

Make a Difference in a Child's Life:

**A Manual for Helping
Children and Youth Get
What They Need
in School**

TeamChild®

Valuing the potential in all young people, TeamChild is a voice for those facing tremendous obstacles due to poverty, racism, disability, homelessness, neglect, abuse and other difficult circumstances. TeamChild is a legal and community advocacy program. Through youth-directed advocacy, TeamChild helps youth access a comprehensive and holistic range of community-based opportunities. TeamChild's work focuses on the right to education, mental and medical health treatment, and safe living situations.

TeamChild is a nonprofit legal services organization with offices in King, Pierce, Snohomish, Spokane and Yakima Counties. Begun in 1995, the program has been recognized nationally as an innovative leader in working with vulnerable young people who might otherwise fall through the cracks.

Casey Family Programs Foundations for the Future

The mission of Casey Family Programs is to support families, youth and children in reaching their full potential. Casey provides an array of permanency planning, prevention and transition services such as long-term family foster care, adoption, kinship care, job training, and scholarships. Through advocacy efforts, national and local community partnerships, and by serving as a center for information and learning about children in need of permanent family connections, the Program aims to improve public and private services for children, youth and families impacted by the child welfare system.

Casey Family Programs is a Seattle-based private operating foundation, established by Jim Casey, founder of United Parcel Service (UPS), in 1966. The program has 29 offices in 16 states and Washington DC. For more information visit our web site at www.casey.org

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This Manual provides basic information on education law in Washington State. While it provides information on the law, it is not legal advice, and is not in any way intended to be a substitute for legal advice or representation. If you need legal advice, please contact a lawyer who can look at the specifics of a particular situation and apply the law.

Keep in mind that laws change and that the law explained in this Manual may have changed since it was written. Consult with an attorney who knows this area of law to make certain that it is still valid. Information on how to find a lawyer or free legal services is located in Chapter 7, the resources section of this Manual.

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We dedicate this Manual to the memory of Tony Koontz and to the many children and youth who face tremendous obstacles in their lives.

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Introduction

This Manual provides tools to help children and youth. It is a guide on how to be an advocate. The Manual focuses on education issues faced by students who are in foster care, group homes, relative care, and other situations where they may not have a birth parent helping them. However, the information in this Manual can be useful for helping any student.



The Need for Advocacy

Why is there a need for education advocacy?

A basic education is essential to living an independent, fulfilling life. Yet many children enter adulthood without this important ingredient for success. Children in out-of-home care face extra challenges.

- More than 60% of children in foster care drop out of school before graduation, which is more than twice the dropout rate for all students.
- When students change schools, they lose an average of 4-6 months of educational progress.
- Children and youth in out-of-home care are 2-3 times more likely than are other students to have disabilities that affect their ability to learn.
- School officials often fail to identify the special needs of students who experience changes in caregivers and schools.
- The uncertainty of home and family situations can profoundly affect students' ability to focus in school.
- Many children and youth who are in out-of-home care have been victims of abuse and neglect that affect their ability to do well in school.

Every child or youth needs an advocate to help overcome barriers to education.



**This is for
you!**

Youth
Foster Parents
Relatives
Parents
Neighbors
Group Home Staff
Family Friends
Caseworkers
CASA's/GAL's
Social Workers
Mentors

Who is this Manual for?

People who care for out-of-home children and youth

People working with out-of-home children and youth

Youth who want to advocate for their own education

The goal of this Manual is to help people who care about children and youth

get the tools,
learn the skills, and
make the effort

to speak out on behalf of children and youth who need an advocate.

What makes a good advocate?

Anyone can become an effective advocate by learning about:

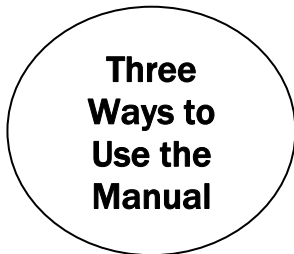
- **Advocacy skills**
- **Education laws and regulations**
- **Resources**

This Manual provides an introduction to each of these topics. If you are a foster parent, a relative with children in your care, a caseworker, social worker, even a neighbor, you can play a role in helping kids succeed in school.

How should I use this manual?

There are three different ways to use this Manual:

1. Read it cover to cover.
2. Go straight to the sections you need.
3. Use one of the quick reference features.



1. Read the Manual cover to cover.

Information in this Manual is organized into six areas:

- Table of Contents
- Advocacy Training
- Chapters explaining education law
- Forms and samples
- Resources
- Copies of education laws and regulations

You can start at the beginning and read straight through the Chapters, and whenever you want, you can refer to the law at the end of the Manual.

2. Go straight to the Chapters containing the information you need.

The Chapters in this Manual include:

- | | |
|-------------------|--|
| Chapter 1 | Advocacy Basics: the nuts and bolts on how to be an effective advocate |
| Chapter 2 | Basic Education: an introduction to the basic rights to education |
| Chapter 3 | Special Education: an introduction to the laws protecting students with disabilities |
| Chapter 4 | Discipline for General Education Students: an introduction to the law on school discipline |
| Chapter 5 | Discipline for Special Education Students: an introduction to the rules for disciplining special education students |
| Chapter 6 | Entering Adulthood: a discussion of important issues for youth 18-21 years old and becoming independent |
| Chapter 7 | Resources: A list of organizations and agencies that provide support and will help you become a more effective advocate |
| Appendices | Copies of some of the laws and regulations referred to in this Manual |

Use the Table of Contents to look for the topic you need. Scan the list of subtopics to narrow down the Section that is most relevant. Remember that for most issues, you will have to read more than just one Section to get an understanding of the topic.



**Special
Features**

3. Use the quick reference features in each Chapter.

Each Chapter in this Manual has special features that give a summary of information or ideas for planning a course of action. Look for:

➤ **Youth Pages**

Several Chapters have a page that summarizes the Chapter for young people. If you are an adult, pull out or copy this page and give it to a young person who can use it.

➤ **The “Three Most Important Things”**

Every Chapter will start with a list touching on the most important themes to remember for that Chapter. Use it to get an overall sense of what is important.

➤ **Action Points**

Each chapter will list specific things that can be done to help a student. Although it is important to read about the topic to figure out when it is appropriate to take these actions, the Action Points can be used as a reminder of the possible steps you can take.

➤ **Forms, Samples, and Advocacy Tools**

At the end of this Manual are sample letters, form letters and forms you can use to help you get started.

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Chapter 1

How to Be a Good Advocate

The 3 Most Important Things to Remember about Being a Good Advocate

- ◆ The keys to being a good advocate are to:
 - Create relationships.
 - Communicate ideas in ways that others can understand.
 - Be prepared by knowing the facts and law that apply in a situation.
- ◆ You can be an advocate on big or small things— the most important thing is just to be there, taking action on behalf of children and youth who otherwise will have no one to advocate for them.
- ◆ There are many ways to be an advocate. Even if you don't know a lot about the laws, you can help by asking questions and letting the school know about students' needs.

I. Introduction

What is an advocate?

What comes to your mind when you hear the word “advocate”? A supporter? An ally? A defender? An attorney or lawyer? Someone who stands up for another who maybe can't do it alone?

Most people who have had some level of success in their lives can look back and remember individuals who advocated for them. Maybe it was as simple as a small encouragement in school, a positive review of their work when they were struggling, or words that inspired them to reach beyond what they saw as possible.

For most children, their daily advocate is a parent or another family member who takes care of them. Children and youth who are out of their homes often lack

that regular and consistent advocate. Often they have spent years of living with parents who are overwhelmed by their own problems. The lack of a regular advocate can be especially devastating in school. A little advocacy can go a long way for a child or young person struggling in school.

II. The Essential Elements of Advocacy

There is no single way to be a good advocate, but for an education advocate, the following are keys to helping a student succeed:

- **Create relationships** with school staff and others who can help.
- **Communicate ideas** in ways that allow others to understand them.
- **Be prepared** by knowing the facts and law that apply in a situation.

Where you can have an impact

If you have a child or young person in your care, being active in that child's education can be one of the longest-lasting gifts you can give to him or her. Think of your contact with school as building connections between the healthy adults in this child's life. Those connections can become a web of support.

You can be an advocate on major, on-going issues, such as the creation of an educational program for a student with severe disabilities, or you can be an advocate on something that might take just one phone call, like making sure a student in a new district gets the chance to take part in sports.

This Chapter will give you tools to advocate for children and youth. You can choose what style fits you best, and you can decide where you can make the biggest impact in a young person's life. Whatever you decide, the most important thing is to act on behalf of a child or youth who needs help to succeed in school.

Do I need special training to be an “educational advocate”?

No.

While it helps to know about education law, you can do a lot for students without legal training. This Manual provides many tips on how to get a student the help he or she needs. There are also references to the law if you want further details on the legal rights of students.

But even when you don't have all the answers, you can work with the school district by asking questions, providing information, and urging those working with a student to provide the best possible education. If you hit a dead end and cannot get what a student needs, seek help from others who have more experience. Consider contacting other foster parents or caseworkers who have dealt with similar problems. Try calling local parent groups that work on education issues, your local legal services office, or an attorney who is experienced in education law.

III. Creating Relationships

How do I create a good working relationship with the school district?

Treat it like any relationship and remember it's going to need a lot of work to be successful.

In an ideal world, schools, families and communities are working together to provide the best for each student. This is not always the reality, however, and relationships can go sour when difficult issues arise.

In your advocacy, you're likely to find yourself across the table from the same school district personnel more than once. You should try to figure out how to build good relationships at the same time that you are standing up for what a student needs to succeed.

When you are helping a child for the first time, make the effort to review his or her educational history and let the school know that someone new is involved. Remember that the school district may have dealt with another adult from this child's life in the past. Bad feelings or a pattern of communication problems may have already developed with others. Let the district know that you're new to the scene and want to start off on the right foot. The district may be relieved to know there's someone who cares about the child and is willing to work on problems.

You can be an active participant in the student's education:

- ☑ Start the relationship out right: Let school officials know you respect them and will work with them.
- ☑ Attend meetings, parent teacher conferences, and school events.
- ☑ Check in with teachers regularly, not just when there's a problem.
- ☑ Follow-up on reported problems.
- ☑ Respond to all school communications promptly.
- ☑ Ask the child or young person regularly how he or she thinks things are going.
- ☑ Look for chances to help the young person communicate his or her thoughts and feelings to teachers and others.
- ☑ Let the school know you are interested in this student and will follow-up on important issues.
- ☑ If a problem arises, always ask for and listen to the school's side of the issue.
- ☑ Make sure the school has information needed to provide the right kind of education for this particular student. Give the school this kind of information every chance you get.

IV. Communicating Ideas: The Heart of Good Advocacy

What's the best way to let the school know what I want for a student?

Think about HOW you are communicating as much as WHAT you are communicating.

1. The "How" of communication

Studies have shown that people pay more attention to body language and tone of voice than to the actual words spoken.

Most people don't think much about the tone of their voice and the way they move their bodies. But to be an effective advocate, you need to figure out the best way to get your points across, and that means being aware of things that can interfere with your message.

a. Tone of voice

Listen to your own voice and think about how you use it. Do you talk louder when you are trying to make a point or think someone disagrees with you? When you find yourself in that situation, slow down and take a breath. See if you can make yourself speak more softly for a few minutes.

Do you sometimes use a sarcastic or derisive tone when you feel the listener's position is stupid? Take a second to ask yourself if the way you are talking with the other person will help or hurt your efforts to accomplish things for the student.

If you are going into a situation where you know you will be discussing a difficult topic, try practicing the way you would like to say things ahead of time. Pick a sentence and practice saying it out loud with different tones. Soften your voice, change the pace, and try emphasizing different words. Listen to what you think would be the most effective way to get your points across.

An exercise in using tone of voice to communicate different ideas

Try saying this sentence out loud to yourself, and make the word that is **highlighted** the strongest word. As you listen to yourself, think of how the meaning changes when you emphasize different words:

Why was she suspended?

Why **was** she suspended?

Why was **she** suspended?

Why was she **suspended**?

While the basic meaning of the sentence stays the same, emphasis on a particular word will convey a perspective and will often imply something that isn't said by the words alone.

b. Body language

It's amazing what the body can say without words. The problem is that body language doesn't always say the same thing to everyone.

When someone puts her hands on her hips during a conversation, one person might understand that to mean she is angry, while another might read the action to mean she is committed to working on the topic being discussed, and a third person might see hands placed on the hips as a sign that she is tired!

The same is true for actions such as crossing one's arms, slouching in a chair, standing very close to another person, or backing away.

A key to good advocacy is being aware of how other people respond to you. What does the other person see and feel? Are mannerisms of the speaker getting in the way of the message?

Think about your own mannerisms or habits. Do you ever roll your eyes when someone says something you think seems stupid? Do you sigh or laugh when you feel frustrated? How about clenching your fists when angry? These are very common mannerisms, but they can offend others and shut down the lines of communication.

If you are concerned that body language may be getting in the way of your advocacy goals, try some simple tricks to neutralize things. Hold a notebook in your hands, put your hands in a pocket or up on the table. If you feel like you'll soon be rolling your eyes at a speaker's comments, look down at some papers and read them for a minute.

If you are talking with a teacher, and she feels you don't respect her, she may focus on that rather than the goal you want to accomplish. She may not want to go out of her way to help you because of the way she imagines you feel about her. Teachers shouldn't react this way, but their work is stressful, and people often behave poorly under stress.

In making your points, there will be times when you do not feel much respect for the listener, or when you are so frustrated you feel like you can't see straight. The key is not to let these feelings get in the way of accomplishing your goals for the student.

2. The “What” of communication

a. Choosing the words we use

Choose words that open up communication rather than words that turn up the heat. State your message accurately. Don’t exaggerate it. Be honest.

How can you get across ideas when you are worried the person across the table doesn’t get it? Here are four steps that can help.

b. Getting across your ideas: Four steps

If you have an important point to make, you can do four things that will increase the chances of your listener understanding what you say:

Step 1 **SIMPLIFY:** *State your point simply.*

Step 2 **EXAMPLES:** *Give concrete examples that support what you are saying.*

Step 3 **REPEAT:** *State your point again.*

Step 4 **QUESTION:** *Ask your listener a question to make sure he or she understands the point you are trying to make.*

An example of using the four steps to get across your ideas

This is how a foster parent uses the four steps in talking to a math teacher about his son James:

Step 1: SIMPLIFY

“I feel James needs extra help in his math class.”

Step 2: USE EXAMPLES

“James has not been doing well in math for some time. He failed five tests, and got only Ds on the tests that he did pass. When I try to help him with homework, I feel like he is missing the basics.”

Step 3: REPEAT

“James needs help in order to succeed in math.”

Step 4: QUESTION

“Do you think extra help in math class would give James a better chance at doing well?”

3. Understanding has to come before agreement

Make sure that there is understanding before moving to resolve conflicts or differences. The way someone responds to you can tell you two different things:

Does the listener *understand* your point?

Does the listener *agree* with your point?

Taking the above example of James, read below how the foster parent makes sure the math teacher understands his point before moving on.

An example of checking that both sides understand each other

Math teacher: “I think James can succeed. All children can learn. I feel he just isn’t paying attention in class.”

Foster parent: “I’m so glad to know you feel he can succeed. I just want to make it clear that I think he needs extra help to do it. Do you know what I mean by extra help?”

Once you have clarified that the other person understands your point, move on to working out the areas where you disagree.

4. Questions, questions, questions

Any time that you are dealing with school personnel, don’t do all of the talking. Ask questions. And, listen to the answers. Then, ask more questions to clarify the answers.

This will help you:

- Get all of the facts
- Understand and be able to respond to the district’s perspective.
- Communicate to the district that you’re an interested party and want to work together on issues.

Can't think of questions to get the conversation going?
An old reporter's trick is to go through the five "W's":

**Who? What?
When? Where?
and
Why?**

Pick any topic and think of five questions, starting each one with one of the W's. You'll be surprised to see how much important information you can get.

An example of using the 5 W's to ask questions

Here is how a social worker asks questions when she runs into a problem getting records for Sherita, a girl on her caseload:

- Who** is responsible for sending Sherita's records?
- What** records will you send me?
- When** do you expect to have the records?
- Where** will you be looking for the records?
- Why** can't the records be sent to me sooner?

When I reach a point of disagreement, what do I do?

Remember disagreement can be temporary. Try to move the discussion forward.

Five steps to getting around disagreement

When you reach an impasse, try these five steps to help move the discussion forward.

- Step 1** **CLARIFY:** Ask questions. (Remember, questions, questions, questions!)
- Step 2** **GET THEIR PERSPECTIVE:** Understand the other's perspective.
- Step 3** **FIND COMMON GROUND:** Look for points where you do agree.

Step 4 **ADD INFORMATION:** *Give more information that might help the other person change his or her mind.*

Step 5 **STATE YOUR POSITION CLEARLY:** *Make sure what you want is clear.*

Going back to the conversation between James’s foster parent and the math teacher—check out below how the foster parent uses these five steps to try to move toward agreement.

An example of using the 5 steps to get around disagreement

Step 1: CLARIFY

Math teacher: “I know you think he needs extra help. I think he needs to just buckle down and pay attention in class.”

Foster parent: “So you don’t think he needs extra help?”

Math teacher: “No, I think I can teach all of the students in my class.”

Step 2: GET THEIR PERSPECTIVE

Foster parent: “Do you feel like I am saying you’re not a good teacher?”

Math teacher: “I guess I do feel that way. I haven’t had a problem teaching students before James.”

Step 3: FIND COMMON GROUND

Foster parent: “We agree that James isn’t doing well in math, right?”

Math teacher: “That’s for sure. I know he is a bright kid so that’s how I know he’s just not applying himself.”

Step 4: ADD INFORMATION

Foster parent: “That’s interesting that you have noticed him not paying attention. Last year, a teacher suggested James might have problems paying attention, and I find that he doesn’t stick with things very long at home.”

Step 5: STATE YOUR POSITION CLEARLY

Foster parent: “What I see is James having problems in math and I want to figure out the reason why. I want to make sure he gets the help he needs.”

If you are not getting anywhere in your discussion, take a break and come back to the problem later.

Foster parent: (Feeling like a dead end has been hit and there is no movement from the teacher.) “Well, thanks for your time. I’m going to head home now. Will you be here tomorrow at the same time? I’d like to talk a few minutes more then.”

How do I know when it's right to compromise?

Know your goals.

Think ahead to what you would be willing to give up and what is your bottom line. Recognize that in most situations, some level of compromise will have to happen.

When a place for compromise arises, take the time to think it through. What are you really giving up? Are you sacrificing the heart of what is important to get something less important? Or are you holding out for something that really isn't essential to your goal?

How do I identify and clarify my goals?

Go through a process of breaking down your goals and deciding which are most important.

Start with the broadest, most general goal that you want to reach. Then list as many specific parts to that goal as possible. Then examine each specific goal and break those down into smaller parts. For each part, ask, "What is the most important thing here? Are there issues on which the school agrees with me?"

An example of identifying and clarifying goals

Imagine this situation: Ellen has been expelled because she threatened another student. A social worker working with Ellen suspects that she has a disability that hasn't been addressed and that probably led to her current problem. The social worker starts listing goals and ranking them as follows:

BIG GOAL: Get Ellen back into school with appropriate services.

Rank	Variations on the big goal
#1	Ellen goes back to school --- same school
#4	--- before the end of the school year
#3	--- with services that she needs --- with a different teacher
#2	Ellen has an evaluation to find out what she needs. The expulsion is removed from her record. The expulsion is changed to a lesser punishment.

By going through this process, the social worker can talk to the school about his goals for Ellen. The school might not agree to everything. Because the social worker has figured out the most important things for Ellen, he is in a better position to decide whether to keep pushing.

Is there really more than one way to handle every situation?

Yes, *always*.

Looking at James's situation from earlier in this Chapter, let's assume that the foster parent and math teacher have talked for a while and can't come to an agreement about what to do about James's problems in math class. The foster parent has options:

- The foster parent could decide to wait, get more input, and seek alliances with other teachers.

Foster parent: "I think it might be good for us to talk with other teachers and see if they are noticing the same things you are. They might have ideas about how to handle it. They might have noticed a pattern of problems. We could work together to solve them. I'm going to contact other teachers and people who work with James."

- Or, the foster parent could decide to give up his perspective on the problem and defer to the teacher's, hoping she will have ideas on how to proceed.

Foster parent: "Do you have any ideas about what might help James concentrate and work harder in class? I would like to help you put those ideas to work."

- Or, the foster parent could decide it's time to move quickly because James needs help right away. He could use a number of options outlined later in this Manual, including:

- Moving James to another classroom
- Finding help outside of the school
- Asking for a special education evaluation
- Talking with the principal about the problem and asking the district to provide help
- Paying for a tutor
- Changing schools.

Foster parent: "Well, you and I have different perspectives on this. I know this problem involves more than James's need to apply himself. I have worked with James on his homework and have seen him trying hard. I am going to pursue other options and try to get extra help."

Not every option is the right one for a student. To decide what is right for a student means knowing the priority of one's goals in any situation. The fact is, there will be

some situations where there is no middle ground because your goals and those of the school district conflict.

What about when I feel that school personnel are being disrespectful to me or the child in my care?

Let them know, fast.

