

INSTRUCTION

Special Education and Related Services for Eligible Students

The purpose of the district 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 Act 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 Director of Special Services if there are questions regarding special education. These procedures describe how the district implements its special education program.

I. Free Appropriate Public Education

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 basic education funding for eligible special education students.

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

Services to eligible special education students age 3 to 21 will be provided without charge to the student. This does not include incidental fees normally charged to all students. Special education services provided by the district will meet state education standards. Special education services will include preschool, elementary, and secondary education and will be provided in conformance with the student's Individual Education Plan (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, interdistrict agreements, or interagency coordination.

II. Students Covered by Public or Private Insurance

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

- A. Require parents or guardians to sign up for or enroll in public insurance programs in order for their students to receive FAPE under Part B of the IDEA;
- B. Require parents or guardians to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim;
- C. Use a student's benefits under a public insurance program if that use would cause the following:
 - 1. Decrease available lifetime coverage or any other insured benefit;
 - 2. Result in the family paying for services required after school hours that would otherwise be covered by the public insurance program;
 - 3. Increase premiums or result in discontinuation of insurance; or
 - 4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

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

- A. Obtain parent or guardian consent in accordance with Chapter 392-172A WAC each time the district wishes to access benefits for a new procedure; and
- B. Inform the parents or guardians that their refusal to permit the district to access their private insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost to the parents or guardians.

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

- A. a statement of the parental consent provisions;

- B. a statement of the “no cost” provisions;
- C. a statement that the parents may withdraw their consent to disclose personally identifiable information to the agency responsible for administering the state’s public benefits or insurance, and
- D. a statement that a parent’s withdrawal or refusal to consent does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

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

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

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

The School Psychologist/Speech Language Pathologist is responsible for providing the required notices and requests for consent to parents under this section.

III. Parent Participation in Meetings

The district encourages parental involvement and the sharing of information between the district and parents to support the provision of appropriate services to its students. As used in these procedures, the term “parent” includes parents; legal guardians; persons acting in the place of a parent, such as relatives and stepparents; 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 free appropriate public education. When a meeting is scheduled parents will be:

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

When a meeting involves an IEP or placement,:

- A. The parent will be notified that the district or the parent may invite others who have knowledge or special expertise of the student; and
- B. Notified that the district or the parent may invite others who have knowledge of the student or special expertise, and
- C. The meetings shall be scheduled at a mutually agreeable time and place.
- D. When the meeting involves transition needs or services, the student will also be invited.
- E. The district shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- F. The case manager or appropriate special education staff is responsible for parent notification and meeting arrangements.

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

The district may proceed with the IEP or placement meeting if the district is not able to get the parent to attend. In this case, the district will document its attempts to arrange the meeting. This documentation will include records of telephone calls and the results, copies of correspondence sent to the parent, and/or other means used to contact the parent.

If another agency is or may be responsible for payment or provision of transition services, a representative of that agency will be invited. If the 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.

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

IV. Childfind – Identification

The purpose of Childfind is to locate, evaluate, and identify children with suspected disabilities, who are not currently receiving special education and related services, and who may be eligible for those services. Childfind activities are intended to reach the following:

- A. Children who reside within school district boundaries; including preschool age students
- B. Highly mobile children, such as homeless, foster care and migrant children;
- C. Children who have a disability and may need special education services even though they are advancing from grade to grade; and
- D. Children attending approved, nonprofit private elementary and secondary schools located within the district boundaries;
- E. Children at home or home schooled.

The district will consult with representatives of private school students to ensure its child find activities are comparable in approved, nonprofit private schools located within district boundaries. These consultations will occur annually through letters or follow-up contact.

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

- A. Notification to parents of Childfind activities in its annual informational packet;
- B. District informational mailings and district website;
- C. Posting notices regarding screening and referral in schools and public locations newspaper and other media;
- D. Notifying and coordinating with the designated Part C lead agencies;
- E. Early childhood screenings conducted by the district;
- F. Coordination with other public and private agencies and practitioners;
- G. Written information provided to district staff on referral procedures;
- H. Training teachers and administrators on referral, evaluation, and identification procedures; and

- I. Review of student behavior, discipline, and absentee information and information gathered from district-wide assessment activities.
- J. Notification to private schools located in the district's boundaries.

The district, through the special services department, conducts early childhood screenings for students ages birth to five years. The screenings occur weekly at the special services office or contracted agency for Part C. When parents or others inquire about screenings, the callers will be referred to the special services department.

The screening process involves the following:

- A. Parents are asked to provide information to assist in the assessment of their children.
- B. Children are screened to assess cognitive, communication, physical, social-emotional, and adaptive development.

Parents will be notified at the screening of the results, and parents will also be provided prior written notice of the results within ten days of the screening. If the screening supports evaluation, written consent for evaluation will be obtained at the exit interview whenever possible, or consent forms may be included with the written notice of the results. If screening results indicate the child does not need an evaluation, written notice shall be sent to the parents within ten days of the screening. Evaluation shall occur in accordance with evaluation procedures.

V. Childfind – Referral

A student or child, whether or not enrolled in school, may be referred for a special education evaluation by any source. Each building principal will designate a person responsible for ensuring that staff members understand the referral process. Referrals are required to be in writing unless the person referring is unable to write. A person who makes an oral referral should be asked to either make the referral in writing or go to the main office of the building for assistance in making the referral. When a referral is made regarding a student, 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 a certificated employee. The special services department records the referral, provides written notice of the referral to the parent, and advises the special services evaluation team to collect and review district data and information provided by the parent to determine whether evaluation is warranted.

