

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)  
SPECIAL EDUCATION AND RELATED SERVICES FOR ELIGIBLE STUDENTS**

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

The state regulations governing implementation of special education services pursuant to the Individuals with Disabilities Education Improvement Act (IDEA) of 2004 are addressed in Chapter 392-172A WAC. These procedures do not address all of the requirements established in the regulations. District personnel who are not familiar with the regulations need to contact the special services 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, shall 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 age three to 21 will be provided without charge to the student. This does not include incidental fees that are normally charged to all students. Special education services will include preschool, elementary, and secondary education and are provided in conformance with a student’s Individual Education Program (IEP).

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

**Early Intervention**

The district participates in the provision of early intervention services to eligible children with a disability, birth to three, consistent with the state lead educational agency’s policies and procedures and the regulations implementing Part C of the IDEA.

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

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

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

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

- Obtain parents' consent in accordance with Chapter 392-172A WAC each time the district wishes to access benefits for a new procedure; and
- Inform the parents that their refusal to permit the district to access their 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 parents' or students' public benefits, for the first time and annually after the first notification, the district will provide written notification using the prior written notice provisions under WAC 392-172A-05010(3) that include:

1. a statement of the parental consent provisions;
2. a statement of the "no cost" provisions;
3. a statement that the parents may withdraw their consent to disclose personally identifiable information to the agency responsible for administering the state's public benefits or insurance; and,
4. a statement that a parents' 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 parents allowing the district to disclose information from the student's educational records to the agency responsible for administering the state's public benefits or insurance programs. The consent will specify:

1. The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to the student;
2. The purpose of the disclosure;
3. The agency to which the disclosure will be made; and
4. That the parents understand and agree that the public agency may access the parents' 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 parents 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.

### **Parent Participation in Meetings**

The district encourages parental involvement and sharing of information between district and parents to support the provision of appropriate services to its students. As used in these procedures, the term “parents” 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.

When a meeting is scheduled parents will be:

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

When the meeting is to address the IEP or placement,

- Parents will be notified that the district or the parents may invite others who have knowledge or special expertise of the student;
- Meetings shall be scheduled at a mutually agreeable time and place;
- The district shall take whatever action is necessary to ensure that the parents understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English;
- The staff 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; and
- The district may proceed with the IEP or placement meeting if the district is not able to convince the parents 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 parents and/or other means used to contact the parents. This documentation will be kept in the student’s special education file.

If the parents cannot attend the IEP or placement meeting but wishes to participate, the district will arrange for other means to participate. This can include individual or conference phone calls, video, 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’s proposal to be discussed at a later meeting.

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

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

#### **Identification**

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

- Children residing in the school district boundaries including preschool-aged children
- Children attending private elementary and secondary schools located within the district boundaries. Elementary or secondary schools include public schools, non-profit institutional day or residential schools and private schools.
- Highly mobile children (such as homeless, foster care and migrant children)
- Children who have a disability and may need special education services even though they are advancing from grade to grade; and
- Children at home or home schooled

The district will consult with parents and representatives of private school students to ensure its child find activities are comparable in private schools located within district boundaries. These consultations will occur annually by phone, meetings, letters, etc.

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

- Notification to parents of child find activities in its annual informational packet
- Information regarding child find on the district's Web site
- Notification to private schools located in the district's boundaries
- District informational mailings
- Posting notices regarding screening and referral in school buildings and public locations including homeless housing agency locations, other community agencies, private schools and preschool in the district boundaries, and community preschool
- Notifying and coordinating with the designated Part C lead agencies
- Early childhood screenings conducted by the district
- Coordination with other public and private agencies and practitioners
- Written information provided to district staff on referral procedures
- Training teachers and administrators on referral/evaluation/identification procedures

When district staff has a concern that a student may have a suspected disability which could result in eligibility for special education services, she/he will notify the building's school psychologist, school counselor, and/or administrator.

The district's special services department conducts early childhood screenings for ages birth to five. These early childhood screenings will occur at least once a month, for children ages 3 to 5, at specific school locations as determined by the special services department offices on an annual basis. Birth –two childhood screenings will be referred to the district's contracted birth –two center programs. When parents or others inquire about screenings, the caller will be referred to the district preschool child find coordinator and/or designee.

The screening process involves the following:

- Parents are asked to provide information to assist in assessing their child; and
- 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, obtain written consent for evaluation at the exit interview if possible, or include consent forms with the written notice notifying the parents of the results. If the screening results indicate that the child does not need an evaluation, written notice shall be sent to the parents within 10 days of the screening explaining the basis for the district's decision not to evaluate. Evaluation occurs in accordance with evaluation procedures.