Let the other person know what you sense and how you feel. Bring up the issue immediately. Don't wait until later. The other person might not be aware of how you feel. Give him or her an idea of ways to improve communication.

Tell the other person:

- What you feel, "*I feel _____.*"
- What happens that makes you feel that way, "*When _____, I feel _____.*"
- What you would like to happen differently, "*Please _____.*"

Remember, be respectful, watch your tone of voice and body language. Talk to others in the same way you want to be talked to.

An example of clearing the air when you feel disrespected

Here's what a caseworker says when he doesn't get a response to his phone calls:

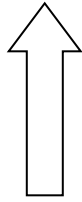
Caseworker: "I have made three calls to your office during the last week and have not gotten a return call. I'm feeling like you don't think this is very important. Please return my call so we can discuss this situation."

Or, listen to how a foster parent deals with someone she believes is not listening to her:

Foster parent: "Could we stop a minute? You keep interrupting me and it makes me feel like you don't care about what I have to say. I would really like you to please listen to me before responding."

What do I do when I have hit a dead end?

Don't give up.

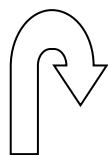


1. Go up

- ⤴ If you're stuck and can't work things out with a teacher, go to the Principal.
- ⤴ If you're working on a discipline issue with the Vice Principal and can't get anywhere, go to the Principal even if the V.P. tells you that discipline in this school is his/her responsibility only, and the Principal doesn't deal with those issues.
- ⤴ If you've reached the end of the road with the Principal, go to the district Superintendent.
- ⤴ And, if you get nowhere with the Superintendent, go to the school board.
- ⤴ If the problem involves special education or a matter of discrimination, consider contacting state and federal agencies that deal with these issues. (See Chapters in the Manual on those issues, and look in Chapter 7 for agency listings.)

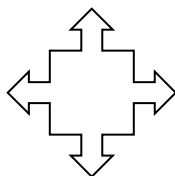
Try not to blame a teacher or other individuals. Stay focused on what the student needs. Try starting out with *"I have a concern for [student]. I have talked with [teacher, principal, etc.], and this is what happened...."*

By going up the chain of command, you get other people involved who may have fresh ideas. They may also have a "bigger picture" perspective that helps resolve the issues.



2. Go in

Examine your goals, review what you and the student want, and re-evaluate your tactics. Decide whether you should completely change course, and re-approach the district with a new offer. Make sure you haven't become stuck on points that don't matter.



3. Go out

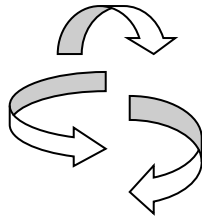
Seek other caseworkers, foster parents, or families who have tackled a similar problem. Ask how they did it and see if they have any advice for you.

If you can't find someone who has encountered this kind of problem before, go to people whose opinions and perspectives you trust. Even if they are not experts, a

fresh perspective can help.

Contact community groups that work on education issues. A list of such groups is in Chapter 7 of this Manual.

Check with your local legal services or bar association and see if you can get free or low-cost legal advice or representation. If you can afford it, hire a lawyer. A list of legal resources is located in Chapter 7 of this Manual.



4. Go over, go under, go around

There is always, always more than one way to resolve a problem. Think through your options. Force yourself to list at least three *different* ways to achieve to your goal. You can find ways to get to your goal without giving up the important parts of what the student needs. The key is not getting stuck on just one path to the goal.

V. Being Prepared: Student Records, Meetings, and Hearings

How can I best be prepared as an educational advocate?

There are three common areas where being prepared really helps:

1. Student Records
2. Meetings
3. Hearings

This Section outlines some helpful hints in each area.

How can I organize student records and keep notes to help me be an effective advocate?

1. Keep everything you get

Don't toss those papers! If you feel like you're being buried in paper, you'll feel better if you put it all in one place. Start by using a big envelope or box labeled "School Papers" and then go on to #2 below.

2. Get organized with a separate education file

Keep a separate education file for each student you are helping. If you have a lot of papers, organize them in different categories: letters and correspondence, special education, grades and attendance, discipline notices, etc.

3. Copy everything you send

Keep copies of all letters, notes or other written communication with the school.

4. Put things in writing

Even if you've asked for something during an in-person or telephone conversation, follow it up with a note. It doesn't have to be typed and it doesn't have to be perfect. It is a good reminder to the other person, and you'll be happy that you have the note if there's some kind of problem down the road. See the Forms and Samples Section at the back of this Manual for a sample of a letter confirming a conversation.

Even more important is the fact that some things *require that a request be made in writing* if special legal protections are to fall into place. For example, a request for school records doesn't have to be in writing, but if the district is slow in getting the records to you or ultimately refuses to give them to you, the timelines that apply are triggered only by a written request.

Use the Forms and Samples at the back of the Manual. Remember to date all correspondence.

5. Keep a log

When you are working on a particular issue with a school district, keep a special pad of paper in the student's file that lists what's happening. A sample blank log sheet is in the Forms and Samples Section at the back of the Manual.

An example of how to use a log sheet

Log Sheet		
Date	Contact or Action	What Happened/Notes
5/4/00	Called teacher – Mr. Jones	Asked for meeting about Jenny’s discipline last week. Jenny says she can’t go on a field trip on May 22 because of being in trouble.
5/5/00	Mr. Jones called back	Mr. Jones said that Jenny had an in-house suspension for talking back, and she can’t go on the field trip. I asked for a meeting with him and the principal, and he said he would call back within a week.
5/15/00	Called the principal	She didn’t know anything about the discipline. Set a meeting to discuss the situation. Told her I wanted Jenny to be able to go on the trip because she has been trying so hard in school and has improved her behavior over the year.
5/18/00	Meeting	At first the principal said it was too late, and I should have dealt with this sooner. Mr. Jones denied that I had asked for a meeting with him and the principal. I showed them my log notes. We discussed Jenny’s improved behavior and

How can I be prepared and make the most of meetings?

1. Make sure you have what you need before you go

Ask for the relevant records before the meeting so you have a chance to read them. Take the time to read the records and write down any questions you have. Find out who will be at the meeting, and what their roles are. Ask for certain people to be there if you think they will help get things done. For example, has the counselor been especially helpful to the student? Or does the student’s teacher from last year have good insights into what the student needs? Ask a friend or support person to attend the meeting with you.

2. Write down your questions and the points you want to make

Take a little time before the meeting to write down the questions you would like answered. Outline the points you’d like to make. Refer to your notes while in a meeting. Even great speakers use notes to keep them on track.

3. Take notes during meetings and other conversations

Don't be shy about taking notes during meetings or while you're on the phone or having conversations with school personnel or others. Your notes will later remind you of what happened and when. It's okay to let the conversation slow down while you catch up on your notes. When a conversation is over and you're alone, read over your notes and see if you missed anything. Check to see if you can read your own writing. Fill in your notes if you have missed things. Keep the notes in the student's education file.

If you don't get a chance to take notes during the conversation or meeting, be sure to write things down right after the meeting when the discussion is still fresh in your mind.

4. Make sure you get a chance to be heard

You may have one perspective about the purpose of a meeting, and school district personnel may have another. Listen and learn what the school's issues are. But don't forget to say what you think is important.

An example of making sure you are being heard

This caseworker called a meeting for one reason, but the school employee starts out on a different topic entirely. Read how she handles it:

School employee: "As you know, we have concerns about Calvin's behavior. We've set times for evaluation and have scheduled an appointment for him to see a psychologist. I'd like to go over those plans today at this meeting. We need to get a consent form signed and make sure Calvin is able to make these appointments. Let's talk about scheduling an IEP meeting next time we get together."

Caseworker: "I'm glad you have identified that Calvin needs an evaluation and are moving forward on that. **My concern** is that the school hasn't let him start classes since he changed foster homes and moved into this district three weeks ago. He needs to start school right away. **Getting him into school is the most important thing, and I would like to resolve that issue today.**"

5. Silence is a gold mine

A lot of us have plenty to learn from cultures in which the norm is to think before talking. You will find that a few moments of silence can yield nuggets of insight. Remind yourself that it is fine, and even good, to pause a moment before answering a question. Take a second

and a deep breath before responding. Collect your thoughts. Let the empty air just hang there for a minute, and it will give you a chance to make a bigger impact because what you ultimately say will likely be clearer.

What's the worst thing that can happen? The other person might jump in and say something. Often, he or she will clarify a position or even concede a point because you haven't immediately reacted. Or, sometimes, after not getting an immediate response, a person could say, "Do you understand what I said?" Your response can be as simple as, "Yes, I am just taking a minute to think about it before I respond."

6. Set concrete goals, and assign tasks during meetings

A problem will get resolved only if people agree to start acting on it. Figure out as a group what tasks need to be done, who should do the tasks, and a time by which the tasks will be done.

7. Take a break

Don't sign papers or agree to a resolution of the issue unless you feel it's the right thing. Ask to take a break. Tell the people at the meeting that you would like to think things over for a few minutes, overnight, or for a week. If you are thinking about waiting for more than a day, consider what the student loses by delaying things, and balance those concerns against how helpful it might be to have the time to think things through or talk with someone else.

8. Re-cap at the end of a meeting

Clarify what you have discussed using the notes you have taken. Make sure everyone is aware of what they are supposed to do next. If it makes sense, set a time to meet again before the meeting ends.

9. Make a follow-up call to ensure things are getting done

Delay can be your worst enemy. If someone has promised to get something done by a certain date, call him or her and ask if it's been done. There may be a

good reason for not accomplishing a task. But by following up, you make sure your priority has not been placed on someone else's back burner. Be sure to follow through on tasks you said you would take care of yourself.

How do I make a plan for a hearing?

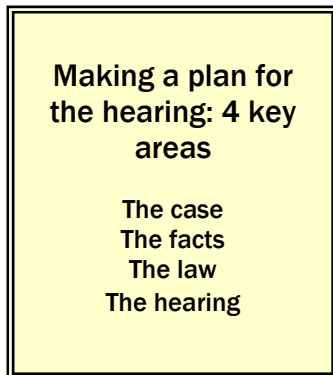
There are four key areas on which to focus when making a plan for a hearing:

1. Defining the "case"

In no more than two sentences, answer the question "What is this all about?" Try starting a sentence with "This is a case about..." or "This situation is about..."

Example:

"This is a case about a punishment that is too harsh for what the student did."



It will be hard to make your case that short and simple, but try it. It will help you focus your thoughts. You can use your summary at the start and finish of the hearing to sum up your position. Do this in your opening and closing statements.

Next, summarize what you want. Make a list of your goals in order of importance. This can help guide you in questioning witnesses and arguing your points.

2. Using the facts

Write what happened in chronological order. Go back through what you have written and highlight the key points. If there are records that confirm facts, then reference them in your notes and mark them with paperclips, post-it notes or tabs so you can easily find them when you need them.

3. Knowing the law

Read the law or policies that apply to the facts of your case. Outline what is important to your case by writing down key points. List the law you are relying on so you have it in one place.

4. Preparing for the hearing

Write out questions you have for witnesses. List key points you want to make during the hearing. List witnesses or records you need to make those points. List records you want to have the judge or hearing examiner consider. See the next Section for more tips.

What can I do to prepare for a hearing?

This Section is a general guide for preparing for a hearing. There are different kinds of hearings discussed in this Manual; slightly different rules apply to each one. If you want more information on how to prepare for a special education hearing, look at Chapter 3. If you want more information about how to prepare for a discipline hearing, look at Chapter 4.

1. Follow the suggestions above for meetings

A hearing is a lot like a meeting, just more formal.

2. Get all relevant records

Getting records is always important. But for a hearing it is essential. Sometimes records and other information that will be used in a hearing are called “discovery.” Make sure you have all of the discovery, and read it carefully before going to a hearing. Look at the end of the Manual under the Forms and Samples Section for a records request form letter.

3. Get a list of witnesses from the district

Find out who will be testifying at the hearing. Ask the district for a list of all of the witnesses it will be bringing to the hearing.

4. Organize the records and other information

Experienced trial attorneys use “trial notebooks” when they have trials in front of judges or juries. It’s a good tool to organize a lot of information for use in a tight time period. You don’t want to be shuffling through a stack of papers thinking “I know I saw a piece of paper that showed Anita was in school that day. Now where is it in

this pile of 300 pieces of paper? ...”

a. How to organize a hearing notebook

If you organize your materials into a “hearing notebook,” you can spend your time thinking about more important things than where a particular piece of paper might be. Create the notebook as soon as possible. It will help to have everything in one place as you prepare for the hearing, and the more you are comfortable using it, the easier it will be for you during the hearing.

b. Start by dividing the records into piles

Take all of the records and group together similar items in different piles. Divide them into logical groups.

Example:

- ☞ Attendance records
- ☞ Discipline records
- ☞ Medical records
- ☞ Notes from teachers
- ☞ IEP

How to organize a hearing notebook

- ☑ Divide records into piles.
- ☑ Organize your own work and your preparation for the hearing.
- ☑ Make dividers for each section.
- ☑ Use a three-ring binder.

This isn’t a complete list, just some suggestions. You need to look carefully at what kinds of records you have, and what groupings will make the most sense.

You might have to divide some into smaller subgroups.

- ☞ Discipline records
- ☞ Notes from teachers
- ☞ Reports to the principal
- ☞ Suspension notices
- ☞ Statement of victim of assault
- ☞ Police report

c. Organize your own work on the issue and your preparation for the hearing

If there are a lot of records, start a second notebook for your work on the case. If there are only a few records, then use the same notebook. This part of your notebook should contain:

- Notes of conversations and meetings you’ve

had on this issue

- A summary of the case
- An outline/summary of the facts
- An outline/summary of laws or policies
- Hearing documents
 - Questions for witnesses
 - List of records you want the hearing examiner or judge to review

d. Make dividers for each section of the notebook

Make dividers to put between sections. You can use something simple like different colored pieces of paper, but dividers with tabs sticking out are easiest to use. Label each section so you can quickly see what is in it.

e. Use a three-ring binder

It may sound nit-picky, but a notebook is better than a file because all of the papers are held in place. It just means you'll avoid the disaster of papers flying everywhere if you drop your stuff. A binder also allows you to move papers easily from one section to another.

5. Find out what the hearing schedule will be

Hearings follow a general pattern or schedule. Find out what this pattern is for the type of hearing you are attending. Be aware that education hearings tend to be informal, and the usual pattern may not be followed, especially in school discipline hearings.

6. Know what will happen at the hearing.

a. Exchange of exhibits and witness lists

In special education hearings, both sides should give each other copies of any records or other things that they plan to use in the hearing and a list of witnesses they intend to have at the hearing no later than five business days before the hearing. In discipline hearings, it is better if the information is exchanged before the hearing, but it often does not occur until the day of the hearing.

b. Preliminary issues

What will happen at the hearing?

- Exchange of exhibits and witness lists
- Preliminary issues
- Opening statements
- Presentation of evidence:
 - Witnesses
 - Documents
 - Legal arguments
 - Closing arguments
 - Decision

The judge/hearing examiner will usually begin the hearing by asking whether there are any things that need to be taken care of before the hearing starts. An example would be one party asking that people who are going to be witnesses in the hearing stay outside the room during the hearing. (The reason for this request is that witnesses may be influenced or change their testimony if they listen to other witnesses during the hearing.) Another example would be letting the judge or examiner know of problems you have had in getting records from the other side. Try to avoid this situation by asking for the records as early as possible in writing.

This is the time for the judge or hearing examiner to make decisions about how the hearing will proceed. You should feel free to ask him or her what to expect. One good question to ask is which side will be first to present their case. Order of presentation depends on which side has “the burden” to prove the case. In special education cases, it is often the school district. In discipline cases, the district usually goes first, too.

c. Opening statements

Normally each side is given an opportunity to give a short statement that helps the judge or hearing examiner understand what the issues are in the case.

d. Witnesses

Next, one side presents its witnesses. Witnesses are usually sworn in by the hearing officer, meaning that they promise to tell the truth when testifying.

The party who called the witness gets to start asking questions. This is called a “direct examination.” When they are finished, the other side gets a chance to follow-up with questions. This is called a “cross examination.” Then the party whose witness it is gets to ask follow-up questions. This is called a “redirect.”

Once one side has presented all of its witnesses and evidence (such as records), then the other side does the same if it has witnesses.

Take your time in the hearing

It is really hard not to feel pressure to move quickly in a hearing. It feels like everyone is waiting, and sometimes an opposing party will play up that sentiment to get things moving. You should keep in mind that the most important thing is that the student gets the best possible outcome. Take your time in reviewing your notes. Ask for a few minutes break if you need to collect your thoughts. Talk with your witnesses or review your notes.

Keep in mind that just because the other side presents a particular witness doesn't mean that witness couldn't help your case. Rarely are witnesses' perspectives clear-cut. Listen carefully. Is the witness being consistent with things he or she has said in the past? Is the witness leaving out things that she or he knows would help your case? Is the witness saying things that need more detail in order to be helpful to your case? These concerns should be a guide for your follow-up questions.

A few rules: Never argue with witnesses. Let the witness finish each sentence. If you don't understand an answer that a witness gives, it probably means no one else in the room did either. Ask a follow-up question if you want more information. If the witness doesn't answer the question that you ask, the witness either doesn't want to give you the answer or didn't understand the question. Ask it again. If you think the witness just didn't understand the question, rephrase it.

e. Exhibits

Exhibits are records, documents, and physical items, as opposed to testimony. Witnesses give testimony. If you want the judge or hearing examiner to consider exhibits as a part of his or her decision, you need to make sure they become a part of the hearing record. To do this, you will need to either:

1. Have someone connected to the exhibits testify at the hearing or
2. Get the other side to agree and state to the judge during the hearing that those particular documents can be a part of the hearing record.

f. Closing arguments

Each side gets a chance to sum up what has been presented in the hearing and to argue the major points of their case. This is the time to bring everything together and convince the judge that your points are valid. The side with the burden gets to go first. Then the other side gets to give his or her closing argument. Finally, the side with the burden gets to finish up with a second argument.

g. Decision

The judge or hearing examiner can give a decision at the end of the hearing or choose to send the decision to you in writing after the hearing is over.

VI. Conclusion

There are many ways to be an effective educational advocate. Use your concern and care for a young person to make an impact where it will really count—helping out-of-home children and youth get the education they deserve.

Action Points – How to Be a Good Advocate

- Ask questions.
- Remember the importance of your tone of voice and body language.
- Choose your words: promote communication, don't turn up the heat.
- Remember the four steps to getting across your ideas:
 - Simplify your message.
 - Give examples.
 - Repeat your point.
 - Ask questions to make sure you're understood.
- Reach an understanding before you accept an agreement.
- Try the five Ws to help form questions: who, what, where, when, and why.
- Remember the five steps to help move past disagreement:
 - Clarify where you both stand.
 - Make sure you have the other person's perspective.
 - Seek common ground.
 - Add information to help the others change their minds.
 - Take a break.
- Know your goals before you compromise.
- Seek help from other caseworkers, foster parents, community groups, or lawyers.
- Keep an education file for each child.
- Keep copies of everything you get about a child's education.
- Put things in writing (requests, letters, thoughts, notes of phone calls).
- Keep a log of what is happening.
- Request records.
- Take notes during meetings.
- Follow-up with phone calls to make sure people are doing what they said they would.
- Going to a hearing? Make a hearing notebook.
- Don't give up. Try another route. There is more than one way to every destination.

Tips for Youth

Advocate for Education

What is an advocate?

An advocate is a supporter, **someone on your side**. An education advocate is someone who is there for you, helping you get what you need and want in school.

We all need someone...and, if you are on your own, not living at home, or in foster care, you probably need a little extra help getting what you need in school.

Anyone can be an advocate.

A family member

A teacher

An adult friend

Someone who knows you and your situation

Ask someone to be there for you.

You can be your own advocate!

Know your rights! Read the TeamChild/Casey Education Advocacy Manual or find other resources to learn your basic rights to education.

Communicate!

- Speak up. Let people know how you feel and what you think is best for yourself.
- Listen to what others have to say. Everyone has an opinion. Respect and be open to different ideas.
- Know what you want and say it clearly to someone at school who can make it happen.

Ask for help! Find adults who you trust and who can support you and your goals.

Don't give up! Keep trying—ask for meetings, write letters, make phone calls. Staying in school is important—your future may depend on it!

Is **ANYONE** listening?

What do you do when you feel like no one is hearing you?

- Keep your cool
- Take a break
- Try another way of making your point
- Don't give up
- Ask someone to help you get your message across

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Chapter 2

Basic Education Rights: Helping Children Enroll and Succeed in School

The 3 Most Important Things to Remember about Basic Education Rights

- ◇ Children have the right to attend public school in the district where they live, even if they are homeless, have just moved to the area, or will live in the area for only a short time.
- ◇ Schools must make prompt decisions regarding enrollment.
- ◇ Schools may make exceptions to their usual rules or take other special steps needed to provide equal educational opportunities to out-of-home students.

I. Introduction

Education is a basic, constitutional right in Washington. Students have certain rights and responsibilities, and school districts have specific duties. Knowing these rights and responsibilities will ensure that out-of-home children and youth get the best possible education.

There are many education issues that especially affect out-of-home students. For example, school districts have well-defined duties to enroll resident students promptly, and they must consider requests for enrollment from students who are out-of-district and out of their home school area. Students cannot be denied an equal educational opportunity because of their race, national origin, disability, pregnancy, or juvenile court involvement. Students may be eligible for special programs or services. When students stop going to school, or have unexcused absences, school staff have a duty to take steps necessary to address the underlying reason why they are not in school before suspending students or taking them to court for being truant.