During the referral period, the special services evaluation team will collect and review existing information from all sources, including parents. Examples may include the following:

- A. The child's history, including developmental milestones;
- B. Report cards and progress reports;
- C. Individual teacher or other provider information regarding the child;
- D. Assessment data;
- E. Medical information, if available; and
- F. 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 special services department will provide written notice to the parents of the decision regarding evaluation, whether or not the parents attend the meeting.

Recommendations regarding evaluation are forwarded to the special services department. If the determination is that the child should be evaluated, the reviewers shall include information about the recommended areas of evaluation. This information will assist the office in providing parents written notice and will assist the district in selecting appropriate members for the evaluation group. The special services department is responsible for notifying parents of the results using written prior notice. When the determination is that the child will be evaluated, parent consent for evaluation and consent for release of appropriate records will be sent with the notice. When the team does not suspect a disability, the district may deny the request. In this case, written notice, including the reason for denial and the information used as a basis for the denial, must be given to the parent.

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

- A. The parents and district agree in writing to extend the timeline;
- B. The parent fails or refuses to make the student available for the evaluation; or
- C. The student enrolls in another school district after the evaluation is begun but before completion and the parent and new district have an agreement for completion of the evaluation.

The school district is not required to obtain consent from the biological parent if:

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

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

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

The district will participate in transition planning conferences, arranged by the local lead agency as designee of the Part C lead agency for each student who may be eligible for preschool services. Transition plans will be designed to promote uninterrupted provision of appropriate services to the child.

1. The School Psychologist assigned to the Part B to Part C transition assessments will serve as the point of contact with the family resource coordinator for timely execution of transition planning conferences that are arranged at least 90 days before the student's third birthday by the designee of the Part C agency;
2. 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:

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

VI. Evaluation and Eligibility

The purpose of evaluation is to determine eligibility for special education and related services and to obtain enough information to develop the IEP if the student is eligible. This includes information provided by the parent. Evaluation activities and procedures are used to determine whether:

- A. The student has a disability that adversely affects educational performance;
- B. The student requires special education and any necessary related services; and
- C. The nature and extent of special education and related services needed by the student.

Evaluations of students are to be complete with 35 school days after parental consent or after consent is overridden in a due process hearing. If staff is unable to obtain voluntary parental consent and those reviewing the data believe the student is appropriately identified for evaluation, the special services department shall arrange an opportunity to ask the parent to agree to mediation or proceed with a due process hearing to request that the school be allowed to conduct the evaluation.

Evaluation activities include the following:

- A. Determining the student's eligibility and need for special education and related services;
- B. Measuring the student's present levels of functioning, needs, abilities, and limitations;
- C. Drawing conclusions about the significance of findings as they relate to the general education curriculum and instructional programming; and
- D. Providing information that will assist the IEP team in making decisions about the special educational program, including necessary related services, assistive technology needs, extended school year services, and supportive services.

The district will evaluate the student in all areas related to the suspected disability and sufficiently comprehensive to identify special education and related services needs, whether or not the needs are commonly linked to a particular disability category. Areas of evaluation should include, if appropriate, health, vision, hearing, social skills, emotional status, general intelligence, academic performance, communication skills, and motor abilities.

The district special services department shall select the members of the evaluation group. Members selected must be knowledgeable about the student and the areas of his/her suspected disabilities. Qualifications of a group member include having the appropriate professional license or certification, and groups may include outside practitioners when necessary. If the student requires a medical evaluation in order to determine eligibility, the district will coordinate with the parents to arrange for the evaluation at district expense or through the use of public or private insurance if the parent consents to allow the district to use the insurance. When the district suspects the student may have a learning disability, the evaluation group will include the parents and a group of qualified professionals.

The evaluation group shall use a variety of methods, tools and strategies designed to gather relevant functional and developmental information. Evaluation procedures or materials must be free of racial, cultural or sexual/gender bias and they must be used for the purpose for which they are valid and reliable. Tests must be appropriate for the student's age and stage of developmental level. Tests should be administered in the native language of the student or conducted in the mode of communication most familiar to the student. If it appears to be clearly not feasible to conduct a procedure or test in the mode of communication most frequently used by the student, the IEP team, including the parent, will develop an individualized strategy for valid evaluation of the student's skills. The evaluation may not rely on one source or procedure as the sole criterion for determination and should include the following:

- A. Review of existing data; including corresponding response to intervention (RTI) documentation if available;
- B. Relevant functional and developmental information;
- C. Information from parents;
- D. Information from other providers;
- E. 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;
- F. Current classroom-based evaluations using criterion-referenced and curriculum-based methods, anecdotal records, and observations;
- G. Teacher and related service provider observations; and
- H. Testing and other evaluation materials, which may include medical or other evaluations when necessary.

VII. Determining Needed Evaluation Data

Members of the evaluation group select the specific assessments to be used in the evaluation, based on a review of existing data and the student's particular needs. The review of the existing data should include the evaluation group members, the parents, and other persons who would be members of the IEP team if the student is determined to be eligible. If it is determined that no additional testing data is necessary to make a decision about eligibility, the parents will be notified that no additional testing is necessary and of their right to request additional assessments.

When additional assessments are necessary, members of the group 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 evaluation group shall use a variety of methods, tools, and strategies designed to gather relevant functional and developmental information. The evaluation will not rely on one source or procedure as the sole criterion for determination. If the IEP Team determines that no additional data are needed, the IEP team will

notify the student's parent of that determination and the reasons for it, and inform them of their right to request additional assessments. The district will complete the evaluation using existing data.