### **Referral**

A student whether or not enrolled in school, may be referred for a special education evaluation by parents, district staff, or other persons knowledgeable about the student. Each building principal will designate a person responsible for ensuring that district staff understands the referral process. Referrals are required to be in writing unless the person referring is unable to write. If the special education referral is a verbal request by the parent/guardian, another staff member, or another person knowledgeable about the student, the LWSD staff member receiving this request must e-mail the building administrator and school psychologist of the request for a special education referral.

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 shall notify and provide a copy of the written notice to the building's administrator and guidance team facilitator/school psychologist. The school psychologist will create a Special Education Referral record in in the district's IEP data management system, provide written notice of special education referral to the parent(s) and send a written invitation to the Guidance Team Meeting along with a copy of the Notice of Procedural Safeguards and the Child Find Brochure. The school's Guidance Team Facilitator or designee will collect student data and information provided by the parent(s) to determine whether evaluation is warranted.

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

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

If the review of data occurs at a meeting, the parents will be invited. The guidance team school psychologist shall provide written notice to the parents of the decision regarding evaluation, whether or not the parents attended the meeting.

Recommendations regarding evaluation are forwarded, by the school psychologist, to the special services department to track compliance referral and evaluation timelines. If the building's guidance team reviews the request for evaluation and supporting data and does not suspect that the child has a disability, the district may deny the parents' request to evaluate. 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 parents.

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

The building school psychologist/special services department will seek parental consent to conduct the evaluation. The school district is not required to obtain consent from the biological parents if:

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

When the parents provide consent, the district shall select an evaluation group. The evaluation group is to complete the evaluation with 35 school days after parents' consent, unless

- The parents and district agree in writing to extending the timeline, or
- The parents fail or refuse to make the student available for the evaluation; or
- The student enrolls in another school district after the evaluation is begun but before completion and the parents and new district have an agreement for completion of the evaluation.

If a parent does not provide consent, the school psychologist notifies the district's special education administrator(s). District special education administrative staff will make a determination as to whether the district wishes to use mediation to seek agreement to evaluate or file a due process hearing to override the parent's refusal to consent. If the parents do not provide written informed consent and the district does not use mediation or due process, the school psychologists will provide the parents with prior written notice informing the parents 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.

**Eligibility – Part C students**

The district will follow the procedures for obtaining consent and conducting an initial evaluation, if it determines that the student will be evaluated to determine eligibility for Part B services. The district will follow the procedures for timelines and evaluation requirements for students moving from Part C to Part B except:

- Students turning three, who were previously determined eligible for early intervention services under Part C of IDEA, must be evaluated for initial eligibility for special education services under Part B of IDEA. The evaluation must be completed in enough time to develop an initial IEP by the date of the student's third birthday.
- Please refer to page 13, Transition Planning Conferences, for additional information.

**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, in order to determine whether a student qualifies for special education services, and the contents of an IEP. This evaluation may include information provided by the parents. All information gathered in this process is reviewed by the evaluation team, IEP team, or other group of qualified professionals.

The evaluation must be an individual assessment designed to determine:

- Whether the student is eligible for special education and any necessary related services; and
- 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 building's guidance team shall select the members of the evaluation group. Members selected must include individuals who are knowledgeable about the student and the areas of suspected disabilities. Qualifications of a group member include having the appropriate professional license or certification. This may include outside practitioners when necessary. Professional members of the evaluation group need to be familiar with qualifying disability definitions and criteria in federal and state rules. When assessing for specific learning disabilities, the parents must be part of the group.

Specific areas to be included in the evaluation are determined by the guidance team and other qualified professionals, as appropriate, as part of a review of existing data concerning the student. All current evaluation data as well as data previously reviewed by the group must be considered. It could include data provided by parents, data gathered in the general education classroom, and/or data gathered from state and district level assessments. The data may provide information about the student's physical condition, social or cultural background, and adaptive behavior. This review of existing data may be conducted without a meeting. The evaluation does not rely on one source or procedure as the sole criterion for determination and should include:

- Review of existing data, including corresponding response to intervention (RTI) documentation
- Relevant functional and developmental information
- Information from parents
- Information from other providers

- Information related to enabling access to and progress within the general education curriculum and assisting in determining whether there is a disability and the content of the IEP
  - Current classroom-based evaluations, using criterion-referenced and curriculum-based methods, anecdotal records and observations
  - Teacher and related service providers' observations
- Testing and other evaluation materials, which may include medical or other evaluations when necessary

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 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 parents' consents to the use of the insurance.

If the IEP Team determines that no additional data is needed, the IEP team will notify the student's parents of that determination and the reasons for it, and inform them of their right to request additional assessments. The district will follow the evaluation procedures outlined in WAC 392-172A.

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 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, as appropriate and determined by the evaluation team of professionals and parents' input and/or request. 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 Learning Disability (SLD)**

The district continues to use the severe discrepancy approach for identifying students with a SLD.