This Chapter provides information on these and other basic educational rights. Use it to get school officials to respond to the needs of out-of-home students in a timely and appropriate manner.

II. Right to Education

Is there a right to education in Washington State?

Yes. There is a right to basic education in this state.

Education is a right in Washington State. The Washington Constitution states that an ample education is the state's paramount duty. It is the state's highest, most important duty to provide a system of public education for students of school age. See WA. CONST. Art.9, § 1 & 2.

What does this right mean for students?

Students cannot be denied an education without due process of law.

Washington courts have required that the legislature define what level of "basic education" will be provided to all students and to fund schools to provide this basic level of education.

A school district cannot take away a student's right to education without providing him or her with an opportunity to dispute the removal from school. School districts must have a very good reason to justify a permanent or indefinite removal of a student from school. See Chapters 4 and 5 of this Manual for a discussion of school discipline and student rights.

III. Enrollment

What is needed to enroll a student in school?

A student should be enrolled as soon as possible and several basic steps are required to accomplish this.

1. Contact the school district office or local school to pick up an "enrollment packet" containing necessary forms, etc. If you expect any problems or are otherwise curious, also request a copy of the district's written enrollment or admissions policies.

Where you can have an impact

Know as much as possible about the student's personal and educational history, special abilities and needs, educational goals, and preferences. Tell school officials about these issues at every contact. Communicate key points firmly and respectfully in writing.

2. For a first-time enrollment in Washington public schools, the school district may request a copy of the student's birth certificate. If the student has previously been enrolled in another school district in the state, the district will ask for the names of prior school districts, information about the student's disciplinary history, special educational needs, and any health conditions. See *RCW 28A.225.330*. See the *Section at the back of the Manual on How to Read Citations and Find Laws*. You can find this law and others cited in this Chapter at your local public library.
3. Proof of immunization is required before beginning school. Immunization means shots or vaccinations that children get to prevent illnesses such as measles. Records that show a student has completed all of his or her vaccinations will satisfy the requirement of proof of immunization. A student can also satisfy the requirement by showing that he or she has started a schedule for immunizations. A student will then need to show that the immunizations were completed by the first day of school the following year.

If you don't have proof of immunization for a student, then call the local public health department. Chapter 7 of this Manual contains information on how to contact the health department in your area.

IV. Enrolling Out-of-home Youth

What if I don't yet have all of the paperwork for a child or youth in my care? Or what if I don't know much about his or her educational history?

Enroll the student right away even if you don't have everything you think you need.

Schools are required by state and federal law to take steps to help enroll "out-of-home" students, including students in foster care. These steps may include:

- Waiving the requirement for parental signatures
- Arranging for vaccinations at community clinics instead of requiring a written record of immunization

Where you can have an impact

Expect timely responses from school staff to your requests. Be concerned when the district delays your student's enrollment or receipt of necessary services. Be the squeaky wheel!

Follow up your requests by asking to meet with a Principal or the district Superintendent. Consider filing a grievance or complaint when necessary to get a response.

- Enrolling a homeless student or a student without any legal residence
- Allowing a homeless youth to stay in his or her prior school or move to a new school and provide transportation even if it is not usually made available by the school.

If you would like to read the law on this topic, you can find it in a public library. See *RCW 28A.225.215 and the McKinney Homeless Act at 42 U.S.C. § 11431.*

Don't delay enrolling a student because you don't know something or lack some paperwork. Take the child to the school and fill out as much of the paperwork as possible. Explain the reasons for any missing documents or information. Ask that the child be enrolled right away and make arrangements for providing additional paperwork if it can be obtained later.

Where you can have an impact

If a school tells you that additional testing or an IEP must be done before allowing a student who lives in the district to start school, request a meeting with the Superintendent, file a grievance or seek assistance from an advocacy organization. If the student already has an IEP, you can also file a civil rights complaint. See Chapter 3 for information on filing a complaint with the Office of Civil Rights.

If you have a problem enrolling a child or youth, look at the school district's policies and contact the Office of the Superintendent of Public Instruction (OSPI). See Chapter 7 of this Manual for information on how to contact OSPI. **You can request copies of the OSPI publications entitled *What Do I Do? Working with Out-Of-Home Youth and Their Families*, and *Amanda Goes to School: An Educator's Guide for Responding to the Rights and Needs of Homeless Students*.**

All districts should have a grievance policy. Consider filing a grievance if a school is not responding, is very slow in acting, or is not following its own or OSPI's policies.

If discrimination appears to be involved, consider a civil rights complaint to the U.S. Department of Education Office of Civil Rights. The kinds of discrimination that are not allowed in Washington are listed in this Chapter under Section VIII. See Chapter 7 of this Manual for information on how to contact the Department of Education and the Office of Civil Rights.

V. Where to Enroll?

What is considered a student's "resident" district?

Where he or she lives most of the time

A school district must enroll any student of school age who resides in that district. A student's "residence" is defined as the location where the student lives the majority of the time. This may be different from the student's mailing address or different from his or her parent's address, and the student may be a "resident" of a district even if he or she has no mailing address at all. See *RCW 28A.225.215 and WAC 392-137-115*.

So, for example,

If a student stays with his aunt four of the seven nights in a week, that's a majority of the time. The school district where the aunt's house is located is the student's district.

No proof of residency is required for enrollment, but if you anticipate any problems, consider providing copies of any documents (DSHS letters, court orders, etc.) that support your claim of residency.

Can a student attend school in a district other than the one in which he or she resides?

Yes, but both the "resident" and "non-resident" districts must agree.

If a student wants to attend a district other than his or her home district, the student must get permission from the home district to be released AND be approved for admission by the new district. Home districts usually allow students to transfer to another district. On the other hand, districts don't always admit non-resident students.

All districts must have a written, non-discriminatory policy about whether to admit non-resident students. A district may refuse to enroll students who do not live within its boundaries. For example, a district can deny non-resident students admission if those students are serving a suspension or expulsion from their home district, all the classes in the district are full, or it's the middle or end of the semester.

If either the resident or non-resident school district refuses the student's transfer, the student can appeal the denial to OSPI.

You should request and review the non-resident district's enrollment policies for such situations. See RCW 28A.225.225 for the procedures that have to be followed when a student wants to change districts. Read RCW 28A.225.230 and WAC 392-137-190, 195, 200, 205 to see how to challenge the denial of a request to change districts. These laws can be found in a public library.

Be sure to look at Chapters 4 and 5 of this Manual to learn about school discipline issues. There are special considerations regarding readmission of students who have been suspended or expelled from either their resident or a non-resident district.

What school within the district will a student attend?

For the most part, the district will decide, but there are guidelines that the district must follow.

School districts may draw lines within their boundaries to determine which school a student will attend. In addition, a district may use other criteria to determine what is a "home school" for a student. Some schools allow open enrollment in any of the district's schools; others allow transfers between schools only for special circumstances or needs. If you want your student to attend a school other than the one to which he or she is assigned, request the district's policies and forms for enrollment in another school within the same district. See RCW 28A.225.270.

Who is considered a "parent" in general education matters?

The definition of "parent" is not always clear, and whether someone is considered a parent depends on the issue.

In the laws that deal with general education, there are numerous references to "parents." But the definition of parent is not clear in all circumstances.

For general education admission and compulsory attendance issues, a parent is defined as "a parent, guardian, or person with legal custody of a child."

Even this definition leaves a lot of unanswered questions. For example, the definition does not explain whether "parent" includes foster parents, and it does not give any guidance on what is intended by the words guardian and legal custody. For general education issues other than attendance and admission, *there is no definition* of the word "parent." So, for example, in the

case of general education discipline matters, attendance at teacher conferences, or giving consent to go on a field trip, etc. the law does not define or describe the word parent.

So who is a “parent” in these types of situations? In our society, many people who are not the biological parent take on the role of parents for children. Local districts may have their own policies about how to handle the involvement of people who are not the biological parents of a student. Many districts are happy to work with someone who cares for the student and who is essentially taking the place of an absent parent.

If a district refuses to allow you to participate, try to determine why. Ask to see any local district policy defining “parent.” If the district has a policy that excludes you, consider meeting with someone in the Superintendent’s office and asking for an exception to the policy. If there is no policy, ask to speak to the Superintendent and discuss with him or her why you should be treated as a decision-maker in this situation.

Note that in special education law, the concept of parent is specifically defined. But the special education definition of parent does not apply to general education issues. See Chapter 3 for a discussion of the role of parents in special education.

VI. Attendance

Do all children and youth have to go to school?

Yes, but there are several exceptions to this rule.

All children ages 8 through 17 must attend school in the district where they live unless excused for one of the following reasons:

1. They are in an approved private, home school, or other education program.
2. They are at least 16, lawfully employed, are either emancipated or have parental permission, *and* have already met graduation requirements or received a certificate of educational competence.
3. They are excused from attendance by the Superintendent of the district in which they reside because they are physically or mentally unable to attend school, are incarcerated in an adult facility, or are attending a DSHS residential school.

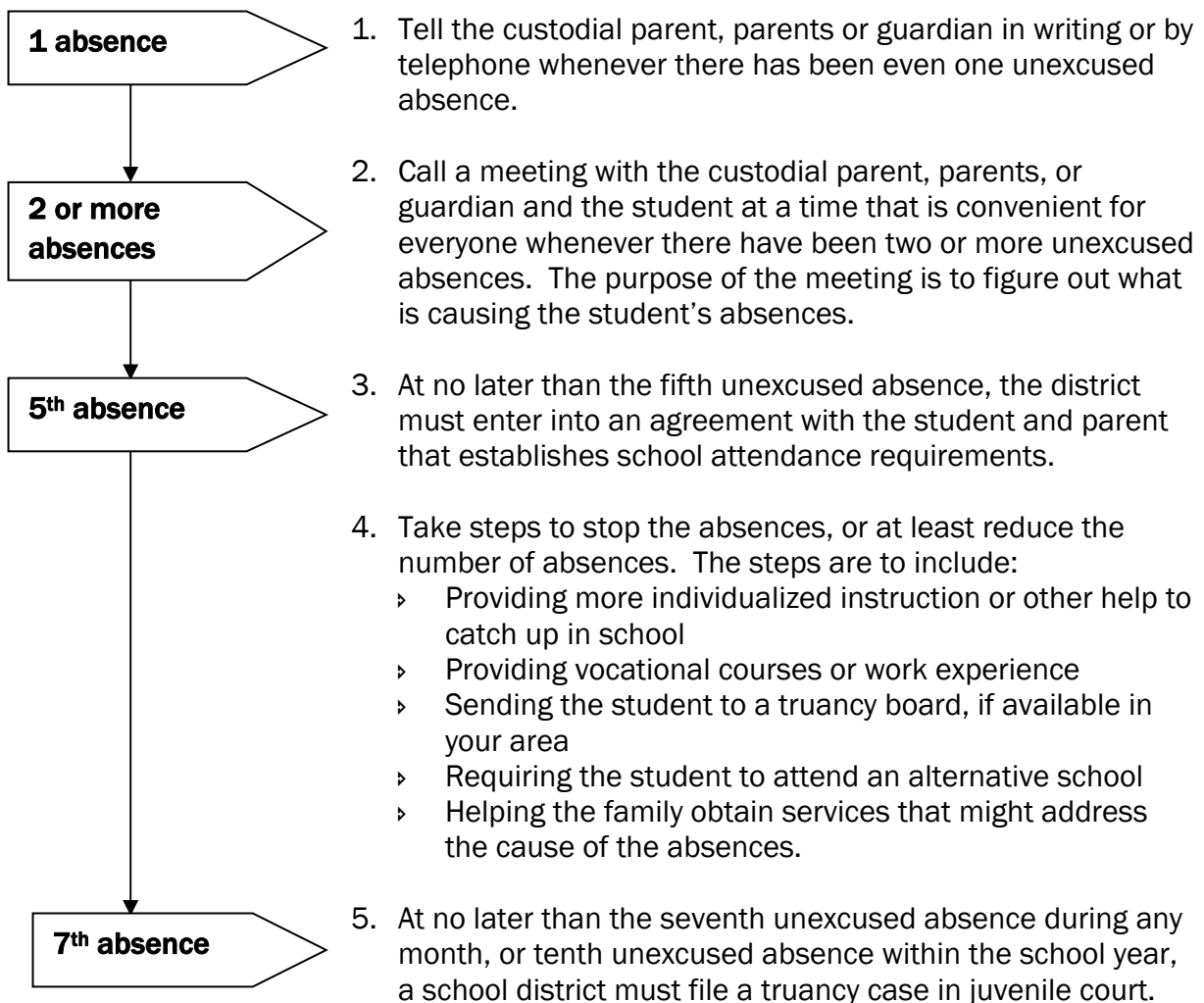
4. They are temporarily excused upon the request of their parents for purposes agreed upon by school authorities and the parents.

If a child ages 6 or 7 attends school, the same attendance rules apply unless the child is formally removed from enrollment. See RCW 28A.225.015.

If a student has unexcused absences, does the school have to do anything before suspending or taking the student to juvenile court?

Yes. The school must look carefully at why a student is having problems getting to school. Schools are required by law to take steps to deal with the problems that cause truancy.

A school is required by law to:



Where you can have an impact

Make sure the school is taking steps to address the reasons that the student is skipping school. Offer creative suggestions about what the school could do to help the situation.

Respond promptly when the school notifies you of an unexcused absence.

Follow the district rules for informing the school about excused absences.

If there is a reason to suspect that the student has a disability, the student should be referred for evaluation. Measures such as shortened school days, a late starting time, etc., should also be considered. If the school contacts you about your student's absences, ask in writing that the school assist you in identifying and responding appropriately to the underlying causes of these absences.

What happens if a truancy case is filed against a student?

A student could spend time in juvenile detention.

When a school files a truancy petition, it is asking a juvenile court judge to take action to stop the student from skipping school. A student who is the subject of a truancy petition may end up in front of a judge in juvenile court and be asked to explain why there are unexcused school absences. If the judge decides that the absences were in fact unexcused and that the school has met its duty to take steps to reduce the absences (see above), then the judge will enter an order requiring the student to go to school.

If the student fails to obey the judge's order, then he or she is in "contempt of court." This means that the student could end up back in front of that judge. The judge has authority to put the student in detention for up to seven days or impose other kinds of punishment to make the student obey the order.

Parents, guardians, or other legal custodians can be fined up to \$25 a day for a student's absence from school.

VII. Home Schooling

What is needed to home school a child or young person?

Home schooling must be approved by the school district.

To be an approved home school program, instruction must be provided in certain basic subject areas, and it must be provided by either:

- › A parent with 45 college credit hours
- › A parent under the direct supervision of a certified teacher or

- › A parent who is deemed sufficiently qualified by the Superintendent of the local school district in which the student lives.

Home school instruction must include:

- › Occupational education
- › Science
- › Mathematics
- › Language
- › Social studies
- › History
- › Health
- › Reading
- › Writing
- › Spelling
- › Art and music appreciation.

Ask your local school district for a copy of its home school program requirements. See *RCW 28A.225.010(4) and 28A.200.020*.

VIII. Student Rights and Responsibilities

What are students' basic rights and responsibilities?

1. Student rights

A student has a basic right to an **equal educational opportunity**, which cannot be taken away

- (i) on the basis of unlawful discrimination or
- (ii) without **due process of law**.

In this case, “due process of law” means that when a student faces losing the opportunity to go to school, he or she must be given notice and a chance to dispute the loss of that right.

Students also have rights of **free speech, assembly** (gathering with others), and free exercise of **religion**. All of these rights are subject to reasonable limits on the time, place, and manner of the activity.

Students also have the right not to have themselves or their possessions unreasonably searched or taken. But this does not mean that students can never be searched. Nor does it mean

their possessions can't be taken. In order for the school staff to conduct a search of students or their belongings, the staff must have a "reasonable suspicion" that a violation of law or policy is taking place. This legal standard is less strict than what a police officer needs to know before searching someone. School lockers can be searched at any time, without any particular suspicion that something illegal is happening. See *RCW 28A.600.220, 28A.600.240 and WAC 392-400-215 in Appendix D.*

Strip or body cavity searches of students by school staff are never allowed. See *RCW 28A.600.230(3).*

2. Student responsibilities

A student's basic responsibilities are to attend school regularly, follow the rules and regulations established by state agencies and the school district, pursue the required course of study, and submit to the authority and punishment of teachers and administrators. Schools have a lot of freedom in deciding what, in any situation, makes an appropriate environment for learning. See *RCW 28A.600.040 and WAC 392-400-210 in Appendix D.*

What are the special protections and programs for students who have disabilities, are involved with the juvenile court system, pregnant, homeless, migrant, non-English speaking, or Native American?

1. Programs and services for students with disabilities

Schools have a duty to identify and provide special education and related services to students with disabilities who qualify for such services. If a student already qualifies for special education services and has a current Individualized Education Program (IEP) written by his or her previous school district (or detention school), then the school district to which he or she seeks admission must immediately honor the existing IEP and provide the placement and services stated in the IEP. See Chapter 3 in this Manual for a more in-depth discussion about special education.

A district may also be required to "reasonably accommodate" a student's disabilities even though the student is not in need of specialized instruction.

Students in grades K through 9 who have learning difficulties but who are not considered eligible for special education services may be eligible for special programs designed to enhance their learning opportunities, under the Learning Assistance Program (LAP). See WAC 392-162.

2. Students who are pregnant

Under state and federal law, pregnancy is generally considered to be a disability requiring accommodations. See Chapter 3 of this Manual for a general discussion of services for students with disabilities.

Pregnant students cannot be denied access to education on the basis of their pregnancy. See *the text of WAC 392-400-215 cited below in Subsection 4.*

3. Programs for homeless, migrant, bilingual, and Native American students

In addition to the federally funded, free or reduced-cost school lunch and breakfast programs, schools receive federal money to provide special programs and services to children who are homeless, migrant, needing bilingual instruction, or Native American. OSPI offers a separate citizen's complaint procedure for such federally funded programs. See WAC 392-168.

4. Students involved in the juvenile justice system

Some school districts are reluctant to enroll immediately or place in regular classrooms a student who is facing juvenile offender charges or who is on probation or parole from such charges. The general rule is that:

[N]o student may be denied an equal educational opportunity...because of national origin, race, religion, economic status, sex, pregnancy, marital status, previous arrest, previous incarceration, or a physical, mental, or sensory handicap. See WAC 392-400-215.

The only exceptions to this rule authorized by the Legislature are that a student *convicted* of a violent offense against a teacher or another student may not be placed in the same class as his/her victim, and that a student convicted of a sex offense against another student may not attend the same school as his/her victim or the victim's siblings (who are also notified of

the offender's release from detention). See *RCW 28A.600.460 and RCW 13.40.215*.

Schools and juvenile authorities are generally authorized to share and exchange their records about a student who is a juvenile offender, but they are generally not authorized to disclose these shared records to others. See *RCW 28A.600.475 and RCW 13.50.050*.

If a school tells you that all youth released from juvenile detention must be enrolled in a special program, ask for information about the program's curriculum and compare it with the basic education offered in the district's regular schools. If there is a meaningful difference in the programs that matters to the student, consider filing a grievance with the school district or a discrimination complaint, and contact an advocacy organization. See Chapter 7 in this Manual to learn more about resources.

IX. Conclusion

The authors of the Washington State Constitution recognized the importance of a full education for people who live in Washington. Do what you can to ensure that children get the education they deserve.

Action Points – Helping Children Enroll and Succeed in School

- Pick up an “enrollment packet” from your local school district. It will contain necessary forms, etc., and help you in enrolling the student.
- If you have problems, request a copy of the district’s written enrollment or admissions policies. Review them to see if the district is following its own rules.
- Don’t delay! Get the student enrolled as quickly as possible, even if you do not know the student’s entire education history or have all of the paper work needed.
- Identify any special characteristics or needs of your child in writing at the time of enrollment, and ask that the school inform you of all special programs or services for which the student might qualify.
- If the student is being treated differently because of race, gender, pregnancy, disability, or other reason, consider filing a complaint with the U.S. Department of Education or the Office of the Superintendent of Public Instruction.
- If the student wants to attend a school other than his or her “home school,” request the district’s policies and forms for enrollment in another school within the same district.
- If you think that the student may have unique needs, ask about special programs for which the student may qualify.
- Is the school delaying responding to a request? Consider filing a grievance under the district’s policies.
- If a school tells you that additional testing or an IEP must be done before allowing a student who lives in the district to start school, request a meeting with the Superintendent, file a grievance or seek assistance from an advocacy organization.
- If the school contacts you about a student being truant, ask the district in writing to assist you in identifying and responding appropriately to the underlying causes of these absences.

Tips for Youth

Your Right to Education

YOU have rights!

You have a right to go to school in the district where you live.

“Where you live” means where you sleep most of the time each week. If you stay at your aunt’s home 4 of 7 nights in a week, then that is the district where you live.

You have a right to an education without discrimination.

You CAN NOT be denied an education on the basis of your race, national origin, gender, whether you are rich or poor, married or not, been arrested or in detention in the past, or have any kind of mental or physical disability.