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

VIII. Specific Learning Disability (SLD)

The district will use a severe discrepancy approach for identifying students with a specific learning disability. The district may choose to use a combination of severe discrepancy and a process based on a student's response to scientific, research-based intervention (RTI) in determining the identification of students with a specific learning disability upon adoption of related RTI policies and procedures by the district.

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

- A. A physical, mental, emotional, cultural or environmental factor or limited English proficiency; or
- B. Inadequate instruction in reading or mathematics.

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

IX. Evaluation of Transfer Students

If a student transfers into the school district while an evaluation process is pending from the other district, the Director of Special Services or designee is responsible for determining the status of evaluations conducted to date and making a determination as to whether the evaluation can be completed within the 35 school day timeline from the date the parent provided consent. If the determination is that additional time will be needed, the school psychologist, speech language pathologist or other evaluation team leader will notify the parent and obtain the parent's agreement to establish a new timeline.

X. Eligibility

The evaluation group and the parents will determine whether or not the student is a special education student.

- A. A student is not eligible if the determinant factor is lack of appropriate instruction in reading, writing or math, based upon the state's grade level expectations, or limited English proficiency.
- B. Eligibility may be determined by documented professional judgment when properly validated tests are unavailable or corroborating evidence indicates that results were influenced due to measuring a disability.
- C. The parent will be provided with a copy of the evaluation report and the documentation of determination of eligibility.

Parents will also be provided with written notice of the eligibility decision within ten school days of the decision. The special services department is responsible for sending the notice.

Eligible students remain eligible for special education services until one of the following three events occur:

- A. The student is determined through a re-evaluation to no longer need special education;
- B. The student has met district high school graduation requirements; or
- C. The student has reached age 21. A special education student whose twenty-first 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.
- D. The student no longer receives special education services based upon a parent's written revocation of services.

When a special education student is expected to graduate prior to age 21 or when graduation is a part of the transition plan, the IEP team will document student progress toward achieving course credits for graduation on the transition portion of the IEP. The district will provide prior written notice to parents and adult students that the student is expected to graduate and will no longer be eligible for special education services. The district will also provide the parents and student with a summary of academic achievement and functional performance and recommendations to assist the student with postsecondary goals.

XI. Evaluation Report

Each person conducting an assessment of the student will specify the procedures and instruments used, 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 report, which will reflect the evaluation information. The report will be completed before the conclusion of the evaluation period and will, at a minimum, contain the following:

- A. Identification of the disability requiring special education and related services if a disability exists;
- B. Discuss assessments and review data supporting conclusions regarding eligibility;
- C. Information on how the disability or disabilities affect the student's involvement and progress in the general curriculum;
- D. Recommendations for 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 services beyond 180 school days, and location of services;
- E. Other information as determined through the evaluation process and parent input;
- F. Additional information required for the specific learning disability eligibility category;
- G. Any necessary professional judgments and facts or reasons in support of the judgments; and
- H. Signatures and date signed for members of the evaluation group to certify their agreement. Any member of the group who disagrees with the conclusions shall prepare a statement presenting his/her conclusions.

The special services evaluation team is responsible for notifying parents of evaluation meetings.

XII. Re-Evaluation

A reevaluation of a student receiving special education or related services is conducted if academic achievement and functional performance has improved to warrant a reevaluation, if the IEP team suspects that the student may no longer be a student with a disability or if the child's parent or teacher requests a reevaluation. A reevaluation does not occur more than once per year, unless parent and school agree otherwise. Every special education student will be re-evaluated at least once every three years using the evaluation procedures unless parents and school staff agree that a reevaluation is unnecessary. An agreement that an evaluation is unnecessary shall be confirmed in writing to the parent.

Students who turn six and who met the eligibility requirements for the disability category of “developmentally delayed” under the criteria for ages three to six years need not be re-evaluated at age six under the criteria for six to nine years until three years after the initial evaluation was completed and eligibility was established in the age three to six category.

Students who were previously eligible under the category of “developmentally delayed” must be re-evaluated before age nine to determine eligibility within another category.

The re-evaluation process shall be completed within 35 school days after the parent’s consent or within 35 school days after a parent’s refusal to consent is overridden by a due process decision and not later than three years after the previous eligibility determination.

As part of any re-evaluation, members of the IEP team and other professionals the district determines appropriate will review existing data, which may include the following:

- A. Evaluation and information provided by parents;
- B. Current classroom-based assessment , local or state assessments and observations; and
- C. Observations by other teachers and related services providers data.

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

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

This review can occur at a meeting or through individual review. If members of the IEP team 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.

If additional testing is needed, the School Psychologist, Speech Language Pathologist or other designated evaluation team leader will request written parental consent for re-evaluation and provide prior written notice identifying the areas of assessment; If the parents do not return the signed consent form, the district will send another letter explaining the need for reevaluation and

parent consent will enclose another consent form and a copy of the prior written notice. In addition, the district will document its reasonable attempts to obtain consent such as telephone calls, emails, personal contact and other efforts to obtain consent. If the parents do not respond to the request for consent after being notified three times in two ways, and the district has documented its reasonable attempts to obtain consent, the district will send a prior written notice and proceed with the re-evaluation. If the parents refuse to consent, the district shall seek mediation in order to obtain consent or, if necessary, request a due process hearing to ask an administrative judge to override the parents refusal to re-evaluation.

After the re-evaluation is complete, the school psychologist, speech language pathologist or other team evaluation leader will invite parents to the eligibility meeting and will also provide prior written notice after the meeting of the results of the re-evaluation to parents in their primary language, indicating one or more of the following:

- A. Whether the student continues to be eligible and in need of special education;
- B. Present levels of performance and educational needs of the student; and
- C. Whether any additions or modifications to the special education program 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.