Under the IDEA and its implementing regulations "specific learning disability" is defined, in part, as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia." The list of conditions under the definition "specific learning disability" is not exhaustive. However, regardless of whether a child has dyslexia or any other condition explicitly included in the definition of "specific learning disability," or has a condition such as dyscalculia or dysgraphia not listed expressly in the definition, the District must conduct an evaluation to determine whether that child meets the criteria for eligibility under the specific learning disability category.

## **Evaluation of Transfer Students**

If a student transfers into the school district while an evaluation process is pending from the other district, the building school psychologist 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 parents provided consent. If the determination is that additional time will be needed, the parents will be provided prior written notice of the timeline needed to complete the evaluation and the reasons for the additional time needed.

### **Eligibility**

Upon completion of the administration of assessments and other evaluation measures, the group of qualified professionals and the parents of the student meet to determine whether the student is eligible for special education service and determine the educational needs of the student. 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 school district will provide the parents with prior written notice of the eligibility decision, within ten school days of the decision, as well as a copy of the evaluation report. If the parents disagree with the eligibility decision they need to be informed of their dispute resolution options described in the procedural safeguards.

- A student is not eligible if the determinant factor is lack of appropriate instruction in language arts and/or math based upon the state's grade level expectations, lack of appropriate math instruction or limited English proficiency.
- If properly validated tests are not available or it appears to the team that the student's disability interfered with the reliability of test results, team members should use professional judgment in making an eligibility decision and document the basis for their judgment.
- 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 and has graduated from high school with a regular high school diploma; or
  3. The student has reached age 21. A special education student whose 21<sup>st</sup> birthday occurs after August 31 shall continue to be eligible for special education and any necessary related services for the remainder of the school year.
  4. The student no longer receives special education services based upon a parents' written revocation of services.

### **Evaluation Report**

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

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

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

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

### **Reevaluations**

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

The District adopts the eligibility category of developmental delay. Students who turn six who met the eligibility requirements for the 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.

Students who were previously eligible under the category of developmentally delay must be reevaluated before age nine to determine eligibility within another category.

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

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

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

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

This review can occur with or without a meeting. 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. Parents' consent is not required if the reevaluation does not require additional testing:

If additional testing is needed, the district will request written parental consent for reevaluation:

- If the parents do not return the signed consent form, the district shall send another letter explaining the need for reevaluation and parents' consent and will enclose another consent form and a copy of the prior written notice. Staff should use multiple channels to attempt to obtain parents' consent, including U.S. mail, e-mail, telephone, and in-person contacts.
- If the parents do not respond to repeated requests for consent, the district can proceed with the reevaluation
- If the parents refuse to consent to the reevaluation, the evaluation group will notify the special education director/coordinator 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 district will invite parents to the eligibility meeting. Following the meeting, the district will provide prior written notice of the results of reevaluation to parents in their primary language, indicating one or more of the following:

- Whether the student continues to be eligible and in need of special education;
- Present levels of performance and educational needs of the student; or
- Whether any additions or modifications to the special education and related services are needed to enable the student to meet IEP annual goals and to participate, as appropriate, in the general curriculum. This notice will occur within ten school days of the eligibility decision. The special services department is responsible for sending the notice

### **Reevaluation and Graduation**

No reevaluation is required when special education eligibility terminates due to graduation from high school with a regular diploma or due to reaching the end of the school year during which the student turned 21. Instead, the district will provide prior written notice 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. This summary will be provided to the student at the time of the final year's IEP meeting.

When a special education student is expected to graduate prior to age 21, or when graduation is part of the transition plan, the IEP team will document a student's progress towards achieving course credits towards graduation on the transition portion of the IEP. The district will provide prior written notice to parents and adult students that the student is expected to graduate and will no longer be eligible for special education services.

### **Certificate of Attendance**

In order to participate in commencement exercises, students must have met the minimum criteria for graduation prior to the date of the exercise and otherwise be in good standing with their school through the commencement date. Minimum criteria for participation may be adjusted for students with an IEP whose disabilities have impacted their opportunity to accumulate credits. Each student's IEP team will determine the student's graduation plan, including graduation date. IEP students who have attended four years of high school and need additional time to complete IEP goals and/or credits may request participation in commencement exercises. IEP students will receive a certificate of attendance until they complete their credits for graduation.

### **Graduation**

Each student's IEP team will determine the student's graduation plan, including graduation date. No student shall be denied the opportunity to earn a diploma solely because of limitations on the student's ability. Each student's IEP team may make modifications or exemptions to graduation requirements if a requirement impedes the student's progress toward graduation and there is a direct relationship between the failure to meet the requirement and the student's limitation.

District procedures for granting high school graduation credits for students with disabilities can be found in district policy IKF, Graduation Requirements, and procedures IKF-R.