You have a right to due process. Your right to be in school can’t be taken away without due process. Due process means that you have a right to know the district’s reasons for taking away your rights AND you have a chance to challenge the decision. For example, if you get suspended or expelled, the school has to tell you why, and let you explain your side of the story.

An education means a lot. It can open doors for you. Make sure you get what you need out of school. Talk about things that are important to you. Tell adults in your life what you need to succeed. Make school work for you.

Education is your right!

What YOU have to do.

You have to go to school regularly. You could end up in juvenile court in a truancy case if you have too many unexcused absences (7 in a month or 10 in a school year).

You have to follow school rules. Ask your school to give you a copy of the rules—read them! If you have questions, ask teachers, counselors, or the principal. If you feel the rules are unfair, let someone know — but remember to follow those rules until they are changed.

Tips for Youth

Produced by TeamChild with support of Casey Family Programs.

This is not legal advice. If you need legal advice, seek the help of a lawyer.

Chapter 3

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Chapter 3

Special Education: When a Student Needs Additional Help

The 3 Most Important Things to Remember about Special Education

- ◇ A problem that interferes with a child or youth's ability to learn may be considered a disability under the law.
- ◇ Every child and youth with a disability that affects learning has a right to instruction that is specially designed to meet his or her needs, in a school environment that is as much like a regular classroom as possible.
- ◇ There are strict timelines and requirements that school districts must follow in providing students with special education services.

I. Introduction

Is a child or young person in your care having a difficult time in school? If the student has a disability, or you suspect that he or she has special needs, there is help available. All children and youth between the ages of 3 and 21 who have an impairment that interferes with their ability to learn can be eligible for additional support and services to help them achieve a meaningful education. Even babies and toddlers, from birth up to 3 years old, can receive special education services through the federally funded Early Intervention Program.

In this Chapter, you will find a detailed explanation of the following rights for students with disabilities:

- Evaluation
- Development of an educational program
- Due process protections.

If you want help on how to read the references to laws, look at the back of this Manual in the Section called *How to Read Citations and Find Laws*. Copies of the most commonly

used portions of laws and regulations are included in Appendices A-D in the back of the Manual.

Congress passed the Individuals with Disabilities Improvement Act in 2004. This law is referred to as IDEA, IDEIA, or IDEA 2004. In this manual, we refer to the new law as IDEA 2004.

One of the most important laws that applies to students with disabilities is the Individuals with Disabilities Education Act or IDEA. In 2004, this federal law was changed significantly and the changes became effective nation-wide on July 1, 2005. This law is frequently referred to as IDEA 2004 and had a huge impact on the provision of special education services to students with disabilities. Washington adopted new state regulations to comply with the changes in the federal law and these regulations went into effect on July 30, 2007. Please note that throughout this manual when we are referring to these changes in IDEA, and the corresponding changes to the Washington regulations, we will use the term “**IDEA 2004.**” Be sure to look at the Appendix A which contains a copy of IDEA 2004 and Appendix C which contains a copy of the new Washington state special education regulations.

II. Legal Protections for Students with Disabilities

What is a disability?

A disability is an impairment that interferes with a child's ability to learn.

In general, the term “child or student with a disability” is used to describe a child who has mental, physical, or emotional impairments that affect his or her ability to learn. To qualify for extra services in school, a student's impairment must also meet the definition of disability under special education laws.

It's important to recognize that having a disability does not mean that a child isn't smart or can't learn. It simply means that he or she needs extra help in certain areas.

Why do schools have to provide services for students with disabilities?

There are federal and state laws that protect the educational rights of students with disabilities.

There are two primary laws that protect students with disabilities. The two laws are commonly referred to as “Section 504” and the “IDEA.” In 1973, the U.S. Congress

passed Section 504 of the Rehabilitation Act, which made it illegal to discriminate against people with disabilities in programs receiving federal funds, such as public schools. Two years later, Congress passed the Education for all Handicapped Children Act. The federal law is reenacted every three years and is now called IDEA 2004.

In addition, in 1991, Congress passed the Americans with Disabilities Act, commonly referred to as the ADA. Title II of the ADA defines disability in the same manner as Section 504. When the ADA and Section 504 both apply, Section 504 is usually used because it has regulations that are more specific for schools.

Section 504 and IDEA 2004 were enacted to ensure that students with disabilities would be provided with meaningful educational experiences. IDEA 2004 starts out with an important statement:

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

See 20 U.S.C. § 1400(c)(1) in Appendix A.

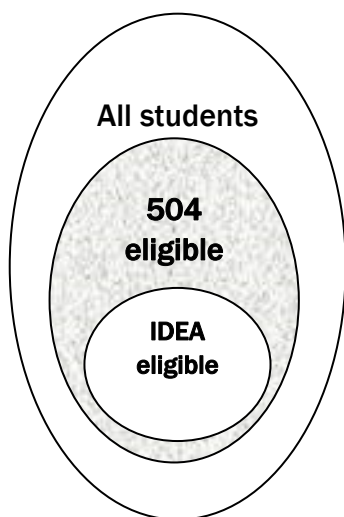
Prior to the enactment of these laws, many states allowed school districts to exclude children with disabilities from school. Instead of finding ways to meet the unique needs of such students, school districts simply refused to serve them. When students with disabilities were allowed in school, they were often placed in school programs where their special needs were ignored or misunderstood. IDEA 2004 and Section 504 are federal laws that address these problems, and they fundamentally changed the way public schools treat children and youth with disabilities.

What is the relationship between IDEA 2004 and Section 504?

Under both laws, school districts are required to provide disabled students with a free appropriate public education, referred to as FAPE. This means that districts must provide

a range of services to meet the individual needs of students who have trouble succeeding in school because of a disability.

Section 504 provides services for a broader group of students than does IDEA 2004 because it has a more expansive definition of “disability.” Therefore, if a student meets the eligibility requirements for IDEA 2004, he or she is also eligible for the protections of Section 504. But not all disabled students who are entitled to Section 504 services are eligible for special education under IDEA 2004.



One way to think about the relationship of the two laws is to think of eligible students as smaller groups of students within a larger group. To the left is a picture with a large circle representing *all* students. The medium-size circle inside the big circle represents the students who have disabilities and qualify for Section 504 services. Of that group, a smaller group is also qualified for services under IDEA 2004.

What is considered a disability under IDEA 2004 and Section 504?

Disability is defined differently under IDEA 2004 and Section 504.

Where you can have an impact

If you see that a student is having problems in school but you are not sure why, don't feel like you have to know which category of disability applies. Just be sure to tell the school your observations and concerns.

1. Disability under IDEA 2004

IDEA 2004 provides services to children who fall within one or more of the following categories of disability and who need special education and related services to make academic progress. The categories are:

- › Mental retardation
- › Hearing impairment (including deafness)
- › Speech or language impairment
- › Visual impairment (including blindness)
- › Serious emotional disturbance
- › Orthopedic impairment
- › Autism
- › Traumatic brain injury
- › Other health impairment
- › Specific learning disability (difficulty with thinking, reading, writing, spelling or doing math)
- › Developmentally delayed.

The state regulations (Washington Administrative Code or WAC) give definitions for each of these categories. Washington law also defines two additional categories of disability: deaf-blindness and multiple disabilities. See 20 U.S.C. § 1401(3) in Appendix A and WAC 392-172A-01035 in Appendix C.

2. Disability under Section 504

Section 504 provides services and accommodations if a child has a physical or mental impairment that substantially limits a major life activity. “Major life activities” under Section 504 include:

- Learning
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Caring for oneself
- Performing manual tasks.

See 34 C.F.R. § 104.3(j) in Appendix B.

Why does this Chapter focus on the rights of students under IDEA 2004?

This Chapter uses IDEA 2004 as a framework for discussing children’s rights to special education and services because the rights under IDEA 2004 are more clearly defined. See Section IX of this Chapter for an outline of Section 504 rights.

III. The Role of Parents under IDEA 2004 and Strategies for Non-Parents

Many rights under IDEA 2004 and Washington state special education law can be asserted only by the parents of students with disabilities. A wide variety of caregivers fit into the definition of parent under IDEA 2004 and the state special education law. Because this Chapter focuses on IDEA 2004 and state special education law rights, this Subsection talks about the definition of parent and how caregivers who do not meet the definition can gain legal authority to act in the place of or for a parent. Remember,

caregivers, foster parents, caseworkers, and people working with children and youth can do many things to help a young person access appropriate services, even without the legal authority to act as parent.

Who is a “parent” or “guardian” under IDEA 2004?

IDEA 2004 defines “parent” to include the following people:

- The birth or adoptive parent of a child
- The foster parent of a child
- A guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child, such as an individual given authority to make educational decisions by a judge (This does not include the caseworker if the child is a ward of the state.)
- A person acting in the place of a parent, such as a grandparent or relative with whom a student with a disability lives, or someone who is legally responsible for the student’s welfare
- A surrogate parent appointed by the district (see information below about surrogate parents).

See 20 U.S.C. § 1401 (23) in Appendix A. See also WAC 392-172A-01125 in Appendix C.

If there is more than one person in a child’s life who meets IDEA 2004’s definition of parent, the child’s birth or adoptive parent has educational decision-making authority unless the birth or adoptive parent’s rights are limited by a court order or compromised in some way. This could happen if the judge overseeing a child’s dependency case has given educational decision-making authority to another person or if the birth parent’s rights were terminated in a legal proceeding. See WAC 392-172A-01125 (2)(a) in Appendix C. If a judicial decree identifies a specific person to make educational decisions on behalf of a child, then that person shall be determined to be the “parent” for special education purposes. See WAC 392-172A-01125(2)(b) in Appendix C.

Are foster parents considered parents for special education purposes in Washington State?

Yes.

Under Washington law, foster parents meet the definition of parent for the purposes of special education decision making. See WAC 392-172A-01125 in Appendix C.

What special protections are available for out-of-home youth to help them identify an adult who can make educational decisions on their behalf?

IDEA 2004 adds specific protections for both homeless youth and children who are wards of the state and who do not have an adult that meets the broad definition of parent under the new law.

1. Protections for homeless youth.

IDEA 2004's definition of homeless child comes from the McKinney Vento Homeless Assistance Act (see Chapter 2 of this Manual for more information on the McKinney Vento Homeless Assistance Act). Under this definition, a child is considered homeless if he or she lacks an adequate, regular night time residence and includes children who live in motels, shelters, on the street or who are waiting for foster care placement. A child is also considered homeless if he or she is an unaccompanied youth, meaning he or she is not in the custody of a parent or guardian. See 20 U.S.C. § 1401(11) in Appendix A and WAC 392-172A-01090 in Appendix C. For homeless youth who do not have an adult who meets the definition of parent, the district must quickly appoint a surrogate to make educational decisions for the youth. The district must make reasonable efforts to ensure that a surrogate is appointed no later than 30 calendar days after a determination is made that the youth requires a surrogate. See 20 U.S.C. § 1415 (b)(2)(B) in Appendix A and WAC 392-172A-05130 in Appendix C.

2. Protections for wards of the state.

A child is considered a ward of the state if they are within the jurisdiction of the Department of Social and Health services, Children's Administration through shelter care, dependency or other proceedings to protect abused or neglected children. However, a child is **not** considered a ward of the state if he or she has a foster parent who meets the definition of parent under federal and state law. See WAC 392-172A-01200 in Appendix C.

A very small group of children will meet the definition of ward of the state, since most children in the state's custody are living with a foster parent or a relative who will meet the definition of parent. However, there will be situations when a child in the state's custody will not have an adult in his or her life who meets the definition of parent. For example, a child who is in a group home run by the state may not have an individual in his or her life that meets the definition of parent.

In these limited cases, the district must take steps quickly to appoint a surrogate to make educational decisions for the child. The district must make reasonable efforts to ensure that a surrogate is appointed no later than 30 calendar days after a determination is made that the child needs a surrogate. See 20 U.S.C. § 1415 (b)(2)(B) in Appendix A and WAC 392-172A-05130 in Appendix C.

Don't forget that for wards of the state, the judge overseeing the child's dependency matter could alternatively issue an order, sometimes referred to as a judicial decree, authorizing someone to make educational decisions for the child. That person would then meet the definition of parent under IDEA 2004 without the district appointing him or her as surrogate parent, as long as that person meets the basic requirements to be a surrogate parent. See 20 U.S.C. § 1401 (23) in Appendix A and WAC 392-172A-05130 (3) in Appendix C.

How can I assert a child's special education rights if I don't fit the definition of parent or guardian in IDEA 2004?

As you will learn in this Manual, you can have an impact on the quality and nature of the education of an out-of-home child or youth. Foster parents, relatives, group home workers and caseworkers can advocate to create and maintain good special education services for those students with disabilities even if they do not meet the definition of parent under IDEA 2004 and state special education law.

There may be times in your advocacy when a conflict might arise that can't be resolved directly with the school district. Since many IDEA 2004 rights can be asserted only by a parent or guardian as defined by the IDEA 2004 laws, you might find yourself running into a brick wall because you do

not have legal authority to make educational decisions on behalf of the child.

There are ways that you can obtain the authority to enforce a student's special education rights when a parent or guardian is not available.

Can a caregiver who is not a parent under IDEA 2004 gain authority to enforce an out-of-home student's rights under IDEA 2004?

Yes.

1. Get appointed as a surrogate parent.

School districts must appoint someone to make educational decisions for a disabled student when the parents of a disabled student are not known, the district cannot, after reasonable efforts, locate the parent, the student is a ward of the state or the student is an unaccompanied homeless youth. This person is called a "surrogate parent." A CASA volunteer or other knowledgeable adult could be a surrogate parent, but a caseworker cannot. The judge overseeing the care of a child who is a ward of the state also has the authority to appoint a surrogate parent for the child. See *20 U.S.C. §1415 (b)(2)(A) in Appendix A and WAC 392-172A-05130 in Appendix C.* Remember, because the new definition of parent is so broad, very few students will require a surrogate to be appointed.

A surrogate parent must:

- Not be an employee of the state or local education agency or any other state agency that is involved in the education or care of the child
- Have no interests that conflict with the interest of the child and
- Have knowledge and skills that ensure adequate representation of the child.

Every school district must have a system in place for appointing surrogate parents. You can call the district special education office to find out how it works in your area. If you would like to be considered as the surrogate, let the district know your relationship to the child and your willingness to be involved. See *WAC 392-172A-05130 in Appendix C.*

2. Request educational decision-making authority through the dependency, CHINS, or other family court process.

If a judge has authority to make decisions about a child's care, he or she can order that someone other than the parent should have the power to make educational decisions. A caseworker can ask the attorney general on the case to include this as a part of any court order. A separate hearing could also be requested for this specific purpose. If a judicial decree or order identifies a specific person to act as the "parent" of a child or to make educational decisions for the child, that person is the parent for purposes of special education decision making. See WAC 392-172A-01125 (2)(b) in Appendix C.

3. Obtain a Power of Attorney from the student's parents.

A Power of Attorney is a simple legal document that allows a person to give authority for someone else to act on his or her behalf. A student's birth parent or legal guardian could use a Power of Attorney to give someone else (such as a caregiver, relative, or foster parent) the authority to act as though he or she were the parent. As long as the dependency court has not terminated the parent's parental rights, the parent can do this by signing a Power of Attorney document. A Power of Attorney form can be purchased at most stationery stores.

A caseworker can ask the birth parent or his or her lawyer to grant Power of Attorney to a person who knows and cares for the child. The birth parents might be comfortable with this option if they know that this means that it will allow someone to watch out for their child's educational interests. A Power of Attorney can be cancelled by the parents at any time.

IV. Evaluation for Services under IDEA 2004

How does a district locate students who need special education services?

Under IDEA 2004 and state special education law, districts have an affirmative duty to identify all students residing in

the district who might need special education services. This duty is called “Child Find.” Districts are required to have policies and procedures in place to ensure that students with disabilities are identified, located, and evaluated. See *20 U.S.C. § 1412 (a)(3) and WAC 392-172A-02040 in Appendix C.*

How does a child get evaluated for special education?

The student is referred to the school district for a special education evaluation.

The district must decide whether to evaluate the student, and then get permission or consent from the student’s parent to perform the evaluation. School districts must evaluate a student in every area related to his or her suspected disability. The evaluation must be done at no cost to the student or family. There are three basic steps to make an evaluation happen:

- Step 1** Someone makes a request that the student be evaluated.

- Step 2** The district decides that an evaluation is necessary.

- Step 3** Consent to evaluate is given to the district.

Who can make a request for a special education evaluation?

Under Washington law, the following people or entities can refer a student for evaluation:

- › Anyone who meets the definition of parent
- › School district
- › Another public agency
- › Others persons knowledgeable about the child

See *WAC 392-172A-03005 in Appendix C.*

Many people fall into the category “other persons knowledgeable about the child,” including group home staff, relatives, court-appointed special advocates (CASAs) and guardian at litems (GALs), and the student themselves. The current version of the state special education law has a list of who can make a referral, but we think that the list

includes a very broad range of people. If you think a child has a disability, you should alert the school district to the fact that the child may need to be evaluated for special education. At the same time, ask that the student be evaluated for Section 504 eligibility.

Where you can have an impact

You can keep things on track by making sure that timelines are met. Note that when the laws or regulations give timelines, “days” can mean different things.

Calendar day means every day on the calendar, including weekends and holidays.

School day means every day of the school year on which students are engaged in educational activity.

Business day means Monday through Friday, except for federal and state holidays unless the holidays are specifically included.

Be sure to check the definition of “day” as it applies to your situation.

A referral for a special education evaluation used to be called a **Focus of Concern**. The IDEA was revised in 1997, and again in 2004, and the term *focus of concern* was taken out. Some school districts may still use *focus of concern* to talk about referrals for evaluation. Whether it’s called a *focus of concern* or referral, the district has the duty to consider the request for special education testing.

How do I make a referral for an evaluation?

1. Do it in writing.

A referral must be in writing, unless the person making the referral is unable to write. See WAC 392-172A-03005 in Appendix C. It can be handwritten and simple. Make sure to date it and keep a copy for your records. A sample and form referral letters are located at the back of the Manual in the Forms and Samples section.

2. Don’t worry about the referral letter being perfect.

Do worry about getting it done as soon as possible. Nothing will happen until a referral is made, and the date that the district receives the referral triggers the timelines within which the district must act.

3. Request that the school evaluate for both IDEA 2004 and Section 504 eligibility.

If the student is not eligible for special education under IDEA 2004, he or she may be eligible to receive services under Section 504.

4. Be specific about what kinds of problems you think the student has.

Districts are required to test in all areas related to a student’s suspected disability, so make sure you describe all of the problems. For example, if you think the student has difficulty reading and has emotional problems that need to be addressed, ask that both areas be evaluated.

5. Use examples.

Include your own observations to describe why you think the student may have a disability. If you have them, provide documents that indicate that the student may have an impairment, such as letters from doctors or mental health providers.

6. Send the referral to someone in the school or district who you think has authority and will act quickly.

Although the law does not specify a particular person or office to whom a referral should be sent, it is a good idea to send it to someone you think will act on it. For example, you might choose to send your referral letter to the school principal or the district's special education director. See *WAC 392-172A-03005 in Appendix C*.

What happens after the district receives a referral for special education evaluation?

Under state special education law, the district has 25 school days to decide whether to evaluate the student. (There are no evaluation timelines in Section 504. If the district doesn't have a 504 evaluation policy, use IDEA 2004 timelines as a guide.) In making its decision to evaluate, the district must review any existing educational and medical records in the school files or provided by a parent or caretaker. See *WAC 392-172A-03005 (c) in Appendix C*.

Once the district has made a decision about whether to evaluate, the district must send the parent or guardian a written notification of the decision. If you are not the parent or guardian, you can tell the district that you would like to be notified as well, but the district is not required to do so by law. See *20 U.S.C. § 1414(b)(1) in Appendix A and WAC 392-172A-03005 in Appendix C*.

If the district decides not to evaluate, you can challenge the decision. See Section VII of this Chapter for a description of the various ways to resolve disputes with the district.

What consent does the district need to do the evaluation?

Where you can have an impact

Nothing says a district has to take the full 25 school days to decide whether to evaluate. You can urge the district to move more quickly by:

- › Providing records
- › Getting additional information from doctors and other health care providers
- › Sharing your own observations about the child and
- › Being a "squeaky wheel" by checking in periodically to offer help and ask if the district has made its decision yet.

**Where you can have an impact
Caseworkers**

If you are concerned that a child in your care needs an evaluation, work with the district to help it get what it needs to move quickly on the referral.

- You can make sure a parent signs the consent form and gets it back to the district.
- You can help locate a parent or a youth's dependency lawyer.
- You can ask the dependency court to order someone else to have the authority to consent.
- You can press the district to ask for a hearing to override the consent process.

Before the district can evaluate a child for the first time, it must ask for consent from a parent. If the parent refuses, the district may request a hearing to override the parent's refusal. See 20 U.S.C. § 1414(a)(1)(D)(ii) in Appendix A and WAC 392-172A-03000 in Appendix C.

For children who are wards of the state and are not residing with their parents (see the IDEA 2004 definition of who is a parent listed earlier in this Chapter), the district needs to make reasonable efforts to obtain the consent of the parent for the evaluation but can proceed without the parent's consent if: 1) the district cannot locate the parent despite reasonable efforts to do so; 2) the rights of the parents have been terminated under state law; or 3) the rights of the parent to make educational decisions has been taken away by a judge and consent has been given for the evaluation by someone appointed by the judge to make the decision. See 20 U.S.C. § 1414 (a)(1)(D)(iii) in Appendix A and WAC 392-172A-03000 (d) in Appendix C.