XIII. 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 to the student and the parent within 2 weeks before the students anticipated graduation date and the IEP team will provide the student with a summary of academic achievement and functional performance including recommendations on how to assist the student in meeting post-secondary goals. The School Psychologist, Speech Language Pathologist or other designated evaluation team leader is responsible for assuring that the IEP team completes the summary of academic achievement and functional performance.

XIV. Independent Educational Evaluations

Parents of special education students or students who have been referred for special education have a right to request an independent educational evaluation at public expense each time the district conducts an evaluation of the student.

When parents request an independent educational evaluation, the district must decide within fifteen calendar days whether or not to provide it. Any parent request for an independent evaluation should be immediately referred to the Director of Special Services. The Director of Special Services shall review the request and determine whether or not the request is warranted. If the district denies the request, it must file for a due process hearing. The district may request mediation as an option after filing the due process hearing. If the parents withdraw their request for an independent educational evaluation, the due process hearing may be dismissed.

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

The following criteria for the selection of an individual to conduct an independent educational evaluation at public expense are established for the purpose of identifying the knowledge, experience, and qualifications of individuals selected to conduct the evaluations; guaranteeing the selection of local professionals who can maintain any necessary ongoing contact and consultation with the district; and ensuring that such evaluations are conducted at reasonable fees commensurate with the usual and customary rate in this geographical area. Any individual selected to conduct either a district evaluation or an independent educational evaluation must fulfill the following qualifications:

- A. Be licensed, credentialed, or otherwise qualified within the state of Washington or state of residence/practice to perform an evaluation in the specific professional discipline for which an independent evaluation is sought;
- B. Be knowledgeable and experienced in evaluating children with similar disabilities;
- C. Be geographically located within the state of Washington or bordering states; and
- D. Be available to the district at a maximum fee that does not exceed by more than 25 percent the prevailing average for similar evaluations within the state of Washington.

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

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

XV. Individualized Education Programs (IEP)

1. IEP Development

The IEP is the written statement reflecting the implementation of instructional programs and other services for special education students. The IEP is intended to be a practical method of addressing, based on the evaluation results, the identified needs of the student, which include special education, any necessary related services, and any other services necessary for the student to progress toward meeting his/her goals in the IEP.

An IEP must be in effect before initiation of special education services. The IEP must be developed no later than thirty calendar days after an initial determination of eligibility for special services. Additionally, parent consent is required for placement and the provision of special education services before the initial provision of special education services. Parent consent is not required after initial eligibility is established.

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

The IEP must be updated annually. The IEP may be revised more frequently as needed to adjust program and services.

The district will maintain a copy of the current IEP in the location(s) serving the special education student. The IEP is accessible to all staff members responsible for providing education, other services, or implementation of the IEP. All staff members will be informed of their responsibilities for 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 proper implementation. The building principal is responsible for ensuring that staff members are knowledgeable about their responsibilities.

The IEP 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 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 student's special services provider or school psychologist is responsible for coordinating interpreters and making arrangements for the meeting location.

The district will provide parents/guardians with a copy of the district's Required Notification of Isolation or Restraint of Students with IEPs or Section 504 Plans policy (Policy 3313) when the student's IEP is created.

The IEP team includes the following:

- A. The parents of the student;
- B. Not less than one general education teacher or preschool provider of the student if the student is or will be participating in the general education environment;
- C. The general education teacher or preschool provider, as a member of the IEP team, must to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies for the student and the determination of supplementary aides and services, program modification, and supports for school personnel that will be provided to the student.
- D. At least one special education teacher or, if appropriate, at least one special education provider of the student;
- E. 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; This may include the building principal, vice principal, dean of students, administrative designee, special programs director, or special education specialist.
- F. An individual who can interpret the instructional implications of the evaluation results;
- G. Any other individuals who have knowledge or special expertise regarding the student. These individuals may be invited by both the district and the parents at the discretion of the person making the invitations;
- H. The student when appropriate or when required; and
- I. Students must be invited when the purpose of the meeting includes discussion of transition needs or services;

- J. If another agency is or may be responsible for payment or provision of transition services, an agency representative will be invited, with the parent's consent. If the agency representative cannot attend the meeting, district personnel shall keep the representative informed of the meeting and obtain agency information that will assist in the service provision;
- K. 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.
- L. The parents and district must agree in writing before any of the above team members are excused from all or part of a meeting. If a team member's area of the IEP is being discussed or modified, then the parent and district must consent to their excusal; and that specific team member must provide advance written input for their part of the IEP prior to the meeting.

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

Please refer to Parent Participation and Meetings for the requirements of a parent invitation to IEP meetings.

Sometimes parents do not attend IEP meetings. Additionally, there will be times when parents do not agree with the IEP as proposed and despite attempts to reach agreement on IEP content, the team does not reach agreement. If a parent attends the IEP meeting and agreement is not reached on the IEP, the team 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 implemented the district must send prior written notice of the decisions reached to the parent, including the date the IEP will be implemented.

When parents do not attend IEP meetings 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. In these instances, the following procedures shall apply:

- A. Have IEP team members present sign the IEP;
- B. Send a copy of the IEP to the parent and provide the parent prior written notice that the district intends to implement the IEP; and
- C. Forward the documentation of actual or attempted contacts to the special services department for processing.