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

Parents of a student's eligible for special education, have a right to request an IEE at public expense. When parents request an IEE, the district must provide parents a list of district criteria applicable to IEEs and a list of evaluators from whom an IEE may be obtained. Both lists are also available upon request from the special services department. The district must decide within 15 calendar days of the parents' request whether it agrees to provide an IEE at public expense. Any parents' request for an independent evaluation should be immediately referred to the special services administrators. The special services director shall review the request and determine whether or not the request is warranted. If the district agrees to provide an IEE at public expense, parents may either obtain an IEE and submit invoices for reimbursement or ask the district to enter into a contract to facilitate direct payment to the IEE provider.

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 parents' 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.

If the school district initiates a hearing and a decision is made that the district's evaluation is appropriate, the parents still has the right to an IEE, but not a public expense. The parents are only entitled to one IEE at public expense each time the district conducts an evaluation with which the parents disagree.

If the parents obtain 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 the provision of FAPE to the student. The IEE may also be presented as evidence at a hearing regarding the student.

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

#### **Transitions of Birth-to-Three Students to Preschool**

The district will participate in transition planning conferences, arranged by the designated 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.

The special services department/preschool coordinator is responsible for coordinating with the Regional Family Resource coordinator for timely execution of transition planning conferences which, are arranged at least 90 days before the student's third birthday. Participants will review the child's program options for the period from the child's third birthday through the remainder of the school year. If a student is determined eligible for special education services, an IEP will be developed and implemented by the student's third birthday. If the third birthday is not during the school year and when appropriate, the IEP may set a start date of the beginning of the school year.

#### **IEP Development**

The IEP is the written statement of an educational program for a student eligible for special education.

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

Parents' 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 parents' refusal. When the parents refuse to provide consent the IEP manager will notify that parents that the district does not have an obligation to provide the student with FAPE. 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 implementing 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 is responsible for ensuring that staff members are knowledgeable about their responsibilities.

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

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

The district will provide parents/guardians with a copy of the district's *Required Notification of Isolation or Restraint of Students with IEPs or Section 504 Plans* each time the Procedural Safeguards are given, as they are attached to the district's updated Procedural Safeguards.

The IEP team includes:

- The parents of the student;
- At least one general education teacher (or preschool teacher) of the student if the student is, or will be, participating in the general education environment;
- At least one special education teacher, or special education provider of the student;
- A representative of the district, who is qualified to provide or supervise the provision of special education and related services, is knowledgeable about general education curriculum, and is knowledgeable about the availability of district resources;
- An individual who can interpret the instructional implications of the evaluation results
- 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, and the student, when appropriate, or when required;
- Students must be invited when the purpose of the meeting includes discussion of transition needs or services;
- A representative of any other-outside public and/or private agency is or may be responsible for payment or provision of transition services. Agency representatives will be invited only, with the parents' consent. If an agency representative cannot attend the meeting, district personnel shall keep the representative informed of the meeting and obtain agency information that will assist in the service provision; and
- Existing team members may fill more than one of these roles if they meet the criteria for the role.

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 requirements for inviting parents to IEP meetings are found in the Parent Participation in Meetings section above.

The parents must consent in writing before an IEP Team member is excused from all or part of a meeting. If a team member's area of the IEP is being discussed or modified, that team member must provide advance written input for their part of the IEP prior to the meeting.

If the parents attend the IEP meeting and agreement is not reached on the IEP, the team shall determine whether another IEP meeting should be scheduled as soon as mutually possible, or whether there is enough information to complete the IEP. When the decision is made that the IEP will be completed, the district must send prior written notice of the decisions reached to the parents, including the date the IEP will be implemented.

If 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. The district will:

- Have IEP members present sign the IEP (or document participation if any member is unwilling to sign);
- Send a copy to the parents, and provide the parents prior written notice that the district intends to implement the IEP; and
- Forward the documentation of actual or attempted contacts to the special services department for processing when parents do not attend the meeting.

When making changes to an IEP after the annual IEP meeting for a school year, the parents and the district may agree not to convene an IEP meeting for the purpose of making changes. The parents and the IEP case manager may complete a written document indicating the changes and inform IEP team members and appropriate individuals of the changes. If the parents request a revised copy of the IEP with the amendments incorporated, the IEP manager will provide one.

### **IEP Preparation and Content**

All IEP teams will consider the results of the most recent evaluation when developing the IEP. In developing the IEP, the team should consider:

- The strengths of the student;
- The academic, developmental and functional needs of the student;
- The concerns of the parents for enhancing the education of their child
- The use of positive behavioral interventions and supports to address behavior when a student's behavior impedes the student's learning or that of other;
- Language needs of students with limited English;
- Whether Braille instruction is appropriate for a student who is blind or visually impaired;
- Language and communication needs; and
- Whether assistive technology devices or services are needed.