If you aren't considered a parent under IDEA 2004's definition of parent and you hit a dead end trying to get parental consent for an IDEA 2004 evaluation, ask that the evaluation be done under Section 504 instead. There are no laws requiring parental consent for evaluation under Section 504. But keep in mind that districts could have a policy requiring parental consent for evaluation under Section 504. See Section IX of this Chapter for more information on Section 504.

What happens once the district gets consent to do the evaluation?

The school district has 35 school days to evaluate the student.

Washington law states that once the district has permission to evaluate for special education eligibility, it has 35 school days to:

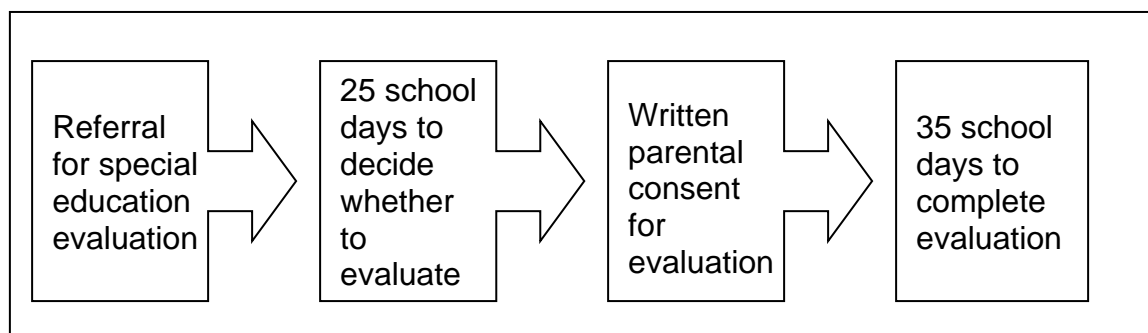
- Fully evaluate the student
- Decide whether the student has a disability
- Determine if he or she needs special education services.

See WAC 392-172A-03005 (3) in Appendix C.

The District and the parent can also agree to another timeframe, as long as the District documents the parent's agreement. For example, a parent may wish to agree to extend the timeline to wait for the results of an independent educational evaluation. See WAC 392-172A-03005 (3)(c) in Appendix C.

The 35 school day timeline is waived if the parent repeatedly refuses to bring the child to the evaluation or if the child moves between districts during the assessment, as long as the new district is making sufficient progress to ensure the evaluation is completed promptly and the parent and new district agree on a timeline to complete the evaluation. See WAC 392-172A-03005 (3)(d) in Appendix C.

Washington State Timelines for Evaluation



What happens if a student moves during the evaluation process?

If a student moves to a different district in the same academic year, the student's prior and new school must coordinate as quickly as possible to ensure the special education evaluations are completed promptly. See 20 U.S.C. § 1414 (b)(3)(D) in Appendix A and WAC 392-172A-03020(2)(f) in Appendix C. Washington state law requires that the new district begin obtaining student records when the student is enrolled and that the student's prior school district provide vital information within 2 school days and school records as soon as possible. See RCW 28A.225.330(3).

What is the scope of the special education evaluation?

The district must evaluate a child in **all** areas in which a disability is suspected.

The special education evaluation has two purposes: 1) to determine eligibility for services, and 2) to identify the needs and strengths of the student so that an individualized education program can be developed. The fact that the district must evaluate in ALL areas of suspected disability is a crucial, important point. Sometimes a student will have problems in more than one area. A district might stop the evaluation once a student is found eligible for special education in one area. If the evaluation has dealt with only one area, there might not be enough information about all of the student's needs when it comes time to develop the individualized program.

Where you can have an impact

The evaluation should be free to students and their families. If the school district doesn't have staff to do a complete evaluation (like a medical exam), the district must still pay for it. Make sure that the evaluation is complete. The evaluation must also be comprehensive enough to identify the student's instructional needs in all areas if the student is found eligible for special education so that an IEP may be written.

In order to get the most appropriate education plan for the student, pay careful attention to the district's evaluation efforts to make sure that they are comprehensive. Remind the district of its obligation to evaluate in all areas. See 20 U.S.C. §1414(b)(3)(B) in Appendix A and WAC 392-172A-03020 in Appendix C.

What areas may be evaluated and what kinds of tests will be used?

The district may evaluate a child in the following areas:

- › Health (physical and mental health)
- › Vision
- › Hearing
- › Social and emotional health
- › General intelligence
- › Academic performance
- › Communication, speech, and language
- › Motor abilities.

See WAC 392-172A-03020 (3) (e) in Appendix C.

The tests used for the evaluation should be valid and appropriate for the area being tested. This means that the tests need to measure accurately the things they are intended to measure. For example, the Wechsler Intelligence Scale for Children IV (called the WISC IV) is a commonly used test that is designed to measure general intelligence. In general, results of the WISC IV should not be used to assess a child's emotional status because it is not designed for that purpose. See WAC 392-172A-03020(3)(a)(iii) in Appendix C.

Tests and evaluation materials must be selected and administered so as not to discriminate on the basis of race, culture or sex. In addition, tests and materials must be given to the student in the student's native language or other mode of communication (such as sign language), unless it is not feasible to do so. See 20 U.S.C. § 1414 (b)(3)(A) in Appendix A and WAC 392-172A-03020 (3)(a)(ii) and (10) in Appendix C.

**Where you can have an impact
Caseworkers**

You may be the only person who can provide complete information on a child's medical and developmental history. Do you have a complete education history for this child? Can you talk to the birth parents and other relatives about the child's early development? Look in your files for evaluations and medical records that describe the child's development. Useful records include EPSDT evaluations, family reports on a child's early development, and medical or mental health records.

What can you do? Ask questions about the tests. Although the jargon of assessments can be intimidating, by asking questions you can understand:

- The purpose of the test and
- Whether the type of test used seems right for a particular student.

Ask one of the assessment team members to explain the tests to you in plain language. Make sure that the test can accurately measure the ability it is supposed to measure. For example, some tests have age, reading skill and language ability requirements in order for results to be valid. If a student is too young for a particular test, can't read at the level necessary for the test, or if the test is not given in the student's first language, then the results of the test might not be useful and might be invalid.

Who will do the testing?

Professionals who are qualified to conduct testing in the area of suspected disability.

The school psychologist can conduct many tests. But some areas of disability will need a psychologist with special training, a psychiatrist, a physical therapist/speech therapist, a medical doctor, or some other person with expertise.

If district staff is not able to do a complete evaluation, the district may need to seek outside expertise to complete the evaluation process. These outside evaluations should be paid for by the district. The district might ask if the student or family has private insurance or other funding that would cover the cost of outside evaluations. If the student or family doesn't want to use up insurance benefits or other sources of funding, the district must still arrange and pay for the outside testing necessary to complete the evaluation.

What other ways can the district gather information about a student's eligibility and need for special education?

The district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the student. See 20 U.S.C. § 1414(b)(2)(A) in Appendix A and WAC 392-172A-03020 in Appendix C.

Gathering information may include observation of the student and interviews of family, caregivers, and caseworkers.

IDEA 2004 and the No Child Left Behind Act emphasize the use of in-class assessments for gathering information. These in-class assessments are often called curriculum based measures (CBMs). You should ask if CBMs were used with the student so that all members of the evaluation team can review these assessments because sometimes CBMs are completed by the general education teacher and not shared with special education staff.

What should be considered before releasing personal information to a district?

Relevancy and privacy concerns should guide any release of information.

Caseworkers and caregivers can provide information to the district that can help identify education needs and appropriate ways to meet those needs. But some information isn't relevant to a student's education, and moreover, the information may be sensitive and personal, such as:

- › Mental health information about a student or his or her family
- › Abuse/ neglect history
- › Placement history
- › Sexual abuse issues
- › Immigration status
- › Criminal history or incarceration status of a student or parent
- › Medical and health history, especially facts such as HIV status or other potentially life-threatening illnesses.

Before providing information to a school district, consider the following questions:

- › Is the information really relevant to the education issues?
- › Is the information protected by confidentiality laws?
- › Is the information so personal that its release might ultimately be harmful?
- › How will the information be used? Can it be limited?
- › Who will have access to the information? Can that be limited?
- › Will those who have access be trained in how to deal with the information, or could they unintentionally cause harm to the student by responding to the information in an inappropriate manner?
- › What does the student think about disclosure?

Also keep in mind that youth have the right to consent to mental health treatment and drug and alcohol treatment beginning at age 13. If the youth you are working with is 13 or older, you will need his or her written consent to obtain mental health records or drug and alcohol treatment records and to share those records with the district.

In addition, youth have the right to consent to testing and treatment for HIV and other sexually transmitted diseases at age 14. If you are working with a youth who is 14 or older, you will need his or her written consent to obtain these medical records and to share these records with the district. Think carefully about whether the records are relevant to the special education evaluation, since this information is confidential and sensitive.

What if I disagree with the scope or results of the evaluation?

A parent can request an independent educational evaluation at the district's expense, if the parent disagrees with the evaluation. People not recognized as parents under IDEA 2004 can try other ways to make sure a complete, accurate evaluation is done.

- › If you have concerns about the scope or results of the evaluation, there are things you can do:
 - Talk with the district and voice your concerns. Ask the district to do additional or further evaluation.

- Find some other means for an evaluation to be performed. (Does the child or youth have medical coverage that would pay for an evaluation in the areas of concern? A district must consider outside evaluations.)
- Ask for an independent educational evaluation at the district's expense, and get a list of evaluators from the district. If the district does not recognize you as a parent under IDEA 2004, try to get a parent to request an independent evaluation or get the legal surrogate to be the one to request an independent evaluation. See Section III of this Chapter for suggestions on obtaining status to assert IDEA 2004 rights.
- Consider more formal dispute resolution options, such as mediation, a complaint, or a due process hearing. See Section VII of this Chapter for more information on dispute resolution.

Where you can have an impact

Upon request, the district must provide parents with information on where to go for an independent evaluation. But keep in mind that the independent evaluation can be done by someone who is not on the district's list. For more resources, check with one of the associations or support groups listed in Chapter 7 of this Manual.

Once an independent evaluator is chosen, make a point to talk to the evaluator about areas of concern. Ask that the evaluation results include concrete recommendations for educational programming.

What happens if an “independent educational evaluation at public expense” is requested?

The district must either grant the request or initiate a hearing to show that its evaluation is appropriate.

An independent educational evaluation means an evaluation conducted by a qualified person who is not an employee of the district that is in charge of the education of the student. Upon request, the district must give parents information about where an independent evaluation can be obtained. The parents get to choose who does the evaluation. See WAC 392-172A-05005 in Appendix C.

The district has 15 calendar days to ask for a due process hearing if it opposes the request for an independent evaluation. If the district doesn't request a hearing within 15 calendar days, then it must pay for the independent evaluation or make sure that one is provided at no cost to the student or family. See WAC 392-172A-05005 (2)(c) in Appendix C.

If the hearing officer determines that the district's evaluation is appropriate, the parent still has a right to an independent evaluation, but the district does not have to pay for it. The district must still consider the results of the independent evaluation even if it doesn't have to pay for it. See WAC 392-172A-05005 (3) and (5) in Appendix C.

V. Qualification for IDEA 2004 Services

How does a district decide if a child is eligible for special education, and who takes part in the decision-making?

The district must make an eligibility decision based on the evaluation.

Once the evaluation is completed, the district must produce an evaluation report that states the following:

- Whether the student has a disability
- How the disability affects the student's progress in school
- What services are recommended to address the student's individual needs.

See WAC 392-172A-03035 in Appendix C.

Whether a student is eligible for special education is determined by a group composed of the student's parent(s) and qualified professionals selected by the school district. See WAC 392-172A-03020.

This eligibility-decision making group used to be called the **Multidisciplinary Team** or **MDT**. When the IDEA was revised in 1997, and again in 2004, references to the multidisciplinary team were taken out. Some school districts may still use the term MDT or multidisciplinary team to describe the group of people making the decisions about evaluation and eligibility. Parents have a right to ask for notice of meetings and to participate in all meetings with respect to the identification, evaluation, and delivery of services to the student. See WAC 392-172A-05000 in Appendix C. Parents must also receive written notice of any decision made at such a meeting. See WAC 392-172A-05010 in Appendix C.

How will I know if the student is eligible for special education?

The district sends notice.

The district must provide the student's parent with a copy of the evaluation report and documentation of its decision about eligibility. See WAC 392-172A-03040(1)(b) in

Where you can have an impact

Ask that a person from the district's Section 504 program be made part of the eligibility determination group. If the group decides that the student is not eligible for special education under IDEA 2004 but may be eligible under Section 504, this person can help identify services that can be provided under Section 504.

Where you can have an impact

The eligibility decision-making group might not include people other than those listed. But the law requires the district to seek input from people who live with and know the student. Ask the district to be a part of the eligibility determination team.

Appendix C. If you are not considered the parent under IDEA 2004, you might not get notice directly. But if you have legal authority to get the information from the district (for example, you are the DSHS caseworker or you have an authorization to release information, etc.), keep calling the district to check on the status of the decision.

What can I do if a child is denied eligibility for special education?

You can challenge the district's decision.

If you think a child has been wrongly denied eligibility for special education services, you can try to change the district's decision by:

- Discussing the situation with school personnel
- Requesting a mediation conference
- Filing a complaint or
- Requesting an IDEA 2004 due process or 504 hearing.

Talking things through with school officials—including special education staff, the principal, the student's teachers and counselor—is the best way to start dealing with any problem.

If discussing the issue doesn't get you anywhere, consider using more formal dispute resolution. Anyone can file a citizen complaint on behalf of a student. However, *only individuals who fit IDEA 2004's definition of parent can request a mediation or an IDEA 2004 due process hearing.* If you are not a parent as defined under IDEA 2004, then try to get legal authority to request a hearing or mediation, or locate the parents and ask them to do it. Refer back to Section III of this Chapter for more information on obtaining legal authority to request a hearing or mediation. The mediation and hearing procedures are described later in this Chapter.

VI. Creating a Special Education Program

What is an individualized education program or "IEP"?

An IEP is a detailed description of the instruction and services a student with disabilities needs in order to receive a meaningful education.

The individualized education program, or IEP, is a document that describes the specific special education services that a child will receive. An IEP should be tailored to a child and his or her educational needs, and it can include creative strategies for delivering services.

The IEP must include:

- ☑ A statement of the student’s current levels of educational and functional performance—how the student is doing
- ☑ Annual educational goals
- ☑ A statement of how a child’s progress will be measured and when periodic reports on the child’s progress will be provided
- ☑ Descriptions of all of the services a child will receive both in the general education classroom setting and in a special education setting
- ☑ A description of “related services” the student will receive such as speech and language therapy, transportation, and counseling
- ☑ A description of all program modifications to be provided, such as modified reading materials, a reader for exams and other assignments, a tape recorder for lectures, etc.
- ☑ A determination of whether the student needs assistive technology devices and services. Assistive technology means equipment or systems that enhance or maintain the capabilities of the student and can include commercially produced items such as a computer or custom keyboard.
- ☑ A decision on eligibility for adaptive PE, and if eligible, how it will be provided
- ☑ A description of how the student will participate in general education classes and activities, and if not, why
- ☑ Any accommodations the student will have for taking state or district achievement tests
- ☑ Extended school year services, if determined necessary by the IEP Team
- ☑ Aversive interventions, if any, required for the student
- ☑ The location, duration, and frequency of services to be delivered
- ☑ Dates on which services will begin

- ☑ Beginning not later than the IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP Team: 1) appropriate measurable postsecondary goals and 2) transition services needed to assist the student in reaching those goals.

See 20 U.S.C. § 1414(d)(1)(A) in Appendix A and WAC 392-172A-03090 in Appendix C.

In addition, students who take alternate assessments must also have the following included in their IEP:

- ☑ A description of benchmarks or short term objectives
- ☑ A statement of why the student cannot participate in the regular assessment.
- ☑ A statement of why the particular alternate assessment is appropriate for the student

Where you can have an impact

Urge the district to hold an IEP meeting as soon as possible.

Be a squeaky wheel...again. By the time a student is found eligible for special education services, a lot of time may have passed. Aside from how long it takes to determine eligibility, this student may have not been receiving services he or she should have in years past. There is no reason to wait to put a special education program in place once the data has been gathered.

How soon after the initial evaluation will an eligible student get an IEP?

Within 30 calendar days of the decision that the student is eligible for special education, an IEP meeting must be held.

Once a school district determines a student is eligible for special education services, the district has 30 calendar days (**not school days**) to hold an IEP meeting and develop an individualized plan for the student. See WAC 392-172A-03105 in Appendix C.

Parents must agree to the services before an IEP can be implemented. The district is not permitted to request a hearing to override the parent's refusal to consent to the initiation of special education services. See 20 U.S.C. § 1414 (a)(1)(D)(ii) in Appendix A and WAC 392-172A-03000(2)(c). This means that a child may be evaluated for special education and found eligible but have an IEP that is never implemented. If the parent will not consent to the provision of special education services, you can ask for services under Section 504 (see Section IX of this chapter for more information).

Who develops the IEP?

The IEP Team is made up of people who can help design the student's education program.

A team of people is responsible for writing and approving the IEP. The following people are part of the IEP Team and generally should be present at all IEP meetings:

Where you can have an impact

Tell the district that you are interested in the student's education and want to be a member of the IEP Team. As an IEP Team member, ask to receive notice of meetings and decisions. If you are notified of a meeting that you are unable to attend, ask the school to reschedule the meeting. Your participation is important.

- Parent or guardian (including any individual who meets the definition of parent under IDEA 2004 or who has been appointed by the judge overseeing the child's care to have educational decision making authority)
- At least one of the student's general education teachers (if the student is or may be participating in the general education environment)
- At least one of the student's special education teachers or, where appropriate, special education provider
- A district representative who is qualified in the education of children with disabilities and is knowledgeable about the general curriculum and available resources (such as a director of special education)
- An individual who can interpret evaluation data (can be one of the above people or the school psychologist)
- At the discretion of the parent or district, others who have knowledge or special expertise regarding the child
- The student (if appropriate)
- Transition service providers (such as vocational specialists or someone from an outside agency such as the Division of Developmental Disabilities (DDD)).

See 20 U.S.C. § 1414(d)(1)(B) in Appendix A and WAC 392-172A-03095 in Appendix C.

Other people can be on the IEP Team. The law specifically allows others who "have knowledge or special expertise regarding the child" to participate on the IEP Team. This means that the IEP Team can include foster parents, caseworkers, therapists, and advocates. The district or the parent decides who has knowledge or expertise regarding the child. See WAC 392-172A-03095(3) in Appendix C.

However, under IDEA 2004 and state special education law, members of the IEP Team may not be required to be in attendance in all circumstances. A member of the IEP Team listed above is not required to attend the IEP meeting if the member's area of curriculum is not a subject of the meeting and the parent and the school district agree in writing that his or her attendance is not necessary.

For example, a speech and language provider may not be required to attend if speech services are not the subject of

Advocacy Tip

To fully understand how a student is doing in school, it may be a good idea to hear input from ALL of the adults working with the student. A full IEP Team may provide a more accurate picture of how the student is doing in school. If you meet the definition of parent under IDEA 2004, you do not need to agree to excuse IEP Team members if you feel it is necessary to have every member of the team present. Refusing to consent to the team member's excusal in writing means that all of the IEP Team members must be present. If you do not meet the definition of parent, you can still encourage the district to assemble a full IEP Team.

the IEP meeting and the parent and school district both agree in writing that the speech and language provider does not need to attend because the purpose of the meeting is to discuss the student's behavior intervention plan only.

Furthermore, members of the IEP Team may be excused from the meeting EVEN IF the meeting involves a modification or discussion of the team member's area if the parent and the school district agree in writing. However, the excused IEP Team member must submit written input into the development of the IEP to both the parent and the school district prior to the meeting. See 20 U.S.C. §§ 1414(d)(1)(B) & 1414(d)(1)(C) in Appendix A and WAC 392-172A-03095(5)(a) & 03095(5)(b) in Appendix C.

How do I know when the IEP Team is meeting?

The district must notify parents of the purpose of the IEP meeting, the time and location, and who will be attending. The district must give notice early enough to make sure that the parents have an opportunity to attend. The meeting should be scheduled at a mutually agreed upon time and place. See WAC 392-172A-03100 in Appendix C.

If the parent and the school district agree, meetings can also be held by telephone or video conference. See 20 U.S.C. § 1414(f) in Appendix A and WAC 392-172A-03100(5) in Appendix C.

If you are not a parent as defined by IDEA 2004 but you are part of the student's IEP Team, ask that you be given notice and an opportunity to participate in the meeting.

What can I contribute to the IEP?

Input from people who know the student and care about his or her success is key to creating an effective special education program. In fact, the IEP Team must consider the student's strengths as well as his or her needs and limitations when creating a plan.

An important part of your role as an advocate is to analyze the educational program and services being offered by the school district. For example, are the goals and objectives reasonable given your understanding of the child's abilities? Are the kinds of services recommended by the district going to make a difference for the child? If you have suggestions

for improving the education plan, you should voice them in the IEP Team meeting.