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

2. IEP Preparation and Content

IEP teams will consider the recommendations in the most recent evaluation to develop the IEP. In developing the IEP, the team should consider the following:

- A. The strengths of the student including academic, developmental and functional needs of the student and concerns of the parents for enhancing the education of the child;
- B. Whether positive behavioral interventions and supports, including a behavioral intervention plan, as defined by WAC 392-172A-01031, are needed to address the student's behavior;
- C. Whether the student with limited English proficiency has language needs;
- D. Whether Braille instruction is appropriate for a student who is blind or visually impaired;
- E. Whether a student has other language and communication needs; and
- F. Whether assistive technology devices or services are needed.

IEP content includes the following:

- A. Present levels of academic and functional performance, including a description of how the disability(ies) affect the student's involvement and progress in the general curriculum of preschool activities;
- B. Measurable academic and functional annual goals for the student, including benchmarks or short-term objectives (if the student is participating in the alternative assessments) that meet the student's needs resulting from the disability(ies) and enable involvement and progress in the general curriculum or in preschool activities and will meet the student's other educational needs;
- C. A statement of special education services, any necessary related services, supplementary aids and services to be provided to the student, and program modifications or supports for personnel so the student may advance toward 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;

- D. 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;
- E. A statement of any accommodations provided in the administration of state or district-wide assessments of student achievement that are needed to allow the student to participate in the assessments. If the team determines the student will not participate in a particular assessment, the IEP will address why that assessment is not appropriate and why the particular alternative assessment is appropriate for the child.
- F. The date for beginning of services and the anticipated frequency, location, and duration of services and modifications;
- G. A statement of how the student's progress toward goals will be measured, how the student's parents will be regularly informed of their child's progress toward the annual goals, and whether the progress is sufficient to enable the student to achieve the goal by the end of the year. Measurement of the student's progress will be based on the data collected as designated on the IEP. The individual responsible for implementing the goal is responsible for maintaining the data used to measure progress. Information to the parents can be provided at the same time the district issues progress reports, report cards, or other agreed times identified in the IEP.
- H. Beginning at age 16, or sooner if the IEP team determines it is appropriate, a statement of needed transition services and any interagency responsibilities or needed linkages. The transition component must include appropriate measurable postsecondary goals based on age appropriate transition and assessments related to training, education, employment and independent living skills where appropriate; and the transition services (including courses of study) needed to assist the child in reaching those goals;
- I. A statement regarding transfer of rights at the age of majority. The IEP team leader will ensure that the student will be provided information regarding their rights, one year prior to the student turning 18 years of age. This will be documented on the IEP at the time of the IEP meeting
- J. Emergency response protocols, if determined necessary by the IEP team for the student to receive FAPE and parents provide consent. Emergency response protocols must meet the requirements stated in WAC 392-172A-02105;)
- K. A behavioral intervention plan (BIP), if determined necessary by the IEP team for a student to receive FAPE. The BIP must meet the requirements stated in WAC 392-172A-01301;
- L. The procedures by which parents/guardians will be notified of the use of isolation or restraint or a restraint device on their student (*see Procedure 3313P*).

M. Extended school year services. The consideration for extended year services is a team decision, based on information provided in the evaluation report and based on the individual needs of a student. Extended school year services are not limited by categories of disability or limited by type, amount, or duration of the services. If the need for extended school year services is not addressed in the IEP and extended school year services may be appropriate for the student, the IEP team will meet by May 1 to address the need for extended school year services. Factors for the team to consider when determining the need for extended school year services may include but are not limited to the following:

- Documentation of regression or difficulty regaining skills during pre- and post-school breaks;
- Acute/chronic health problems that negatively impact the student's education;
- When a student is beginning to show progress in a critical skill and the team determines that an extended program is appropriate; or
- When a student is not making progress despite changing objectives, methods, materials, placement, or time.

Use of isolation, restraint and restraint devices:

A. Definitions

1. **Imminent:** The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.
2. **Isolation:** Restricting a student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan.
3. **Likelihood of serious harm:** A substantial risk that physical harm will be inflicted by a student:
 - a. upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;
 - b. upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm;

- c. upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or
 - d. after the student has threatened the physical safety of another and has history of one or more violent acts.
4. **Positive behavioral intervention:** Strategies and instruction that can be implemented in a strategic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior.

C. Conditions specific to use of isolation:

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

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

- 1. Use of restraint devices by district employees during school-sponsored instruction or activities is not authorized in any circumstances unless there is reason to believe imminent death or serious bodily injury to the student(s) and/or other person would result without the use of the restraint device.

2. The use of restraint or a restraint device must be discontinued as soon as the likelihood of serious harm has dissipated;
3. The restraint or restraint device will not interfere with the student's breathing;
4. Any staff member or other adults using restraint or restraint devices must be trained and certified by a qualified provider in the use of such restraint or restraint devices, unless trained personnel are not immediately available due to the unforeseeable nature of the emergency.

E. Documentation and Reporting Requirements

Districts must follow the documentation and reporting requirements for any use of isolation, restraint, or a restraint device consistent with RCW 28A.600.485 and the parental notification requirement of RCW 28A.155.210. See Policy and Procedure 3313.

3. Transfer Students

Students who transfer from one district to another within the state continue to be eligible for special education and any necessary related services. When an eligible student transfers into the district, the building principal, school psychologist, or speech and language pathologist will notify the special services department. The IEP team will review the student's IEP to determine whether the district is able to implement the services on the IEP, as written, and will notify parents. If implementation of the IEP is not possible, the district will provide services that approximate the services on the old IEP until a new IEP can be developed. If it is necessary to develop a new IEP, the district will convene the IEP team as soon as possible.

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

The district must take reasonable steps to promptly obtain records, including IEP supporting documents and any other records related to special education or related services from the previous school. The school psychologist, speech language pathologist or other team evaluation leader is responsible for obtaining records and ensuring follow-up if the records are not provided.

