;

2. Must have knowledge and skills that assure adequate representation of the student; and

3. May not be an employee of a school district and/or other agency that is involved in the education or care of the student. This includes OSPI, DSHS, district employees, and group care providers.

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

B. **Mediation**

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

The primary participants are the parents, school district representatives, and mediator. The process is voluntary, confidential, and informal. It is a collaborative process, conducted in a no adversarial manner. Mediation services will be provided by OSPI at no cost to either party.

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

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

Due Process Hearing

Both parents and districts may file due process hearings involving the identification, evaluation, placement, or provision of FAPE to a student. IDEA requires that specific information be provided as part of a due process hearing request. The requirements are identified in the notice of procedural safeguards. If parents request information about how to file a due process hearing, the district will provide the parent with a due process hearing request that contains the required information. Due process hearing request forms are available *at school building offices* and on the OSPI Special Education website.

If any staff receives a request for a due process hearing, a copy of the request should be immediately forwarded to the *Special Education Director and Superintendent.* Parents are entitled to a copy of the notice of procedural safeguards if this is the first due process hearing in a school year. The district *Special Education Director* is responsible for providing the parents a copy of the procedural safeguards in this situation, and documenting that the safeguards were provided to the parent.

When a parent files a due process hearing, the student remains in the placement at the time of the request for hearing, unless the parents and district agree to a different placement. The student's status during the pendency of any proceedings does not preclude the IEP team from meeting, as needed or as required, and updating and implementing the student's IEP, unless those changes are in dispute. See the discipline section below for placements when a disciplinary action is challenged.

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

Any resolution agreement reached will be documented in writing and is binding on the parties. The

document will inform the parent of their right to void the agreement within three business days of signing the agreement.

Discipline
Students eligible for special education may be disciplined consistent with the disciplinary rules that apply to all students. The district will determine on a case by case basis whether discipline that is permitted under WAC 392-400 should occur. However, students eligible for special education must not be improperly excluded from school for disciplinary reasons that are related to their disability or related to the district's failure to implement a student's IEP. The district will take steps to ensure that each employee, contractor, and other agents of the district responsible for education or care of a student is knowledgeable of special education disciplinary rules.

A. **Removal Up to Ten Days**
Building Principals may order the removal of a special education student from a current placement. The district need not provide services to a student who is removed from the current placement for ten school days or less in any school year, if services are not provided to a student without disabilities.

B. **Removal for More than Ten Days**
Once a student has been removed from placement for a total of ten school days in the same school year, and if the district determines that the removal is not a change of placement, the district must, during subsequent days of removal, provide appropriate services to the extent necessary to enable the student to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP *the Special Education Director* in consultation with one or more of the student's teachers, will make the determination of such necessary services.

C. **Change in Placement**
A change of placement occurs when an eligible student is:

1. Removed from his or her current placement for more than ten consecutive school days in a school year; or

2. Subjected to a series of removals in a school year that constitute a pattern of removal because: 1) the series of removals total more than ten school days in a year; 2) the student behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and 3) because of factors such as the length of each removal, the total amount of time a student is removed, and the proximity of the removals to one another.

Whether a pattern of removal constitutes a change in placement is determined on a case-by-case basis by the building principal and special education director and is subject to review through due process and judicial proceedings.

D. **Manifestation Determination**
Within ten school days after the date on which the district makes a decision to change the student's placement, the district will conduct a manifestation determination meeting to determine the relationship between the student's disability and the behavior subject to the disciplinary action.

The review of the relationship between a student's disability and the behavior subject to the disciplinary action will occur at a meeting that includes the parent and relevant members of the IEP team who are selected by the parent and the district. The team will review all relevant information in the student's file, including the IEP, teacher observations, and information provided by the parent to determine:

1. If the conduct was caused by or had a direct and substantial relationship to the child's disability; or

2. If the conduct in question was the direct result of the district's failure to implement the student's IEP.

If the team determines that the behavior resulted from any of the above, the behavior must be considered a manifestation of the student's disability.

The district will take immediate action to remedy the deficiencies, and will:

1. Conduct a functional behavioral assessment (unless already completed) and implement a behavioral intervention plan if one is not already in place; or

2. Review the existing behavioral intervention plan and modify it to address the behavior; and

3. Return the child to the placement from which he or she was removed from unless the parents and the district agree a change is necessary as part of the behavioral intervention plan, or unless the infraction involves drugs, weapons, or serious bodily injury.