You can also add a fresh perspective and creativity to the process. Think about ways to engage the student that the educators may not have considered. For example, if a reward of a special activity or sports time motivates a child to do chores at home, then a similar reward for completing assignments could be put in place at school. Or maybe you know that a youth has a difficult time when there are a lot of distractions, people, and noise. You could suggest that the student change classes before or after the rest of students do.

How does the IEP address behavior issues?

The IEP should include a functional behavior assessment and a behavior intervention plan if behavior problems exist.

For a student whose behavior gets in the way of his or her learning or that of other students, the IEP should provide goals and objectives for improving behavior and strategies for addressing the problem. It is important to remember that a student's behavior may be related to his or her disability. The IEP should anticipate behavior problems and create effective ways to respond to those problems before they occur. See Chapter 5 of this Manual for more discussion on the functional behavior assessment and behavior intervention plan.

When does an IEP get reviewed or revised?

At least once a year, but more frequently if an IEP Team member requests it.

IEPs are good for one year. However, a district must follow an IEP even if it is past due for review. At the end of a year, the IEP Team must meet to review the education program and to determine whether the student's annual goals are being achieved.

The IEP must be revised if the student has not shown academic progress or new information about the student is made available. The IEP should also anticipate a student's changing needs as he or she matures.

The IEP can also be reviewed at any time at the request of a team member or when circumstances have changed.

Where you can have an impact

There may be reasons an IEP Team meeting should be requested between annual reviews, such as:

- › Services identified in the IEP are not being delivered.
- › The student's needs have changed.
- › The student's placement has changed.

Ask for an IEP meeting if you feel that the IEP Team needs to discuss or change the student's program. School districts may be reluctant to schedule multiple IEP meetings in one year, but remember there is no prohibition on holding an IEP meeting more frequently than one time per year.

However, under IDEA 2004 and state special education law, changes can now be made to a child's IEP after the annual review meeting without convening an IEP meeting if the parent and the district agree to do so. In this case, a written document can be used to amend or modify the child's IEP. See 20 U.S.C. § 1414(d)(3)(D) in Appendix A and WAC 392-172A-03110(2)(c) in Appendix C. At the parent's request, the school district must provide the parent with a revised copy of the IEP that includes the amendments. See 20 U.S.C. § 1414(d)(3)(F) in Appendix A and WAC 392-172A-03110(2)(d) in Appendix C. If you think that the IEP or the student's special education services have changed, ask the District for a copy of the most recent IEP including any written amendments that have been made through agreement.

Under IDEA 2004, school districts are also encouraged to reduce the number of IEP meetings held for each student per year by encouraging the consolidation of IEP Team meetings. See 20 U.S.C. § 1414(d)(3)(E) in Appendix A and WAC 392-172A-03110(2)(e) in Appendix C.

Once a student qualifies for special education, is there any further evaluation?

Yes, students with disabilities should be evaluated at least once every three years, and more often if necessary.

Although the IEP must be reviewed once a year, reevaluations of students with disabilities need not occur that frequently. Reevaluations must occur at least once every three years. A parent and the school district may agree that a three year reevaluation is not necessary. However, these three year evaluations often give parents and school districts valuable information on how a student is doing. Imagine the changes that a student experiences in the three years from grade school to high school! Think carefully before agreeing not to re-test your child because many things may have changed in the three years that have passed since the last evaluation.

Where you can have an impact

If a student's performance is consistently low or a new problem is discovered, you should request an IEP Team meeting to discuss the need for a reevaluation.

A student can be reevaluated sooner if the school district determines that the educational and service needs of the child warrant a reevaluation (this includes circumstances where the child has made improvement) or if the parent or the teacher requests a reevaluation. See 20 U.S.C. § 1414 (a)(2)(A) in Appendix A and 392-172A-03015(1) in Appendix C. However, reevaluations may not occur more

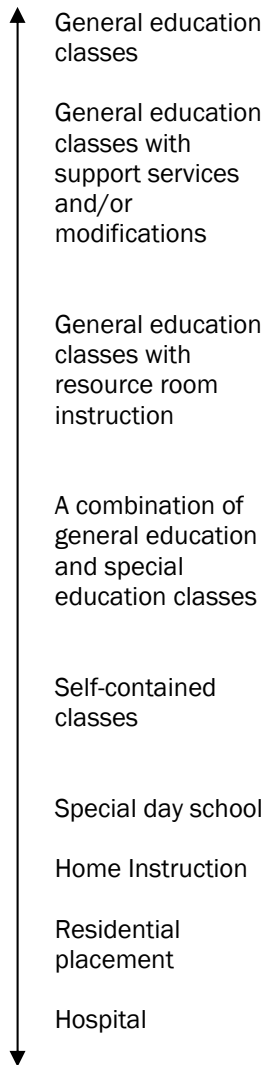
frequently than one time per year unless the parent and the district agree that an evaluation is necessary. See 20 U.S.C. § 1414(a)(2)(B) in Appendix A and WAC 392-172A-03015(2) in Appendix C.

The purposes of a reevaluation are to determine:

1. Whether the student continues to meet eligibility criteria
2. What additional services are needed to meet the goals of the IEP
3. The present levels of academic achievement and related developmental needs of the student.

The IEP Team must review the existing evaluation data for the student and decide what additional testing, if any, is needed to address the three issues listed above. See WAC 392-172A-03025 in Appendix C.

Least Restrictive



Where will the student with disabilities receive services described in the IEP?

Students with disabilities must be educated in the least restrictive educational environment - and that may mean a general education class.

An essential principle of IDEA 2004 is that students with disabilities should be included in the general education program as much as possible and not excluded or educated separately.

Children with disabilities have the right to be educated in the **least restrictive environment**. This means that an IEP Team must consider educating and providing services to a student in the same setting as students without disabilities for academic, non-academic, and extracurricular activities. A student with disabilities can be removed from the general education classroom setting only if the needs are so severe or disruptive that he or she cannot make educational progress, even with extra support and services in the general education classroom. See WAC 392-172A-02050 in Appendix C.

Not all students with disabilities can succeed in a general education classroom without support. Some students need individual help from a teacher's aide in the class, or modifications of curriculum, materials, or methods of

instruction. Other students require a different setting entirely, such as a special day school or home instruction.

Every school district must make sure that a range of educational settings is available for students with disabilities since some students with disabilities need more than can be offered in a general education setting. Students must be educated in the educational setting that is closest to the general education classroom, but will still allow the student to make academic progress.

This range of educational settings is sometimes called a continuum of placements and can include the options described in the chart to the left. See WAC 392-172A-02055 in Appendix C.

What happens if a student with an IEP moves during the school year?

1. Moves within the state

The new school district must provide the student with services comparable to those outlined in the IEP from the former district until the new district either adopts the old IEP or develops a new IEP. See 20 U.S.C. § 1414(d)(2)(C)(i)(I) in Appendix A and WAC 392-172A-03105(4) in Appendix C.

2. Moves out of the state

The new district in the new state must provide the student with services comparable to those outlined in the IEP from the former district until the new district conducts an evaluation, if necessary, and develops a new IEP. See 20 U.S.C. § 1414(d)(2)(C)(i)(II) in Appendix A and WAC 392-172A-03105(5) in Appendix C.

In both circumstances, the new school must take reasonable steps to promptly obtain the child's special education records and the previous school must promptly reply to the request for records. See 20 U.S.C. § 1414(d)(2)(C)(ii) in Appendix A and WAC 392-172A-03105(6) in Appendix C.

If you are working with a student who moves frequently, be sure to remind the school district of its obligation to request and send records as quickly as possible. You can also

reference a Washington state law, RCW 28A.225.330, that requires school districts who are enrolling a new student to request records from the previous school district and requires the previous school district to respond to the request for information within two school days of receiving the request.

Can a student with disabilities get special education services during the summer?

Yes.

1. Extended school year (ESY) services

A student with disabilities may receive special education services during the summer if the IEP Team decides that the services are necessary in order for the student to get a meaningful education. Eligibility for extended school year services can be based on the following factors:

- the likelihood that the student will lose skills over the summer
- whether a summer program is necessary for the student to meet the annual IEP goals
- a recommendation from a professional
- the student's educational history.

Schools districts are required to develop criteria for IEP Teams to use when determining a student's need for extended school year services. If you are working with a student who you think requires extended year services, ask for a copy of the district's criteria. See *WAC 392-172A-02020 in Appendix C*.

If a summer program is provided, it has to meet the goals of the IEP. In other words, participation in the regular summer school courses offered to all students may not be enough. If a student's IEP provides for a one-on-one aide during the school year, he or she has to be provided with one-on-one help during the summer as well. An extended school year program must be provided at no cost to the student.

If the district does not have an appropriate summer program for a student who qualifies for extended school year services, the district should create one or pay for the student to participate in a program offered by another school district or a private organization. The district must

pay transportation and other costs associated with the extended school year program.

2. Accommodations and services in regular summer school

If a student with disabilities does not qualify for ESY services but signs up for the district's regular summer school program, the school should still provide accommodations and specialized instruction to the student. Ask for these services under IDEA 2004 or Section 504 if the student needs additional help in order to participate in the program.

Can a special education program help a student transition from school into adult life?

Yes, special education must provide transition services to students beginning at least by age sixteen.

Special education provides services to all students with disabilities to help them prepare for adult life. These services, called "transition services," are designed to promote movement from school to post-school activities, including college and other post-secondary education, vocational training programs, independent living programs, and adult services, and supported employment.

School districts must start transition planning for older students, beginning no later than the first IEP to be in effect when the student is 16. This means that the school district must address transition planning at the annual IEP meeting prior to the student's 16th birthday. See 20 U.S.C. § 1414(d)(1)(A)(i)(VIII) in Appendix A and WAC 392-172A-03090(1)(j) in Appendix C. After transition is addressed, the IEP must include appropriate, measurable post secondary goals related to training, education, employment and, where appropriate, independent living skills and outline the transition services, including courses of study, the student will need to reach these goals. These goals must be based upon an age appropriate transition assessment. See WAC 392-172A-03090(1)(i) in Appendix C. The kinds of transition services a student receives should take into account his or her interests and preferences and the skills he or she needs to acquire. See 20 U.S.C. § 1414(d)(1)(A)(VIII) in Appendix A and WAC 392-172A-01190 in Appendix C.

Advocates can be especially helpful in creating useful transition plans. Your creativity and knowledge about a

Where you can have an impact Caseworkers

Help a child prepare for life after foster care by coordinating your transition efforts with those of the school and other agencies.

Use your knowledge of other agencies, and talk with the IEP Team about plans for housing and other support services that can be arranged for the youth when they leave DCFS care.

foster child's needs and interests can result in services that effectively prepare him or her for life after school and after foster care.

VII. Dispute Resolution

What can I do to resolve a dispute with the school district?

Meet with the district, request mediation, make a complaint or file for a due process hearing.

In the course of advocating for a student with a disability, you may at some point find yourself disagreeing with the school district. Where possible, it is always a good idea to try to first solve the problem by talking with members of the IEP Team or other district officials. But if that approach doesn't work, there are several methods for resolving disputes that are set up by law.

Formal complaint procedures, mediation, and due process hearings are available to parents and schools to resolve disputes about special education, including disagreements about:

- The identification of a student as disabled
- The evaluation of a student
- The delivery of special education services
- The educational placement of a child.

1. Complaints

There are two formal complaint processes that are available to anyone if there is disagreement about the special education (IDEA or 504) program of a student. These complaint procedures are especially useful if you do not have legal authority of a "parent" under IDEA 2004 to request a mediation or due process hearing.

a. Citizen Complaint to the Washington State Office of the Superintendent of Public Instruction.

What is a citizen complaint?

A citizen complaint is a way to have disagreements between students and districts resolved by an outside agency. Citizen

complaints should be filed with the Office of the Superintendent of Public Instruction (OSPI) when someone believes that an educational entity (including the state, a school district, or a public or private school) has violated the requirements of IDEA 2004 or state special education regulations. See WAC 392-172A-05025(1) in Appendix C.

Who can file a citizen complaint?

Any person or organization can register a complaint with the Office of the Superintendent of Public Instruction. See Chapter 7 for information on contacting OSPI.

What are the requirements of the citizen's complaint?

The complaint must:

- Be in writing
- Be signed by the person making the complaint
- Include a statement that the educational entity has violated special education law within the last year
- State the facts of the violation
- List the name and address of the person making the complaint and
- List the name and address of the educational entity.

See WAC 392-172A-05025(2) in Appendix C.

If the complaint is about a specific student, the complaint must also include:

- The name of the student
- The name of the student's school district
- A description of the nature of the problem of the student
- A proposed resolution of the problem.

See WAC 392-172A-05025(2) in Appendix C.

OSPI has created an optional form for you to use when filing a citizen complaint. The form is available at:

http://www.k12.wa.us/SpecialEd/pubdocs/Citizen_Complaint_Request_Form.pdf

What happens after the citizen complaint is filed?

Once OSPI receives the complaint, it must send a copy of the complaint to the school district. Within 20 calendar days of receipt of the complaint, the school district must investigate the complaint and respond in writing to OSPI. OSPI will send you a copy of the school district's response. You then have the option of submitting additional information about the complaint. See WAC 392-172A-05030(1) - (5) in Appendix C.

Where you can have an impact

When you make a citizen complaint, be sure to watch the timelines carefully. If OSPI or the educational entity fails to act within the appropriate time frame, you have grounds for another complaint.

Be sure to include relevant school records with numbered pages with your complaint so that the records are easier to refer to.

Within 60 calendar days, OSPI has to make an independent, written decision as to whether the educational entity is violating federal or state special education law. The decision must include findings of fact and reasonable steps necessary to resolve the complaint. This timeline can be extended if: 1) exceptional circumstances exist related to the complaint or 2) the complainant and educational entity agree in writing to extend the timeline to use mediation or another dispute resolution method. See WAC 392-172A-05030(7) in Appendix C.

The school district then has to comply with the timelines established in OSPI's written decision to complete any recommended corrective action. If the school district does not follow through, OSPI can withhold funding to the district or order other punishment. See WAC 392-172A-05030(8) and (9) in Appendix C.

If it is decided that the school district failed to provide appropriate services to a student with disabilities, OSPI must:

- Decide how the school district should make up for the denial of services, including paying money or taking some other corrective action that addresses the needs of the student
- Address the future provision of services for all students with disabilities.

See WAC 392-172A-05030(8) in Appendix C.

b. Civil Rights Complaint to the United States Office of Civil Rights for the Department of Education

What is a civil rights complaint?

Section 504 is an anti-discrimination law that aims to eliminate discrimination on the basis of disability in all programs that receive federal funds. Because public schools and districts receive federal money, they are subject to Section 504 requirements.

The U.S. Office for Civil Rights (OCR) for the U.S. Department of Education enforces the protections of Section 504 and is responsible for investigating complaints.

Who can file a civil rights complaint?

Anyone can file a complaint with the U.S. Office of Civil Rights whenever a student with disabilities does not receive educational benefit from a program that is comparable to the benefit received by non-disabled peers. An example is when a student with a behavioral disability is told he or she cannot go on field trips and must stay in the principal's office while the rest of the class is on the trips. OCR complaints can also include access issues, such as the lack of a ramp for a child in a wheelchair or a district's failure to provide accommodations or services that should be or are in a student's 504 plan. See 34 C.F.R. § 104.4 in Appendix B.

What are the requirements of a civil rights complaint?

A civil rights complaint must be filed within 180 calendar days (6 months) of the date of the discrimination. The complaint should include:

- The name, address and phone number of the person filing it
- The name, address and phone number of the person(s) discriminated against
- The name and address of the school, district, or person that discriminated
- The basis of discrimination (race, disability, national origin, etc.)
- When and where the discrimination took place
- The facts of the discrimination and

- Copies of written materials, data, or other documents that support the complaint.

To file a complaint with OCR, you can use the on-line form found at:
<http://www.ed.gov/about/offices/list/ocr/docs/howto.html>
or call OCR at 1-800-421-3481 for a hard copy of the complaint form to be mailed to you.

What happens after the civil rights complaint is filed?

The Office of Civil Rights must acknowledge your complaint within 15 days, but it may take up to 45 days to review the substance of the complaint. OCR will investigate your complaint and send you a letter stating its findings within 120 days from the start of the investigation. See 34 C.F.R. § 100.7 in Appendix B.

If OCR finds that the district is out of compliance with Section 504, it will seek voluntary compliance from the district within 60 days. If the district does not comply, OCR will begin enforcement measures within the next 30 days.

If you think a district is violating a student's right to an appropriate educational experience, consider filing a complaint.

2. Mediation

What is mediation?

Mediation is a type of dispute resolution. Under IDEA 2004, states are required to provide free mediation services to parents/guardians and school districts for the purpose of resolving conflicts about a student's special education program. Look in Chapter 7 of the Manual for information on contacting the mediation service for Washington State.

The mediation process brings the school and parent or guardian together with a neutral third person—the mediator. The mediator sits down with both sides to try to come to an acceptable agreement on the educational needs of the student. The process is voluntary, so both the parent or guardian and the school district have to agree to participate. Mediation can be an excellent way to improve services for

Advocacy Tip

Agreeing to participate in mediation does not prevent a parent from asking for a due process hearing later on. The parent can stop the mediation process at any time and still ask for a due process hearing. The only limitation is that at a later due process hearing the conversations that took place during the mediation process cannot be used as evidence. However, the written mediation agreement can be used as evidence. See 20 U.S.C. § 1415(e)(2)(F) in Appendix A and WAC 392-172A-05070 in Appendix C.

the student, resolve conflict, and repair relationships between the school and the parent or guardian.

If mediation is successful, the parties sign a legally binding agreement that sets forth the resolution. It is up to the school and parent or guardian to carry out the terms of the agreement. Once a mediation agreement is made, the mediator steps out of the picture and has no power to force either side to do anything. If a conflict comes up around the mediation agreement, the parent or guardian can seek enforcement in state or federal court. If a new or different conflict comes up, the parent or guardian or district can use all the forms of dispute resolution available under the law.

Requests for mediation should be made to Sound Options. You can make your request in writing or over the telephone. See Chapter 7 for contact information for Sound Options. Either party can contact Sound Options and they will contact the other party.

3. Due Process Hearings

What is a due process hearing?

A due process hearing is a formal administrative proceeding, much like a trial. The parent or guardian and the school district each have the opportunity to present evidence and witnesses and to cross-examine the witnesses presented by the opposing side. A hearing officer makes a written decision based on the facts and the law.

Do I need a lawyer for a due process hearing?

No, but you have a right to be represented by a lawyer if you wish.

The parent or guardian of a student with a disability can be advised or represented by a lawyer in a due process hearing. Having a lawyer is not required, and you can be successful in a hearing without one. Often it is a good idea to consult with a lawyer or another knowledgeable person to help request and prepare for the hearing.

Under IDEA 2004 and state special education law, the court can also award attorney's fees to the parent of a child with a disability if the parent wins the due process hearing. There are also new provisions in the law that allow a court to award attorney's fees to the school district and force the

parent or attorney to pay if 1) the parent or parent's attorney filed a complaint that was unreasonable or without foundation or 2) the parent or parent's attorney presented a complaint for an improper purpose, such as harassing the school district or causing unnecessary delay. Be sure that you have a clear reason for asking for a due process hearing before you file the complaint. You can always consult with an attorney about whether or not you have a legal claim against a school district. See 20 U.S.C. 1415(i)(3)(B) in Appendix A and WAC 392-172A-05120(1)(b) and (c) in Appendix C.

See Chapter 1 - Advocacy Basics for more information about preparing for and participating in a hearing.

How do I request a due process hearing?

Make the request in writing to OSPI and notify the school district.

A request for a due process hearing must be made in writing and contain the following information:

- The name and address of the student (in the case of an out of home youth, available contact information for the youth)
- The district and school a child attends
- An explanation of the parent's concerns
- Your suggestions for resolving the problem.

See 20 U.S.C. § 1415(b)(7) in Appendix A and WAC 392-172A-05085(2) in Appendix C.

Mail or deliver a copy of your hearing request to:

Office of the Superintendent of Public Instruction
Administrative Resources Section
Old Capitol Building
P.O. Box 47200
Olympia, WA 98504

You must also provide the original hearing request to the school district by delivering or mailing it to the Superintendent of the school district. Don't forget to keep a copy for yourself!

OSPI developed a due process hearing request form to help parents with requesting a due process hearing. This form is

available at:

http://www.k12.wa.us/SpecialEd/pubdocs/DPH_form.doc

What are the limitations for a hearing request?

Under IDEA 2004, the hearing request must address a violation or issue that occurred within the past two years.

Under IDEA 2004, a due process hearing request can address a violation from more than two years ago if one of two conditions is met:

1. The parent was prevented from requesting a due process hearing within two years because the school district misrepresented that it had resolved the problem

Or

2. The parent was prevented from requesting a due process hearing within two years because the school district withheld information it was required to share by law.

See 20 U.S.C. § 1415(f)(3)(C) & (D) in Appendix A and WAC 392-172A-05080(2) in Appendix C.