IEP content includes:

- 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;
- 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;
- 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 be educated and participate with other special education students and non-disabled students and participate in extracurricular and other nonacademic activities;
- A statement of the extent, if any, that the student will not participate with non-disabled students in general classroom, extra-curricular and non-academic activities;

- A statement of 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) and why the particular alternative assessment is appropriate for the child;
- The date for the beginning of services and the anticipated frequency, location and duration of services and modifications;
- A statement of how the student's progress towards goals will be measured and how and when the student's parents will be regularly informed of their child's progress towards the annual goals. Information to the parents can be provided through the use of progress reports or report cards or other agreed means, but the information must be provided at least as often as information is provided to students without disabilities;
- Beginning 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. Transition services description must include appropriate measurable postsecondary goals based on age appropriate transition assessments related to training, education, employment, independent living skills where appropriate; and transition services (including course of study) needed to assist the child in reaching those goals;
- Emergency response protocols, if the student requires advanced educational planning and the parent provides consent. Emergency response protocols will be implemented in compliance with the subsection of this procedure regarding restraint and isolation; and
- A student will be informed, beginning no later than one year before the student turns 18, a statement that the student has been informed of the rights that will transfer to the student at the age of majority.

**Extended School Year (ESY)** is a special education service that provides services to students beyond the standard 180-day school year in order to maintain a student's learned skills or behavior. ESY is not intended to be used to teach new skills or behaviors. The IEP team decides whether or not the student requires ESY services. Without a recommendation from the IEP team, ESY services will not be provided. The decision is based upon three criteria: **regression**, **recoupment**, and **critical learning**.

- **Regression** – All students, disabled and non-disabled alike, experience regression during breaks in instruction. For purposes of ESY determination, regression is defined a significant decline in the performance of a skill or acquired knowledge as specified in the annual IEP goals that occurs during a break in instruction.
- **Recoupment** – A student's ability to recoup a skill or relearn the acquired knowledge to approximately the same level that existed prior to the break in instruction.
- **Critical Learning Stage** – A student is in a critical stage of developing a skill that has great potential for increasing his/her self-sufficiency in the areas of academics, related services or social skills / behaviors.

**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 a special education student transfers into the district, the building principal will notify the special services department. The special services department, school's special services team, 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 in another state transfers from out of state into the district, the building principal will notify the special services department as soon as possible of the student's enrollment into the district. The special services department, guidance team if appropriate, school's special education team, and principal, in consultation with the parents, will review the student's IEP and evaluation to ensure the district provides services comparable to those in the previous IEP until the district conducts an evaluation to determine whether the student is eligible for special education services in this state, and develops, adopt and implement a new IEP. The school psychologist 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 develop, adopt, and implement a new IEP. If the student needs to be evaluated to determine eligibility in this state, the school psychologist will notify the parents, obtain consent, and evaluate the student for eligibility within 35 school days.

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

**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 a special education placement. When a student has been evaluated and the evaluation team and parents have determined student eligibility and the need for special education and related services, programming decisions must occur. Placement decisions are made on the basis of information generated through the evaluation and IEP processes, with consideration of the student's least restrictive environment (LRE), the consideration of placement options that provides a reasonably high probability of assisting the student to attain annual goals, and consideration of any potential harmful effect on the student or on the quality of the services which he or she requires.

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 with non-disabled students in the general educational setting to the maximum extent appropriate. 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

When determining a student's least restrictive environment (LRE), team will consider:

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

The district offers a continuum of alternative placements, including general education classes, resource room, self-contained, home-bound, and out-of-district options. A student will be educated in the school that he or she would attend if nondisabled, unless the IEP requires another arrangement. If the placement is in another building, the appropriate educational placement will be as close to the student's home as reasonably possible.

Students will be provided supplementary aides and services that are appropriate and necessary for participation in nonacademic and extracurricular activities with non-disabled students to the maximum extent appropriate. Participation in nonacademic settings and any supplementary aids will be determined by the IEP team. Nonacademic settings may include counseling services, athletics, transportation, health services, special interest groups and clubs, etc.

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, industrial arts, computer, family consumer science, and other general education elective classes.

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

On or before December 1<sup>st</sup> of each year, the district shall conduct an annual count of the number of private elementary and secondary school students eligible for special education who are unilaterally enrolled by their parents in a private school located within district boundaries and who do not wish to enroll in a public school to receive special education and related services. The district special education director shall have timely and meaningful consultation with appropriate representatives and parents of private school. 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 funds to provide special education and related services to private school students. In order to determine which students will receive services, what services will be provided, how and where the services will be provided, and how services provided will be evaluated, the district shall consult with appropriate representatives and parents of private school students. The district shall make the final decision with respect to services to be provided to eligible private school students.