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

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

2. Knowingly possesses or uses "illegal drugs" while at school or a school function;

3. Sells or solicits the sale of a "controlled substance" while at school or a school function; or

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

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

1. Be selected so as to enable the student to participate in the general curriculum, although in another setting and to progress toward meeting the goals set out in the student's IEP; and

2. Include services and modifications designed to address the behavior or to prevent the behavior from recurring.

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

Unless the parent and the district agree otherwise, if a parent requests a hearing to challenge either the manifestation determination or the interim alternative educational setting, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45-day period, whichever occurs first.

F. **Basis of Knowledge**

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

The district is deemed to have knowledge if:

1. The parent expressed concern in writing (or orally if the parent does not know how to write or has a disability the prevents a written statement) to district supervisory or administrative personnel or a teacher that the student is in need of special education and related services;

2. The parent requested that the student be evaluated for special education services; or

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

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

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

1. Conducted a special education evaluation of the student and determined that the student was not eligible for services; or

2. The parent of the student has not allowed an evaluation of the child or has refused services.

If the district is not deemed to have knowledge that a student is eligible for special education services, the student may be disciplined as a student without disabilities who engages in comparable behaviors. If a request to evaluate the student is made while the student is excluded, the district will expedite the evaluation. Until the evaluation is completed, such a student will remain in the educational placement determined by the district, which could include suspension or expulsion.

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

Staff Qualifications

All employees of the district funded in whole or part with state or federal excess special education funds will meet the standards established by the Professional Educator Standards Board (PESB) and defined in WAC 392-172A-02090.

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

Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraeducators may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff (or early childhood special education certificated staff, deaf education certificated staff, deaf education with American Sign Language proficiency certificated staff, teacher of the visually impaired certificated

staff), or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or, for related services, a certificated educational staff associate.

In the event a special education teacher does not have a certificate endorsed in special education (or early childhood special education endorsement, deaf education endorsement, deaf education with American Sign Language proficiency endorsement, teacher of the visually impaired endorsement), a district may apply for a pre-endorsement waiver through the special education section of the OSPI. To qualify for the special education pre-endorsement waiver, the teacher must meet PESB criteria outlined in WAC 181-82-110.

If the district must temporarily assign a classroom teacher without a special education endorsement (or early childhood special education endorsement, deaf education endorsement, deaf education with American Sign Language proficiency endorsement, teacher of the visually impaired endorsement) to a special education position, the district *(name the appropriate personnel)* will document the following in writing:

A. The district is unable to recruit a teacher with the proper endorsement who is qualified for the position.

B. The need for a teacher with such an endorsement could not have been reasonably anticipated, and the recruitment of such a classroom teacher at the time of assignment was not reasonably practical.

C. The reassignment of another teacher within the district would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned to the other teacher.

If one or more of these criteria can be documented and the district determines that a teacher has the competencies to be an effective special education teacher and the teacher has completed two hundred forty clock hours (or the equivalent of 24 quarter or 16 semester credits) applicable to one or more Washington state special education teaching certificates (early childhood special education endorsement, deaf education endorsement, deaf education with American Sign Language proficiency endorsement, teacher of the visually impaired endorsement), the district can assign the teacher to special education in compliance with the process for making out-of-endorsement assignments and reporting them to the state.

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

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

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

2. All personnel who use restraint or isolation must be certified and annually trained in the use of such restraint and isolation.

3. In-service training schedules will be developed based upon the results of the district assessment and in support of needs identified.

4. Training activities will be conducted for regular general and special education staff, staff of other agencies and organizations and private school staff providing services for students eligible for special education.

5. Training for classified staff in the state recommended core competencies will occur through

Public Participation
Any application and any required policies, procedures, evaluations, plans, and reports are readily available to parents and other members of the public through the district's special education office and the office of the superintendent. A notice regarding the availability of such documents will be placed on the district's website and in the district's newsletter.

Adopted: 08/11/95
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Management Resources:

- 2025 - July Issue
- 2023 - July Issue
- 2021 - December Issue
- 2016 - March Policy Issue
- 2014 - June Issue
- 2009 - October Issue

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