It is very important that a hearing request discuss all the potential issues and concerns a parent has. Once the request is received, it can only be changed if the school district agrees in writing or if the hearing officer agrees it can be amended, and the timelines for the resolution session (see below) start to run again. *See 20 U.S.C. § 1415(c)(2)(E) in Appendix A and WAC 392-172A-05085(6) in Appendix C.*

Also, under IDEA 2004, only issues raised in the hearing request or in an amendment to the request can be addressed at the due process hearing unless the other party agrees. *See 20 U.S.C. § 1415(f)(3)(B) in Appendix A and WAC 392-172A-05100(3) in Appendix C.* While you aren't required to have a lawyer to request a due process hearing, it may be helpful to consult a lawyer when drafting the due process hearing request to make sure that all of your concerns are raised.

What happens after a parent submits a request for a due process hearing?

The school district must reply.

Within 10 calendar days of receiving the parent's complaint, the school district must reply to it. The school district must explain why it took the action it did, what other options the IEP Team considered and why they were rejected, a description of the information the district relied on in making its decision and information on any other factors relevant to the district's decision. The school district does not need to reply if it sent prior written notice to the parent about the subject matter in the complaint. See 20 U.S.C. § 1415(c)(2)(B) in Appendix A and WAC 392-172A-05085(7) in Appendix C.

What is a resolution session?

IDEA 2004 added a new step in the due process hearing time-line: the resolution session. Under IDEA 2004 and current state special education law, a resolution session is a meeting that occurs after a due process hearing request has been made, but before a due process hearing.

Within 15 calendar days of receiving the due process hearing request from the parent, the school district must convene a meeting with the parent, relevant members of the IEP Team, and a representative of the school district that has decision making authority. The school district cannot bring an attorney to this meeting unless the parent has an attorney as well. The purpose of this meeting is to discuss the complaint and see whether the issue can be settled without a due process hearing.

If the parent and the school district come to an agreement at the resolution session, they must sign a legally binding agreement that is enforceable in court. Either the school district or the parent has three business days to change their mind and to cancel the agreement. See 20 U.S.C. § 1415(f)(B)(iii) in Appendix A and WAC 392-172A-05090(4) in Appendix C.

The resolution session must take place unless the parent and the school district both agree in writing to waive the meeting or agree to use mediation instead. See 20 U.S.C. § 1415(f)(B) in Appendix A and WAC 392-172A-05090(1)(c) in Appendix C.

How long is the due process hearing process?

IDEA 2004 states that a school district has 30 calendar days from the time it receives the complaint to try and resolve the issue to the parent's satisfaction through the resolution process. If the district does not do so within the 30 calendar days, the due processing hearing timelines begin. The hearing must be held and a decision reached within 45 calendar days. See *20 U.S.C. § 1415(f)(B)(ii) in Appendix A and WAC 392-172A-05090(2) and (3) in Appendix C.*

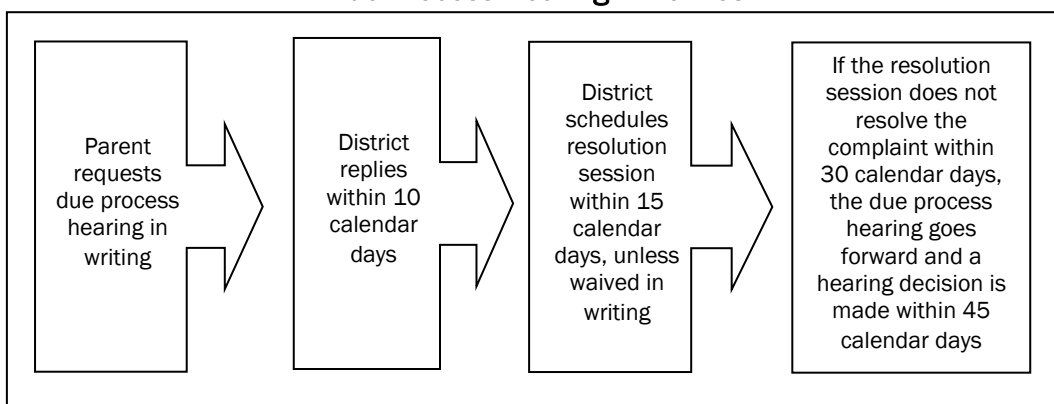
Under IDEA 2004, the 30 calendar day resolution period is adjusted if one of the following events occurs:

- both parties agree in writing to waive the resolution session;
- after mediation or the resolution session, both parties agree in writing that no agreement is possible; or
- the parties had agreed to participate in mediation past the 30 day resolution session and one party withdraws from mediation. In those situations, the 45 calendar day time begins immediately. See *WAC 392-172A-05090(1)(c) in Appendix C.*

The length of the hearing itself depends on what the issues are and how long each side thinks it will take to present its case.

The resolution session is very important. If a parent is unwilling to participate in the resolution session, the timelines for the resolution meeting and due process hearing are delayed until the meeting is held. In addition, a school district may ask a hearing officer after the end of the 30 day resolution period to dismiss the parent's due process hearing request if the parent refuses to participate in the resolution meeting. See *WAC 392-172A-05090(2)(d) in Appendix C.* On the flip side, if the school district fails to schedule a resolution meeting within 15 days of receiving the hearing request, the parent may ask the hearing officer to immediately begin the 45 day due process hearing timeline. See *WAC 392-172A-05090(2)(e) in Appendix C.*

Due Process Hearing Timelines



What is “stay put”? And, where does the student go to school when a hearing is requested?

Stay put is a term used in IDEA 2004 to describe where a student goes to school when a hearing is requested. If a hearing is requested, the student has a right to continue to receive his or her individualized education program in the same setting until the hearing is completed and a decision is made. There are some exceptions to *stay put*. For more information on exceptions to *stay put*, read Chapter 5 - Discipline of Students with Disabilities.

What can a due process hearing accomplish for a student?

The district can be ordered to provide services, give the student compensatory education, and pay for the parent’s legal fees.

A due process hearing can help the student **obtain appropriate services** and make up for education that was lost due to the district’s failures. A hearing officer can help resolve disagreements about a student’s eligibility, the IEP, changes in educational settings, and evaluations and reevaluations.

The hearing officer can also order **compensatory education**, meaning the district must provide services to make up for time or opportunities missed because of the district’s failures. For example, the district might be ordered to pay for the student to participate in a community college course, provide tutoring in addition to the special education program, or make summer programs available, even though the student wouldn’t otherwise qualify for extended school year services.

Compensatory education requests ought to be related to the goals and objectives of the IEP. But be creative when asking for compensatory education services. Think about what the student likes to do (art, music, science) and suggest a program or services that provide those experiences.

If you win at the hearing, the district may have to pay for the costs you had to go forward in the hearing and the fees that an attorney charges to represent you. Keep track of costs that you have in preparing for the hearing.

VIII. Programs for Children with Disabilities Age Birth to Three

Advocacy Tip

The federal regulations implementing IDEA 2004's early intervention provisions are in the process of being revised. Stay tuned for changes to the law when the new regulations are final. You can visit <http://idea.ed.gov> for more information.

Are services available to a child with disabilities before he or she qualifies for special education at age 3?

Yes.

The Early Intervention Program for infants and toddlers with disabilities is a set of services designed to meet the developmental needs of each eligible child and to help families enhance the child's development. Services are provided by both public and private agencies and are coordinated by the Department of Social and Health Services Infant Toddler Early Intervention Program (ITEIP).¹ See Chapter 7—Resources for information on contacting DSHS to learn more about the early intervention program.

What are the eligibility requirements for early intervention services?

The child must be evaluated and determined to have a significant developmental delay.

To qualify as disabled, a child under 3 must be evaluated and determined to:

1. Demonstrates a delay in at least one of the following developmental areas:

¹ During the 2005-2006 Washington Legislative Session, a highly significant bill, House Bill 1107, passed. It requires all school districts, by September of 2009, to provide or contract for early intervention services to all eligible children with disabilities and makes DSHS the payor of last resort for these services. Watch for major changes over the next few years as school districts begin to partner with local agencies to provide these services to children birth to three years old.

- › **Cognitive**, such as thinking and making sense of one's experience
- › **Communication**, such as using age-appropriate language
- › **Physical**, such as fine and gross motor skills needed for body control, and skills like standing, walking, climbing
- › **Social or emotional**, such as age-appropriate feelings and behaviors
- › **Adaptive behaviors**, such as self-help skills, including feeding and dressing.

Or

2. Have a physical or mental condition that is known to cause developmental delays, such as Down Syndrome.

See 20 USC §1432(5) in Appendix A.

How does a child under 3 become eligible for early intervention services?

You can request an evaluation from a Family Resource Counselor, public health organization, or school district.

Every child can get screened for early intervention services. If you think a young child in your care may be delayed or disabled, make a referral for evaluation. Each county or geographic area has a Family Resource Counselor that can give you information about where to get an evaluation. To find out who it is in your area, call the Within Reach hotline - 1-800-322-2588. You can also request an evaluation directly from your local school district or public health department.

**Where you can have an impact
Caregivers and caseworkers**

You can make valuable contributions to the evaluation by providing information in the form of medical records and personal observations of the child's development.

An evaluation looks at the child's progress in the five areas of development listed above. In addition, the evaluation must assess the unique strengths and needs of the infant or toddler and identify the services necessary to meet the child's needs. Input from the family must be considered, including the family's priorities and concerns about the child and the provision of services. See 20 U.S.C. § 1436(a) in Appendix A.

How are early intervention services delivered?

An individualized family service plan (IFSP) is created.

Within a reasonable time after the assessment is completed, an individualized family service plan, or IFSP, must be developed. The team that writes the IFSP must include the family. See 20 U.S.C. § 1436(a) and (c) in Appendix A.

The IFSP must be in writing and contain the following:

- ☑ Current levels of child's functioning
- ☑ A family statement of concerns, priorities and resources (the family may choose not to include this information)
- ☑ Outcomes expected to be achieved
- ☑ Specific early intervention services needed, including how often and for how long, and who will pay for the service
- ☑ The natural environments in which services will be provided (settings that are normal for the child's age peers who are not disabled)
- ☑ Timelines for the beginning and ending of services
- ☑ The identification of the service coordinator
- ☑ A plan for transitioning the child to preschool or other services.

See 20 U.S.C. § 1436(d) in Appendix A.

Before services can be provided, the child's parent must give informed, written consent. Parents can consent to some services and not to others. They can also agree to services but disagree about the frequency or where services are to be delivered. See 20 U.S.C. § 1436(e) in Appendix A.

The IFSP must be reviewed at least every 6 months and rewritten every year. See 20 U.S.C. § 1436(b) in Appendix A.

What kinds of services are provided through the early intervention program?

A wide range of services may be provided.

The individualized family service plan may include:

- › Family training, counseling, and home visits
- › Special instruction
- › Speech-language therapy
- › Occupational or physical therapy
- › Psychological services
- › Service coordination services

Where you can have an impact

Be creative when asking for services for a child in your care. A vast array of services is available, but you should be prepared to make a good argument for why a particular service is essential.

- Medical services for diagnostic or evaluation purposes
- Early identification, screening and assessment services
- Health services necessary to enable the child to benefit from other early intervention services
- Social work services
- Vision services
- Assistive technology devices and services
- Transportation needed for family and child to receive early intervention services.

See 20 U.S.C. § 1432(4)(E) in Appendix A.

What does the family service coordinator do?

The family service coordinator implements the individualized family service plan.

The family service coordinator is responsible for making sure that the plan is followed and coordinating with other agencies and individuals to ensure that services are provided. See 20 U.S.C. § 1436(d)(7) in Appendix A.

How are disagreements about early intervention services resolved?

If you disagree with a child's evaluation, the IFSP, the delivery of services, or the environment in which the services are delivered, you have several options for resolving the problem. It is always a good idea to try talking with others, especially the family services coordinator. However, if that approach doesn't work, a parent can request mediation or an administrative hearing.

Mediation of disputes over early intervention program services is offered at no cost and is voluntary. Both the parent and the service provider must agree to participate in mediation. If the parties reach an agreement, it must be written and a copy provided to each party. If you are not a parent, refer to Section III in this Chapter that outlines things you can do. See 20 U.S.C. § 1439(a)(8) in Appendix A.

The parent or guardian also has a right to the timely administrative resolution of complaints. An administrative hearing must be requested in writing and include the complaint. Talk with the ITEIP to find out where to send the request for a hearing. See Chapter 1 of this Manual for

information on how to prepare for an administrative hearing. See 20 U.S.C. § 1439(a)(1) in Appendix A.

How does a toddler move from an early intervention program into special education?

The child must be reevaluated for a disability, and a transition planning conference is held.

Any child who qualifies for early intervention services must be reevaluated for a disability before age 3 in order to be eligible for special education services. See WAC 392-172A-01035(2)(d)(vii)(B) in Appendix C.

In order to create a smooth transition between early intervention programs and special education preschool programs, each school district is required to have policies and procedures in place for transition planning. The law requires that districts hold transition planning conferences for each student at least 90 calendar days before the student's third birthday. By the time the student is 3 years old, an IEP must be developed and in effect. See WAC 392-172A-02080 in Appendix C.

IX. An Overview of Section 504

Where you can have an impact

Urge the district to move quickly to finish the evaluation. If the district doesn't have a policy or set timelines for completing the evaluation, ask that the district use the IDEA 2004 evaluation timelines as a guide.

Section 504 of the Rehabilitation Act was the first law made to protect people with disabilities. Under Section 504, all programs that receive federal funding must not discriminate against individuals on the basis of a disability. Schools receive federal funding, and therefore must follow the requirements of Section 504 to ensure that students with disabilities are not treated differently. School districts must also take steps that range from accommodating special needs to providing special instruction and related services. The intent of Section 504 is to remove barriers so that people with disabilities can fully participate in "life activities" such as learning in school.

As discussed earlier in this Chapter, Section 504 defines disability as an impairment that substantially limits a major life activity. Learning is a "major life activity" for children. Impairments that affect a student's education may qualify him or her for services under Section 504. The definition of disability under Section 504 is much broader than under the

IDEA 2004, so many students who are not eligible for IDEA 2004 may be eligible for extra support under Section 504.

School districts are required to create procedures and systems for implementing Section 504. In addition, each district must designate at least one person to coordinate the district's efforts to comply with Section 504. Ask for a copy of the district's procedures and for the name of the person designated as the Section 504 compliance officer. See 34 C.F.R. § 104.7 in Appendix B.

How does a student become eligible for 504 services?

Districts are required to identify students who may have disabilities, and evaluate whether they need extra support in order to get a meaningful education. The evaluation must be done at no cost to the student. As under IDEA 2004, districts must use valid assessment tools, administered by trained people. The evaluation tools must also be tailored to test specific needs and accurately reflect the student's abilities. Unlike IDEA 2004, there are no specific timelines for the district to finish an evaluation. See 34 C.F.R. § 104.35 in Appendix C.

Is parental consent required for evaluation under Section 504?

Section 504 does not have a provision requiring parental consent prior to an initial evaluation. Caregivers, foster parents, caseworkers, and other education advocates may all be able to initiate the evaluation for 504 services. If the district will not do an evaluation because it lacks parental consent, ask to see the district's policy on consent and any definitions of who has authority to make decisions and requests for Section 504 services.

How often does the district have to reevaluate students?

Section 504 requires periodic reevaluation of students with disabilities. The law does not state clearly how often, except that evaluating at least once every 3 years (like under IDEA 2004) would satisfy this requirement. See 34 C.F.R. § 104.35(a) and (d) in Appendix C.

Where you can have an impact

Ask the district to put the Section 504 plan in writing. If the district refuses, write up what you think the district agreed to do, and send the school a letter. Ask the district to confirm that the district's understanding of the plan is the same as yours.

Like IDEA 2004, Section 504 also requires a reevaluation whenever the district proposes to make significant changes to a student's program.

Does the district have to develop a plan for the student?

Section 504 requires a plan for meeting the student's special needs, but it doesn't require that the plan be written. See 34 C.F.R. § 104.35 in Appendix B.

The Washington State Office of the Superintendent of Public Instruction recommends that districts put plans in writing, even if it is not as detailed as an IEP.

Who develops the 504 plan?

There is no clear guidance in the law about who specifically should be involved in the development of the 504 plan. Section 504 does say that decisions about placement and services must be made by a group of people who knows the child, understands the evaluation data, and knows about support available within the district. You can ask to be on the 504 team and share your information about the student's strengths and needs. See 34 C.F.R. § 104.35(c)(3) in Appendix B.

What kind of things can be put into a 504 plan?

504 plans can range from seating a student near the teacher for extra help to providing specialized instruction and related services. For a student who has challenging behavior, a behavior plan, counseling, or an aide may be necessary in order for him or her to participate in school. For a student who is hearing impaired, a signing interpreter or written lectures might be included in the plan. Be creative! Your suggestions about how a student can participate in school should be open for consideration.

Does the district have to educate the student in a regular classroom?

Unless an IEP or 504 plan requires another arrangement, a child must be educated in the school that he or she would attend if not disabled and be with non-disabled classmates

to the maximum extent possible. See 34 C.F.R. § 104.34(a) in Appendix C.

Can a student be suspended or expelled for behavior that is related to a disability?

Suspending or expelling a student for behavior that is a result of or related to a disability is illegal discrimination, unless it is for a short-term (less than 10 school days). If suspension is more than 10 school days, or is part of a series of short suspensions, the district must hold a meeting to determine whether the behavior is related to the student's disability.

What if the district refuses to develop a 504 plan, or there appears to be some other sort of discrimination against the student?

Section 504 requires that school districts develop dispute resolution procedures, including the right to an impartial hearing. Ask for a copy of the district's 504 procedures to determine your next step. In addition, you can make a complaint to the Office of Civil Rights. See Section VII in this Chapter for more information about making a civil rights complaint.

X. Conclusion

All students are entitled to an education that helps prepare them for life. If students are disabled in some way, they may have a right to a vast array of services and accommodations that help them succeed. If you know a child or young person who needs more help than he or she is getting in school, advocate for special education services.

Action Points – Special Education: When a Student Needs Additional Help

- Ask (in writing) for a special education evaluation if you suspect a child or youth has a problem that is interfering with his or her ability to learn.
- Remember to ask for an evaluation under both IDEA 2004 and Section 504.
- Make sure the district evaluates in all areas of suspected disability.
- Be the “*squeaky wheel that gets the grease.*” Make sure the district keeps to the required time lines and does everything necessary for a student.
- If things are not going well, ask for a meeting.
- Share your knowledge about the child with the school district.
- Become an active member of the IEP Team.
- Invite people to the IEP Team who can help you advocate for the student.
- Involve the student in the planning process.
- Make suggestions for how the school can best serve the student.
- Scrutinize all aspects of the IEP to make sure the program will really help this student.
- Ask for summer special education services if the child needs them.
- Make sure that transition services are part of a child’s IEP who is 16 or older.
- If you think a student is being discriminated against, file an OCR complaint.
- Make a file of the student’s special education records. Include records from outside evaluators and service providers who work with the student.

Tips for Youth

Special Education

Need extra help
in school?

Are you:

- Failing classes?
- Having a hard time understanding or concentrating in school?
- Getting in trouble all the time and can't help it?
- Having trouble reading, writing, or understanding math?
- Feeling depressed or stressed out and not doing well in school?

Special education *what is it?*

It's help that is designed to meet your needs.

It's help that is in a general education class whenever possible.

It's about making sure that every student has a chance to succeed in school.

**It's NOT about being
DUMB!**

You might be eligible for extra help that can help you do better in school. Special education helps all sorts of students—students with learning difficulties, physical impairments, and behavior/emotional problems.

What can YOU do to get more help?

Ask for an evaluation. If you're having problems, but are not sure why, ask the school to test you to find out why you are having trouble. The evaluation will also help the school decide if you are eligible for special education and other supportive services.

Ask for a meeting to talk about your education program. Use the meeting to talk about the problems you're having and ways to make your school program work for you. If you already have an IEP (special education plan), ask that your IEP team participate in the meeting.

Ask an adult or parent for help in challenging a school's delay or denial of services.

Chapter 4

Discipline

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Chapter 4 Discipline

The 3 Most Important Things to Remember about Discipline

- ◆ Students have a right to an education, even if they misbehave at school.
- ◆ Students have a right to challenge removals for misbehavior if the discipline is not fair or if there is a disagreement about what happened.
- ◆ Students have a right to receive notice about why they are removed and for how long they will be excluded. They also have a right to fairness in their discipline appeal.

I. Introduction

Every child and young person has a right to education. The right to education is an important one that is protected by Washington's Constitution and laws. However, if students break school rules, school districts are allowed to take action to correct the behavior or to prevent it from happening again. Schools must make sure that students have a chance to tell their side of the story and make an argument about whether the discipline is appropriate and fair.

This Chapter gives information about the ways that a school district can punish behavior. It also explains how students can challenge discipline when it's not appropriate and fair.

Most of the laws referenced in this Chapter can be found in Appendix D in the back of the Manual. Also in the back of this Manual is a Section called How to Read Citations and Find the Law.

Please note that this manual does not include the recent changes to school discipline enacted in 2016. For more information about those changes, please refer to the [updated handbook](#) on the Office of the Education Ombuds (OEO) website: WWW.OEO.WA.GOV

II. How and Why Students Can be Disciplined

Where you can have an impact

Understanding the rules and showing an interest in your student's education are good ways of preventing school exclusion

Take time to talk with your students and help them make good decisions about what they do at or bring to school.