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

The district special education staff (nearest to the private school and of similar grade level configuration) and a special services administrator will meet with the parents, student as appropriate, and nonprofit private school representative, to develop an Individual Service Plan for eligible 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 special education students in public schools. However, the services provided to special education private school students will be provided by personnel meeting the same standards as personnel providing the services in the district.

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

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

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

### **Procedural Safeguards**

#### **Consent**

The district will obtain informed, written parental consent before:

- Conducting an initial evaluation;
- Providing initial special education and related services to a student; and
- Conducting a reevaluation.

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 parents or adult student:

- Has been fully informed of all information that is relevant to the activity for which the district is asking consent, and that the information is provided in his or her native language or other mode of communication, if appropriate as determined by the school team and/or requested by the parents unless it is clearly not feasible to do so.
- 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 any records that will be requested and from whom; and,
- Understands that the granting of consent is voluntary and may be revoked at any time. If consent is revoked, the revocation does not undo an action that occurred after the consent was given and before the consent was revoked.

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

If the district is unable to obtain a parents' consent to an evaluation or reevaluation, the district may use mediation procedures to obtain a parents' consent or request a due process hearing asking the administrative law judge to override the parents' refusal to consent. The district may not request a due process hearing to override a parents' refusal to consent to initial special education services.

### **Revocation of Consent**

If a parent revokes consent for special education services after the district has provided special education and related services, the district will not amend the student's educational records to remove any reference to the student's receipt of special education and related services.

Upon receipt of the parents' written notice of revocation, the district:

- a. Will provide prior written notice before ceasing services;
- b. Will stop providing special education and related services after the effective date contained in the district's prior written notices; and
- c. May not use mediation or due process procedures to obtain consent.

Discontinuation of special education and related services in response to the parents' written revocation does not violate the requirement to make FAPE available to the student, and eliminates the requirements 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.

### **Notice of Procedural Safeguards**

Parents and adult students have procedural safeguard protections when a student is eligible for special education or when a student's identification, evaluation, or placement is at issue. The school district shall provide a copy of the procedural safeguards notice to the parents of eligible special education students and adult students one time a year and:

- Upon initial referral or parents request for evaluation;
- Upon receipt of the parents' first state complaint and first request for due process hearing in a school year;
- Upon a disciplinary action that will constitute a change of placement; and/or ,
- Upon request by the parents.

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, 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 due process hearings, civil actions and attorney's fees. Copies of the district's special education procedural safeguards are available at each building and the special services department office.

### **Prior Written Notice**

The district will provide prior written notice to the parents of an eligible student or of a student referred for a special education evaluation whenever the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a FAPE to the student. Prior written notices document the decisions made by the IEP team and evaluation group.

The prior written notice will include:

- A statement that the parents of a special education student have procedural safeguard protections and if a copy of the statement of procedural safeguards do not accompany the notice, a statement that describes how a copy of the statement of procedural safeguards may be obtained;
- A description of the action proposed or refused by the district;
- An explanation of why the district proposes or refuses to take the action and a description of other options that the district considered and the reasons why the options were rejected;
- A description of any other factors which are relevant to the district's proposal or refusal;
- A description of each evaluation procedure, test, record or report the district used as a basis for the proposal or refusal;
- A description of any evaluation procedures the district proposes to conduct; and
- Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the content of the prior written notice.

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

- Arranging for an interpreter if English is not the native language of the parents or if the parents has a hearing impairment; or,
- 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 parents understand the content of the notice. The special services department will send the parents the prior written notice after an evaluation; the IEP case manager will send the parents the prior written notice for an IEP team decision.

### **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 parents, 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 parents and student that the educational rights have transferred to the student and the IEP case manager will send any required notices to both the parents and the adult student.

At an IEP meeting occurring no later than 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 student over the age of eighteen is unable to provide informed consent or make educational decisions, and the student does not have a legal guardian, the parent or other interested party may ask the district to appoint an educational representative. This determination will only be made if two separate professionals state that they conducted an examination or interviewed the student and concluded the student is incapable of providing informed consent, and the student has been informed of this decision. The district will appoint the parents, spouse, or another adult who is willing to act as the student’s educational representative, or a surrogate educational representative to represent the student, in that order of preference. 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 or designee is responsible for maintaining the confidentiality of personally identifiable student information pertaining to special education. The special services compliance department’s lead secretary 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 parents 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 (through an annual guidance team training) 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) and the district’s procedures.

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

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. District policy and procedure JO and JO-R, Student Records, describes the process and timelines for challenges and hearings regarding student records. The district follows the records retention outlined by the Secretary of State. The district shall inform parents or adult students when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student. The information shall be destroyed at the request of the parents or adult student, or will be provided to the parents 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 KBA and KBA-R, Public Access to District Records.