4. Placement

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

When programming decisions are addressed by the IEP team, proper consideration must be given to the least restrictive environment. Within the educational setting, the disabled student should be placed, whenever possible, as follows:

- A. In the school the disabled student would normally attend; and
- B. With nondisabled students in the general education 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.

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

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

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

Within the nonacademic setting, students will be provided nonacademic and extracurricular activities with nondisabled students as specified on the IEP and described in WAC 392-171A-02025. Limits on nonparticipation or conditions of participation must be designated in the IEP.

The district will also make opportunities available for special education students to participate with non-disabled students in district elective courses or special course offerings.

Within the district, a range of placement options exists with inclusion, resource room, Tier III intensive support, self-contained, life skills, adaptive life skills, homebound, and out-of-district provisions. These options are intended to address the individual needs of students, and they are considered according to the process described below.

The placement of each student with a disability will be determined annually or sooner, if appropriate, by the IEP team. The appropriateness of placement options will be based upon various decisions, including the following:

- A. Data-based judgments in IEP development;
- B. Data-based judgments in determining LRE;
- C. The reasonable probability of the placement option(s) assisting the student to attain annual goals and objectives and the quality of services needed;
- D. The consideration of potentially harmful effects upon the student or on the quality of services needed.

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

XVI. Students Unilaterally Enrolled in Private Schools by Parents

On November 1 of each year, the district shall conduct an annual count of the number of private school special education students residing in the school district boundaries, who are unilaterally enrolled by their parents in a private school located within the district boundaries. . Prior to November 1, the district director of special services or designee shall consult with appropriate representatives of private schools and representatives of parents of private school students to decide how to conduct the annual count. The purpose of the child count is to determine the proportionate amount of money the district must spend on providing special education and related services, including transportation, to private school or preschool students in the next fiscal year.

The district is required to spend a proportionate amount of federal special education Part B and Section 619 funds to provide special education and related services to private school students. In order to determine which students will receive services, what services will be provided, how and where the services will be provided, and how services provided will be evaluated, the district shall consult with appropriate representatives of private school students. The district shall make the final decision with respect to services to be provided to eligible private school students. Private schools will be notified by the special services designee regarding identification and services that are provided to students attending nonprofit private schools. Each year the district will make attempts to meet with representatives of students who are unilaterally placed in private schools. Representatives of eligible private school students may include either a representative from the school or the parents.

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

Private school 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 not subject to sectarian control or influence may be provided on-site. District personnel may be made available to nonsectarian 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 nonsectarian private school teacher or other employee salaries, except for services performed outside regular private school hours and under public supervision and control.

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

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

Revocation of Consent

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

Upon receipt of the parent's written notice of revocation, the school psychologist, speech language pathologist or team evaluation leader:

- ± Will provide prior written notice for a reasonable time before the district stops providing services. The notice will include information about the effect of revocation and will inform the parent of the date the district will stop providing special education and related services.

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

XVII. Procedural Safeguards – Consent

The district will obtain informed, written parental consent before the following:

- A. Conducting an initial evaluation;
- B. Providing initial special education and related services to a special education student; and
- C. Conducting a re-evaluation if the reevaluation includes administration of additional assessments.

Parental consent is not required to review existing data as part of an evaluation or re-evaluation or to administer a test or other evaluation that is administered to all students unless consent is required from the parents of all students.

Informed consent means that the parent or adult student:

- A. Has been fully informed of all information relevant to the activity for which the district is seeking consent and that the information is provided in his/her native language or other mode of communication;
- B. 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
- C. Understands that the granting of consent is voluntary and may be revoked at any time.
- D. If consent is revoked, the revocation does not negate an action that has occurred after the consent was given and before the consent was revoked.

The district may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the district. If the district is unable to obtain consent, the district may use mediation procedures to obtain a parent's consent or request a due process hearing asking the administrative law judge to override the parent's refusal to consent to an evaluation. The district may not request a due process hearing to override a parent's refusal to consent to initial special education services. The district may not use mediation or due process procedures to override a parent's refusal to consent to an evaluation or reevaluation if the student is home schooled or enrolled in a private school.

XVIII. Notice of Procedural Safeguards

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

- A. Upon initial referral for evaluation;
- B. Upon receipt of request of the parent's first state complaint and first request for due process hearing in a school year; and
- C. Upon a disciplinary action that will result in a change of
- D. Upon request by the parent

The procedural safeguard notice used by the district includes a full explanation of all the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; 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; the child's placement during pendency of due process proceedings, including requirements for disclosure of evidence, mediation, due process hearings, civil actions, and attorney fees. Copies of the district special education procedural safeguards are available at the district office and all school sites or on the district web site.

XIX. Prior Written Notice

The district will provide prior written notice to parents or adult students whenever the district proposes or refuses to change the identification, evaluation, educational placement, or provision of a free appropriate public education to the student. The prior written notice will include the following:

- A. A statement that the parents have procedural safeguard protections and, if a copy of the procedural safeguards do not accompany the notice, a statement that describes how a copy of the statement of procedural safeguards may be obtained;
- B. A description of the action proposed or refused by the district;
- C. An explanation of why the district proposes or refuses to take the action and a description of other options the district considered and the reasons why the options were rejected;
- D. A description of any other factors that are relevant to the district proposal or refusal;
- E. A description of each evaluation procedure, test, record, or report the district used as a basis for the proposal or refusal; and
- F. 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 provision of this chapter.

Prior written notice of the 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 the following:

- A. Arranging for an interpreter if English is not the native language of the parents or if the parents have a hearing impairment; or
- B. Providing notice orally if the written language is not a native language.