### **Surrogate Parents**

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

The special education office is responsible for determining the need for appointment of a surrogate parents.

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

The district will utilize the following criteria to assist in determine the status of the parents' rights to make educational decisions:

- In cases where the student is in out of home care the district must determine the legal custodial status of the child;
- 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;

- 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;
- 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;
- Parents whose parental rights are terminated no longer have the right to make educational decisions on behalf their child; and
- When a student is placed in foster care the foster parents may act as the parents. 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 the identification, evaluation, placement of, and provisions of FAPE to the student.

If a student is referred for special education or if special education student transfers into the district who may require a surrogate parent, 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 protected.

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 which is involved in the education or care of the student. This includes OSPI, DSHS, district employees, and group care providers.

The district will assign a surrogate within 30 days of the determination that a surrogate parent is required. The district will at a minimum, review with the surrogate parent procedural safeguards, parents’ involvement in the special education process, parents education publications and special education regulations. The district will also cooperate, as needed, with other districts, the ESD or OSPI, and the district parents group in training surrogate parents and in establishing a list of persons willing and able to serve as surrogate parents or when requested by school personnel.

### **Mediation**

The purpose of mediation is to offer both the parents 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 the parents 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 non-adversarial manner. The District utilizes mediation services provided by the Office of Superintendent of Public Instruction 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 parents 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.

### **Restraint or Isolation of a Student**

The following procedures are established for the appropriate use of restraint or isolation of students with disabilities. These procedures include parent/guardian notification of incidents of restraint or isolation in accordance with RCW 28A.600.485 and WAC 392-172A. Definitions and reporting procedures are in accordance with Policy JFA-R, Restraint or Isolation of Students.

### **Limitations on the Use of Restraint and Isolation**

Restraint or isolation must be closely monitored to prevent harm to the student and must be discontinued as soon as the likelihood of serious harm has dissipated.

### **Restraint or Isolation in an IEP**

The district is committed to providing a safe and beneficial learning environment for all students. Although restraint and isolation of any student should generally be avoided, there are circumstances where such actions are necessary to preserve the safety of students and school staff as defined in RCW 28A.600.485.

The planned use of restraint or isolation may be included in a student's IEP as part of emergency response protocols in accordance with state law only if (1) the student's needs require specific planning of this nature and (2) the parent provides written agreement, in advance, to the emergency response protocols to be adopted.

If the parent and the district agree that the use of restraint or isolation will be included in emergency response protocols in a student's IEP, the emergency response protocols must specify:

- 1) The emergency conditions under which restraint or isolation will be used.
- 2) The type of restraint or isolation that may be used.
- 3) The staff or contracted positions permitted to use restraint or isolation with the student and the required training, which must be updated annually, for these individuals.
- 4) Any special precautions which must be taken.

Any staff member or other adult using restraint or isolation pursuant to emergency response protocols must be trained in the use of restraint and isolation.

### **Notification of Policy and Procedures**

All IEPs will include notice of the above procedures for notifying parents or guardians regarding the use of restraint or isolation. The District will provide a copy of the section of Procedure IGB-R regarding use of isolation and/or restraint for students on IEP or 504 to parents or guardians of students with IEPs or section 504 plans at the time that the program or plan is created. Upon request, the District will also make available to parents a copy of this procedure or information on where to access the laws and regulations set forth above.

### **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 the special education office and on the OSPI Special Education and Administrative Resources Web site.

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. If the parents have not filed the request for hearing with OSPI, the district will forward the parents request to OSPI Administrative Resources Section. The district may not delay or deny a parents' due process hearing request. 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 office is responsible for providing the parents a copy of the procedural safeguards in this situation and documenting that the safeguards were provided to the parents.

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. 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 no more than 15 days after a parent files a due process request with the district and provides a copy of the request to OSPI or within seven days if the hearing request involves an expedited hearing regarding discipline. The 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 legal counsel to a resolution meeting unless the parents are 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 parents 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 shall determine on a case-by-case basis whether corrective action is permitted under WAC 392-400 should occur. However, students eligible for special education must not be improperly excluded from school for reasons that are related to their disability or related to the district's failure to implement a student's IEP. The district shall take steps to ensure that each employee, contractor, and agent of the district responsible for education or care of a student is knowledgeable of special education disciplinary rules.

**Removal Up to Ten Days**

A building administrator may remove a special education student from a current placement. The district need not provide services to a special education student removed from the current placement for ten school days or less in any school year, if services are not provided to a student without disabilities.

**Removal for More than Ten Days**

Once a student has been removed from placement for a total of ten school days in the same 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 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 student's IEP case manager, in consultation with one or more of the student's teachers, shall make the determination of such necessary services.

**Change in Placement**

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

- Removed from current placement for more than ten consecutive school days in a school year; or
- Subjected to a series of removals in a school year and which constitute a pattern of removal because:
  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. 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 series 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. The building administrator will notify the special education director or designee of relevant circumstances by email or in writing.

**Manifestation Determination**

Within ten school days after the date on which the decision to change the placement is made the district shall conduct a "manifestation determination" of the relationship between the student's disability and the behavior subject to the disciplinary action.

The review of the relationship between a student's disability and the behavior subject to the disciplinary action shall be done in a meeting by the parents and relevant members of the IEP team who are selected by the parents and the district. The special education coordinator and IEP case manager will arrange the meeting and send notice to the parents. The team shall review all relevant information in the student's file, including the IEP, teacher observations and information provided by the parents 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 met either of the above, the behavior must be considered a manifestation of the student's disability

If the team determines, specifically, that the conduct was the direct result of the district's failure to implement the IEP, the district must take immediate action to remedy the deficiencies.

If the IEP team determines that the conduct was a manifestation of the student's disability, the team must:

1. Conduct a functional behavioral assessment (unless already completed) and implement a behavioral intervention plan; or,
2. Review the existing behavioral intervention plan and modify it to address the behavior; and,
3. Return the child to the placement removed from unless the parents and the district agree a change is necessary, or unless the infraction involves drugs, weapons, or bodily harm.

If the IEP team members described in the manifestation determination section determine that the behavior is not a manifestation of the student's disability, the district may apply the same corrective actions that apply to students without disabilities. However, the student must continue to receive 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 relevant IEP team members, selected by the parents and the district, shall determine appropriate services.

#### Special Circumstances

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

- Possesses a dangerous weapon or carries such a weapon to school or to a school function; or,
- Knowingly possesses or uses illegal drugs while at school or a school function; or,
- Sells or solicits the sale of a controlled substance while at school or a school function; or
- Inflicts serious bodily injury upon another person while at school or a school function. Serious bodily injury means a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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

- Be selected so as to enable the student to participate in the general curriculum, although in another setting and to progress toward meeting the goals set out in the student's IEP; and
- Include services and modifications designed to address the behavior or to prevent the behavior from recurring.

The district may ask an administrative law judge 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 can demonstrate beyond a preponderance of the evidence that maintaining said student's current placement is substantially likely to result in injury to the student or others;
- The district has made reasonable efforts to minimize the risk of harm in the current placement, including the use of supplementary aids and services; and
- The proposed interim alternative educational setting has been proposed by school personnel in consultation with the student's special education teacher and meets the requirements of WAC 392-172A.

Unless the parents and the district agree otherwise, if the parents request 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.

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

### **Students Not Determined Eligible for Special Education**

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

The district is deemed to have knowledge if:

- The parents expressed concern in writing (or verbally if the parents does not know how to write or has a disability the prevents a written statement) to district supervisory or administrative personnel or a teacher of the student that the student is in need of special education and related services; or
- The parents requested that the student be evaluated for special education services; or,
- 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 services department or to other supervisory staff.

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

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

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

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

### **Staff Qualifications**

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

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

All special education teachers providing, designing, supervising, evaluating, or monitoring the provision of special education shall possess “substantial professional training.” This shall be shown by the issuance of an appropriate special education endorsement on an individual teaching certificate issued by the superintendent of public instruction.

In the event a special education teacher does not have a certificate endorsed in special education, a district may apply for a pre-endorsement waiver through the special education section of the OSPI. To qualify for the special education pre-endorsement waiver, the teacher must meet SBE criteria.

If the district must temporarily assign a classroom teacher without a special education endorsement to a special education position, the district’s Human Resources department will document in writing that:

- The district is unable to recruit a teacher with the proper endorsement who was qualified for the position; and/or,
- The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practical; and/or,

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

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

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

### **Personnel Development**

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

- Special education concerns will be identified through a staff needs assessment completed by administrators, and/or teachers, educational staff associates, program assistants;
- Training must be provided annually to all personnel who may foreseeably use isolation or restraint;
- In-service training schedules will be developed based upon the results of the district assessment and in support of needs identified;
- 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 special education student; and,
- Classified staff will be considered to have been trained in the state recommended core competencies their first two years of employment.

### **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 in the Parents Information Booklet that is sent home at the beginning of each school year.

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10/13/17

CROSS REFS.: IGB Education of Students with Disabilities  
AC Nondiscrimination  
JFA Restraint and Isolation of Students  
JFA-R Restraint and Isolation of Students

LEGAL REFS.: 45 CFR Part 99 Family Education and Privacy Act  
PL 101-336 Section 512 Americans With Disabilities Act  
of 1990  
34 CFR Part 300 Individuals with Disabilities Education Act