The district will document in writing the attempts to explain this information so the parents understand the content of the notice.

XX. Transfer of Educational Rights to an Adult Student

When a special education student reaches the age of 18, all educational rights under Part B of the IDEA, previously exercised by the parent, transfer to the student, unless the student is determined to be incapacitated as to person in a guardianship proceeding. When the student turns 18, the district will send any required notices to both the parents and the adult student.

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

Appointment of an Educational Representative

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

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

XXI. Confidentiality and Records Management

The superintendent or designee is responsible for maintaining the confidentiality of personally-identifiable information pertaining to special education and all other students. The superintendent will maintain, for public inspection, a current list of the names and positions of district employees who have access to personally identifiable information for 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 training on procedures to protect the confidentiality of personally-identifiable information on an annual basis to employees collecting or using personally-identifiable information. The training will address the protections outlined in WAC 392-172, state law, and federal regulations implementing the Family Educational Rights and Privacy Act, FERPA, (34 CFR Part 99).

Upon request, the parents of a special education student or adult student will be afforded an opportunity to inspect, review, and challenge all educational records, including, but not limited to, the identification, evaluation, delivery of educational services, and provision of free appropriate public education (FAPE) to the student. The district shall comply with the request promptly and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, delivery of educational services, or provision of FAPE to the student, including disciplinary proceedings. 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 child. School personnel receiving requests for educational records will immediately forward the request to the director of special services.

If parents believe the information in an education record is inaccurate, misleading, or violates the privacy or rights of the student, they may request that the district amend the information. Policy and Procedure 3600, Student Records, describes the process and timelines for challenges and hearings regarding student records.

The district follows the guidelines for records retention outlined in the General Records Retention Schedule and Records Management Manual provided 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 request. However, a permanent record of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed will be maintained without time limitation.

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

XXII. Surrogate Parents

A surrogate parent is a person appointed by the school district to act on behalf of a student to help ensure the rights of the student to a free and appropriate public education (FAPE) when a parent cannot be identified, the whereabouts of the parent are unknown, or the student is a ward of the state.

The special services department is responsible for determining the need for appointment of a surrogate parent.

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

The following are guidelines for the district to follow to assist in determining the status of the parent's rights to make educational decisions. In cases where the student is in foster care, the district must determine the legal custodial status of the child.

- A. 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.
- B. Parents whose children are placed in group care, pending a determination of dependency, may still retain the right to make educational decisions unless otherwise ordered by the court.
- C. When a disposition order and order of dependency are issued, the state becomes the legal as well as physical custodian of the child. Parents no longer have the right to make educational decisions during this stage of dependency.
- D. Parents whose parental rights have been terminated no longer have the right to make educational decisions on behalf of the child.

When a student is placed in foster care, the district will work with parents, case-workers, foster parents, and others who have knowledge of the student's legal status in order to determine the need for appointment of a surrogate.

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

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

The person selected as a surrogate must meet the following criteria:

- A. Must have no interest that conflicts with the interests of the student he/she represents;

- B. Must have knowledge and skills that assure adequate representation of the student; and
- C. May not be an employee of a school district and/or other public agency involved in the education or care of the student. Public agencies include OSPI and DSHS to district employees, and group care providers.

The district may appoint as surrogate parents non-public agency employees involved in the care of the student and other persons who meet the standards described above.

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

XXIII. Mediation

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

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

A request from the school district for mediation services will be made in writing to the OSPI-contracted agent by the district director of special services. If a parent requests mediation, the district director of special services must be notified, and the director will respond to the parent and file appropriate requests with the OSPI-contracted agent. Staff members are reminded that discussions that occur during the mediation process shall be confidential.

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

XXIV. 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 provided in the notice of

procedural safeguards. If parents request information on 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 from the Special Programs Director and on the OSPI Special Education and Administration Resource Web site. Parent requests for hearings should immediately be forwarded to the special services department. If the parent has not filed the request for hearing with OSPI legal services, the district will forward the request to OSPI Administrative Resources Section. The district may not delay or deny a parent's 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 the school year. The district Special Programs Director is responsible for providing the parents a copy of the procedural safeguards in this situation and documenting that the safeguards were provided to the parent.

When a parent files a request for a due process hearing, the student remains in the placement he/she was in at the time of the request 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 Programs Director will immediately schedule a resolution meeting. The meeting must occur within 15 days after a parent files a due process request with the district and provides a copy of the request to OSPI, or, within seven days if the hearing request involves an expedited hearing regarding discipline. The Special Programs Director will determine the appropriate district staff that will attend the resolution meeting. The district will ensure that one of the district representatives attending the resolution meeting has authority to bind the district in any resolution agreement. The district will not bring district counsel to a resolution meeting unless the parent is bringing an attorney to the meeting.

Any resolution agreement reached will be documented in writing and is binding on the parties. The document will inform the parent of their right to void the agreement within three business days of signing the agreement.

XXV. 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 discipline that is permitted under WAC 392-400 should occur. Special education students must not be improperly excluded from school for disciplinary reasons that are related to their disability or related to the district's failure to implement a student's IEP. The district shall take steps to ensure that each employee, contractor, and other agent of the district responsible for education or care of a special education student is knowledgeable of special education disciplinary rules.

1. Removal Up to Ten Days

Authorized school personnel may order the removal of a special education student from his/her current placement. The district need not provide services to a student who is removed from the current placement for ten school days, or less in any school year, if services are not provided to students without disabilities.

Once a student has been removed from placement for a total of ten school days in the same school year, and if the district determines that the removal is not a change of placement, the district must, during subsequent days of removal, provide appropriate services to the extent necessary to enable the student to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The School Psychologist, in consultation with the student's teachers, shall make the determination of such necessary services.

2. Change in Placement:

A change of placement occurs when an eligible student is:

- A. Removed from his/her current placement for more than ten consecutive school days in a school year; or
- B. When a special education student is subjected to a series of removals accumulating to more than ten school days in a school year and which constitute a pattern of removal because of factors such as the length of each removal, the total amount of time a student is removed, and the proximity of the removals to one another.

Whether a pattern of removal constitutes a change of placement is determined on a case by case basis by the special education team, building principal and Special Services Director, and is subject to review through due process and judicial proceedings.

3. Manifestation Determination:

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

The review of the relationship between a student's disability and the behavior subject to the disciplinary action will occur at a meeting that includes the parent and relevant members of the IEP team.

The team shall review all relevant information in the student's file, including the IEP, teacher observations and information provided by the parent to determine:

- A. If the conduct was caused by or had a direct and substantial relationship to the child's disability; or
- B. If the conduct in question was the direct result of the district's failure to implement the student's IEP.

If the team determines any of the above standards were not met, the behavior must be considered a manifestation of the student's disability. The district will take immediate action to remedy the deficiencies and will:

- 1. Conduct a functional behavioral assessment (unless already completed) and implement a behavioral intervention plan if one is not already in place.
 - 2. Review the existing behavioral intervention plan and modify it to address the behavior; and
 - 3. Return the child to the placement from which he or she was removed from unless the parents and the district agree a change is necessary as part of the behavioral intervention plan, or unless the infraction involves drugs, weapons or serious bodily injury.
- A. If, however, the results of the manifestation determination review indicate that the behavior was not a manifestation of the student's disability, the special education student may be disciplined in the same manner as a student without disabilities, subject to the requirement that a FAPE shall continue to be made available to special education students consistent with Chapter 392-172A WAC.

4. Special Circumstances

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

- A. Possesses a "dangerous weapon" or carries such a weapon to school or to a school function; or
- B. Knowingly possesses or uses "illegal drugs" while at school or a school function; or
- C. Sells or solicits the sale of a "controlled substance" while at school or a school function.

- D. 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 meet the following criteria:

- A. Be selected so as to enable the student to continue to progress in the general curriculum and to continue to receive services and modifications, including those specified in the student's IEP, which will enable the student to meet the goals in the IEP; and
- B. Include services and modifications designed to address the behavior to prevent the behavior from recurring.

The district may ask a an administrative law judge, or seek injunctive relief through a court having jurisdiction of the parties to order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days or seek injunctive relief through a court having jurisdiction of the parties in the following instances:

- A. When the district believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. If the student's IEP team believes that the student may not be maintained in his or her current placement, the IEP team should work with the district's Special Services Director or designee.

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

If the district proposes to change a student's placement after expiration of a 45-day interim alternative educational setting (IAES) and the parents request a hearing to challenge the proposed change in placement, the student's "stay put" placement is his/her placement prior to the IAES unless the district requests an expedited due process hearing in accordance with WAC 392-172A and proves that it is dangerous for the student to return to said placement.

5. Basis of Knowledge:

A student who has not been determined eligible for special education services may assert the protections under WAC 392-172A if the district had knowledge that the student was an eligible special education student before the behavior that precipitated disciplinary action occurred.

The district is deemed to have knowledge in the following instances:

- A. When the parent expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to district supervisory or administrative personnel or a teacher that the student is in need of special education and related services;
- B. When the parent requested the student be evaluated for special education services; or
- C. When the teacher or other school personnel have expressed concern about a pattern of behavior 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 one or more of these events applies to the student, he/she 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 took the following actions:

- A. Conducted a special education evaluation of the student and determined that the student was not eligible for services; or
- B. The parent of the student has not allowed an evaluation of the child or has refused services.

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

Notwithstanding the foregoing, the district 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).

XXVI. Staff Qualifications

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

All employees will hold such credentials, certificates, or permits as are now or hereafter required by the state board of education for the particular position of employment and shall meet any 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 director of human resources will document in writing the following:

- A. The district is unable to recruit a teacher with the proper endorsement who is qualified for the position; and/or
- B. The need for a teacher with such an endorsement could not have been reasonably anticipated, and the recruitment of such a classroom teacher at the time of assignment was not reasonably practical; and/or
- C. The reassignment of another teacher within the district would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned to the other teacher.

If one or more of these criteria can be documented, 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 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.

XXVII. Professional Development

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

- A. Special education concerns will be identified through a staff needs assessment completed by administrators, teachers, educational staff associates, program assistants, parents, and volunteers;
- B. All personnel who use restraint, restraint devices and/or isolation must be certified and annually trained in the use of such restraint, restraint devices and/or isolation;
- C. Inservice training schedules will be developed, based on the results of the district assessment in support of needs identified;
- D. Training activities will be conducted for regular staff, special education staff, private school staff, and staff of other agencies and organizations who provide services for special education students; and
- E. Training for classified staff in the state-recommended core competencies will occur through scheduled inservice opportunities.

XXVIII. Public Participation

The district will provide reasonable opportunities for the participation by teachers, parents of special education students, families, and other interested agencies, organizations, and individuals in the planning for and operation of the special education program. Any application and any required evaluations, plans, and reports relating to the program will be made readily available to parents and other members of the general public.

The district will make policies and procedures and any required evaluations, plans, and reports relating to the program available to the public, upon request, through the district special services office and the superintendent's office. A notice regarding the availability of such documents may be placed in district publications or websites.