Schools are often quick to discipline, suspend, or expel students who schools think have broken the rules.

What are a student's responsibilities at school?

- Attend school and be on time to class.
- Follow school rules.
- Behave on the bus and follow the driver's directions.
- Show respect to other students and school staff.
- Don't bring drugs, alcoholic beverages, or tobacco products to school.
- Don't bring or have weapons on school property or carry weapons on the way to and from school. A weapon is anything that can be used to threaten or intimidate people.
- Don't participate in any gangs or gang-related activity at school. A "gang" means a group of three or more people, with a leader, that on an ongoing basis regularly plans and acts together to do illegal things. Schools often have policies forbidding students from using gang signals, wearing gang symbols or colors, recruiting gang members, or advertising that they are in a gang.

How do students know what behavior is expected?

All students should receive a copy of the school rules. If your student didn't get one, ask for it from the school office.

Read the school rules. If they are confusing, ask the school Principal for clarification.

What happens if a student misbehaves at school?

Teachers and school administrators can use a variety of methods to discipline or correct the action of a student. See *WAC 392-400-205 in Appendix D of this Manual.*

For example, schools can:

- Send a student home early.
- Require a conference with the teacher, principal, or other student involved in the alleged behavior.
- Impose an in-school suspension or detention.
- Refer the student for outside help such as counseling or a drug and alcohol evaluation.

- Immediately remove the student from school (called an “emergency expulsion”).
- Suspend the student for a certain number of days.
- Expel the student for up to one year.
- Call the police or make a referral to juvenile court if a crime is alleged to have been committed.

III. Limits on Discipline

Are there limits to the discipline that a school district can impose?

Yes.

Teachers and other school staff may not verbally or physically abuse students.

Students are entitled to an opportunity to challenge the discipline.

Discipline must be fair and must be warranted by the disciplined student’s behavior. Discipline excluding students from school may not last longer than one calendar year.

What is corporal punishment, and is it allowed in schools?

Corporal punishment means intentionally causing physical pain to a student. It has not been allowed in Washington State since September 1, 1994. The ban on corporal punishment does not include situations where a school staff person uses physical force necessary to maintain order or to prevent a student from harming himself or herself, other students, school staff, or property. See WAC 392-400-235(3) in Appendix D of this Manual.

IV. Student Rights When Removed from School

What are a student's rights when kicked out of school?

The school administrator (usually a Principal or Vice Principal) must:

1. Tell the student that he or she will be suspended or expelled.
2. Give reasons for kicking a student out and explain which rule was broken.
3. Give the student a chance to tell his or her side of the story.

A student's rights are slightly different depending on what discipline the district proposes. The rest of this Chapter discusses rights and procedures for challenging:

- Short-term suspension
- Long-term suspension
- Expulsion
- Emergency expulsion

Who is considered a "parent" in general education discipline matters?

The law does not define the word "parent" for general education discipline matters.

In the laws that deal with general education, there are numerous references to "parents." "Parents" hold many of the rights in the laws and must be the ones to receive notices and initiate certain appeals processes. The definition of parent is not clear in all circumstances. In the case of general education discipline, there is no definition for the word "parent."

So who is a "parent" for purposes of general education discipline issues? Without specific guidance in the law, some districts create their own definition for local district policy. Other districts may not have any policy at all on the issue and decide who is a "parent" on a case-by-case basis. In our society, many people who are not the biological parent take on the role of parents for children. It does not make sense to deprive those children of their caretakers' involvement in school issues.

If you are acting like a parent for a student or have some type of legal responsibility for a student, ask to be treated like the parent. Many districts are happy to work with someone who cares for the student and who is essentially taking the place of an absent parent. If a district refuses to allow you to participate, try to determine why. Ask to see the local district policy defining “parent.” If the policy excludes you, consider meeting with the Superintendent and asking for an exception to the policy. If the district does not have a policy, ask to speak with the Superintendent and discuss with him or her why you should be treated as a decision-maker in the situation.

V. Short-Term Suspension

Where you can have an impact **Challenging a short-term suspension**

Ask for an informal conference to talk about the behavior.

Work with school staff on ways to prevent the problematic behavior from happening again.

Schools will often not observe the right of the student to have this informal conference before the suspension. Do not hesitate to remind the school that they must allow the student the conference before serving the suspension.

What is a short-term suspension?

A short-term suspension is a disciplinary exclusion for up to ten school days. See WAC 392-400-205(3) in Appendix D.

What are a student’s basic rights?

Schools must try other ways to correct problem behavior before using a short-term suspension.

A student serving a short-term suspension must be allowed to make up missed schoolwork if the suspension will have a substantial effect on grades or prevent the student from getting credit for the course.

Kindergarten to 4th-graders cannot be short-term suspended for a total of more than 10 days in a term. Students in grades 5 and above cannot be short-term suspended for a total of more than 15 days in a semester or 10 days in a trimester.

What is the process?

Students have the right to an informal conference with school district administration **before** serving the suspension. The student has a right to give his or her side of the story at the informal conference. See WAC 392-400-250 in Appendix D.

Before the informal conference, the school must give the student an oral or written notice describing:

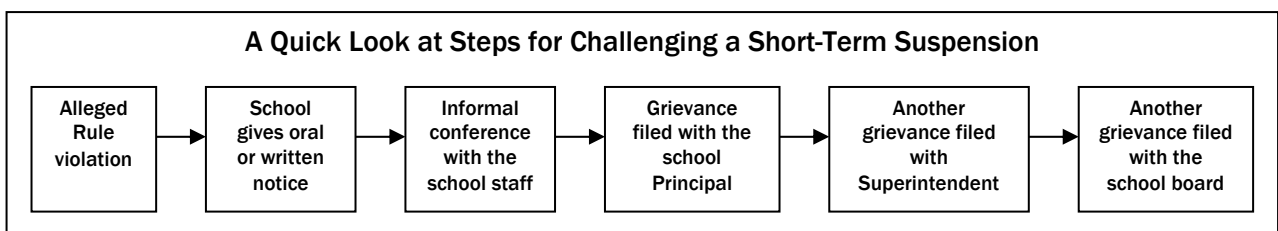
1. The alleged bad behavior.
2. The school district rule that was broken.
3. An explanation of the facts showing that the bad behavior really happened.
4. An explanation of the corrective action or discipline that the school district wants to impose.

If the suspension is going to last more than one calendar day, the district must provide written and/or oral notice to the student's family. See WAC 392-400-250 in Appendix D.

What if the student is still unhappy with the short-term suspension after an informal conference?

A student or his or her family can file a grievance with the Principal. A grievance is a statement of why the student is unhappy with the short-term suspension. The Principal must hold an informal conference to try to resolve the grievance. During the conference, the Principal can ask questions of the student, the student's parent or guardian, and the school staff involved in the matter.

If the student or his or her family is still unhappy after the grievance conference, another grievance can be filed with the Superintendent and then a third with the school board. Further challenge of the short-term suspension would most likely need to occur in court. See WAC 392-400-255 in Appendix D.



VI. Long-term Suspension

Where you can have an impact
Challenging a long-term suspension

Request a hearing as soon as you receive a notice. Timelines are very short, in this case **three school business days**. If you miss the timeline, you may lose your chance to challenge the suspension.

Put the hearing request in writing. Write specifically that you want a hearing for the suspension, and specify when the suspension was given.

Deliver it to the school or board office, whichever is specified in the notice.

Keep a copy of your request. Ask the person receiving it to stamp or write the date and his or her initials on your copy.

Expect the hearing to be scheduled within three days. Tell the school that you expect your student to be in school before the hearing occurs and out of school for no longer than ten days before the hearing decision is given, per RCW 28A.600.015, in Appendix D. If you need more time to prepare for the hearing, ask for it.

What is a long-term suspension?

A long-term suspension (LTS) is a disciplinary exclusion from school for a definite period of time of more than 10 school days in a row. See WAC 392-400-205(4) in Appendix D.

What are a student's basic rights?

The nature and circumstance of the rule violation must warrant a long-term suspension. This means that the discipline must be appropriate for the behavior.

The school must also first try other ways to address the behavior, unless the rule violation is “exceptional misconduct.” Exceptional misconduct is a category of bad behavior that can be punished more harshly. School districts should have a list of what falls into the exceptional misconduct category. If it is not listed in your school rules, ask the school district for a copy.

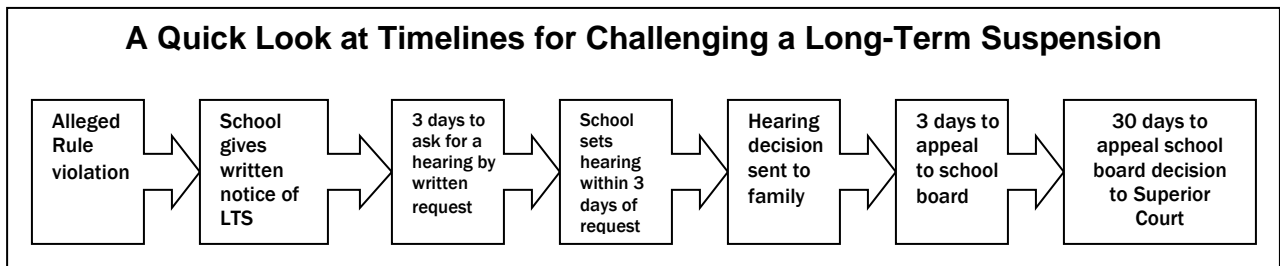
Students in Kindergarten through 4th grade cannot be given long-term suspensions. Students in 5th grade or above cannot be given a long-term suspension if it will cause a loss of academic grades or credit for more than one semester or trimester during the same school year. Long-term suspensions may not be imposed in any school year besides the one in which the behavior occurs.

Students and their parents have three school business days to request a hearing to challenge the long-term suspension. See WAC 392-400-265 in Appendix D.

Students have the right to a reengagement meeting to discuss a plan to reengage in a school program. This meeting should be scheduled by the school within 20 days of the start of the long-term suspension and no later than five days before the student's return to school, but you may ask to schedule one if the school does not. See WAC 392-400-420 in Appendix D and Section XII in this Chapter, which talks about reengagement meetings.

What is the process?

- Schools must give written notice to the student and his or her parent or guardian before imposing the long-term suspension.
- The notice must be delivered in person or by certified mail.
- The notice must:
 - › Be in the language the family primarily uses at home.
 - › Describe the things the student is supposed to have done wrong.
 - › Identify the rule that was broken.
 - › Describe the discipline.
 - › Explain the right to a hearing, how to request a hearing, and the timelines for making a request.



VII. Emergency Expulsion

What is an emergency expulsion?

An **emergency expulsion** is an immediate removal from school for an indefinite period of time, but no more than ten days. See *WAC 392-400-295 in Appendix D*.

What are a student's basic rights?

Schools can expel a student on an emergency basis when there is good and sufficient reason to believe that the student's presence would be unsafe to him/herself or to others. Schools can also order an emergency expulsion if the student's presence presents an immediate and continuing threat of substantial disruption to the education process. Often, schools will emergency expel students for being disruptive to the education process, even when there is no emergency. If the school has issued an emergency expulsion where no

Where you can have an impact
Challenging an emergency expulsion

Make a written request for a hearing as soon as you receive a notice.

Timelines are very short, in this case within **three school business days** after receiving the notice. If you miss the timeline, you may lose your chance to challenge the emergency expulsion.

Emergency expulsions may not last longer than ten school days. If the school has not converted your student's emergency expulsion to a long-term suspension or expulsion after ten days, your student should be allowed to go back to school.

If the school does convert the emergency expulsion, you may challenge that discipline separately. See Sections VI and VII of this Chapter.

emergency or threat to the educational process exists, challenge it immediately on that basis.

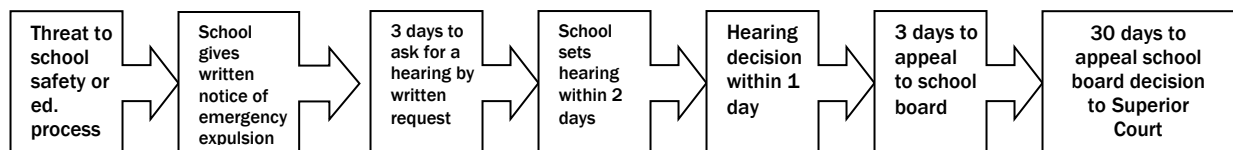
Emergency expulsions might not have a definite ending time when notice is given, though they must end within ten days. They continue until the school district says that the "emergency" is over, until a hearing officer ends it as a result of a hearing, or until the tenth day, when it must end or be converted to a suspension or expulsion.

If an emergency expulsion is converted to a suspension or expulsion, the school must provide the notice and hearing rights associated with those forms of discipline. You may request a hearing for a converted emergency expulsion, regardless of whether you requested one for the emergency expulsion. See Sections VI and VII of this Manual for the hearing processes for long-term suspensions and expulsions.

What is the process?

- Schools must give written notice to the student and his or her parent or guardian.
- The notice must be hand-delivered or sent by certified mail within 24 hours of the expulsion.
- In addition to the written notice, the school must try to notify the student and family by telephone or in person as soon as reasonably possible.
- The written and oral notice must:
 - Be in the predominant language of the family.
 - Describe the things the student is supposed to have done wrong.
 - Identify the rule that was broken.
 - Describe the discipline.
 - Explain the right to a hearing, how to request a hearing, and the timelines for making a request.

A Quick Look at Timelines for Challenging an Emergency Expulsion



VIII. Expulsion

Where you can have an impact

Request a hearing as soon as you receive a notice. Timelines are very short, in this case **three school business days.** If you miss the timeline, you may lose your chance to challenge the expulsion.

Put the hearing request in writing. Write specifically that you want a hearing for the expulsion, and specify when the expulsion was given.

Deliver it to the school or board office, whichever is specified in the notice. Keep a copy of your request. Ask the person receiving it to stamp or write the date and his or her initials on your copy.

Expect the hearing to be scheduled within three days. Tell the school that you expect your student to be in school before the hearing occurs and out of school for no longer than ten days before the hearing decision per *RCW 28A.600.015, in Appendix D.* If you need more time to prepare for the hearing, ask for it.

Review advocacy basics in Chapter 1, Section X of this Chapter on discipline hearings, and Section XI of this Chapter on Behavior Charged as a Crime.

What is an expulsion?

An expulsion is an exclusion from school for up to one calendar year, unless the school petitions the district superintendent for an extension and the superintendent authorizes the extension. An expulsion can also include a denial of admission to or entry on property owned, leased, rented, or controlled by a school district. See *WAC 392-400-205(5) in Appendix D.*

What are a student's basic rights?

The nature and circumstance of the rule violation must warrant the harshness of an expulsion. Expulsions should only be used for very serious violations of school rules, but schools often expel students for repeat violations of more minor rules.

The school must try other ways to address the behavior first, unless other ways have been tried and failed or there is good reason to believe that other forms of corrective action or discipline wouldn't change the student's behavior.

Expelled students can ask to be readmitted at any time with a petition for readmission written to the school district. See Section XIII in this Chapter, which talks about petitioning for readmission.

Students have three school business days to request a hearing to challenge the expulsion. See *WAC 392-400-280 in Appendix D.*

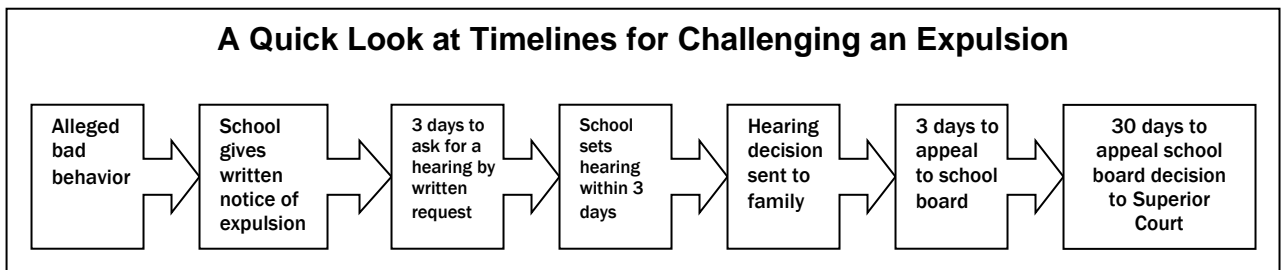
Expelled students have the right to a reengagement meeting to discuss a plan to reengage in a school program. This meeting should be scheduled by the school within twenty days of the start of the expulsion, but you may ask to schedule one if the school does not. See *WAC 392-400-420 in Appendix D* and Section XIII in this Chapter, which talks about reengagement meetings.

If the school submits a petition for an extension of an expulsion past one calendar year, the student has the right to submit a written response to the petition within ten school business days and if the petition is granted, the student has the right to appeal

the decision to the district's school board. See WAC 392-400-410(5),(7) in Appendix D and Section VIII of this Chapter.

What is the process?

- Schools must give written notice to the student and his or her parent or guardian before imposing the expulsion.
- The notice must be delivered in person or by certified mail.
- The notice must:
 - Be in the predominant language of the family.
 - Describe the things the student is supposed to have done wrong.
 - Identify the rule that was broken.
 - Describe the discipline.
 - Identify the date on which the expulsion is to end.
 - Explain the right to a hearing, how to request a hearing, and the timelines for making a request.



IX. Schools' Appeals for Expulsion Extensions Beyond One Year

What happens if the school appeals for an extension?

All expulsions should have an end date within one calendar year of the first day of the student's removal from school. The school may appeal for an extension of this limit if it believes it has evidence that the student's return to school would be a risk to public health or safety. To do this, the school must submit a petition to the school district's superintendent **before** the end of the expulsion. The Superintendent should only grant the petition in limited circumstances.

In its written petition, the school must:

- Describe in detail what the student is alleged to have done wrong.
- Describe the student’s academic, attendance, and discipline history.
- Describe what lesser forms of discipline were considered and why they were not chosen.
- Describe all alternative educational programs and services which may be available to the student.
- Specify the proposed extended length of the expulsion.
- Specify a proposed date for a reengagement meeting.
- Describe all special education or 504 accommodations, if applicable to the student.

The school must deliver the petition in person or by certified mail to the student and his or her parent or guardian. It must be provided in the predominant language of the family.

The student and family may then submit to the superintendent a written or verbal response to the petition within ten school days after receiving the petition.

The superintendent should wait until at least the eleventh school day after the petition is delivered to the student in order to give the student the opportunity to respond. No later than twenty days after the petition is delivered to the student, the superintendent should issue a decision as to whether the expulsion may be extended. This decision should also let students and families know of their right to appeal this decision to the school board. A request for an appeal to the school board needs to be made within ten school days of receiving the superintendent’s decision. See *WAC 392-400-410(7) in Appendix D*.

X. Discipline Hearings

What should I know about discipline hearings?

A discipline hearing is an opportunity for your student to challenge the claims that he or she did something wrong and/or the amount of punishment he or she is receiving. Even if your student admits to the wrongdoing, the hearing can be used to make sure that the discipline is fair. For example, the hearing officer might decide that the student did break a rule, but that the punishment is too long.

Where you can have an impact

In the case of long-term suspension or expulsion, the student has the right to remain in school until the hearing is over. In the case of emergency expulsion, however, there is no such right. As a result, school districts often use emergency expulsion as a first step before they decide to impose a long-term suspension or expulsion. If the school has issued an emergency expulsion where no emergency or threat to the educational process exists, challenge it immediately on that basis.

The hearing officer is appointed by the school district and may not be the most objective decision-maker. Do not get discouraged by this; your student still has rights. Keep advocating for them.

When will it be scheduled?

Once a hearing is requested, the school district must schedule it within 3 school business days for an expulsion or long-term suspension hearing and within 2 school days for an emergency expulsion hearing. If you need to, ask the school district for more time to prepare or to find an attorney.

Who will make decisions at the hearing?

A hearing officer appointed by the school district will make a decision after listening to the student and the district give their sides of the case. The hearing officer can be an employee of the school district but cannot be someone who is also a witness. This means that the hearing officer can't be someone who took part in the original decision to suspend or expel the student.

What can I expect at the hearing?

The hearing can be formal or informal depending on how the hearing officer wants to handle it. The hearing is tape-recorded. The hearing officer may want a short statement at the beginning about why the student is appealing and what the student wants the hearing officer to do (e.g., overturn the suspension, let the student come back to school). Usually, the district will go first and present documents, witnesses, and reasons why the student should be punished. If the student and family feels that something being said isn't fair, they should raise their hand, say they object, and say why. They don't need a legal reason to object, but they do need something more than just disagreement with what is being said or wanting tell their side of the story. The student and family will also get an opportunity to present documents, witnesses, and reasons why the student should not be punished in the way proposed by the district.

The hearing officer may make a decision at the end of the hearing or wait to send it in writing. Even if the decision is given orally, the hearing officer must also send a written decision to the student and family. Hearing officers must make decisions about emergency expulsion hearings within one school business day after the hearing.

**Where you can have an impact
Caregivers and Caseworkers**

Although sometimes it is helpful to have an attorney for school discipline hearings, the process is meant to be accessible to families, not just lawyers. You can be a strong advocate for the student.

Discipline hearings may be informal, and they provide an opportunity not only to challenge whether the student did what the school says he or she did, but also whether the discipline is appropriate. Districts will often reduce disciplinary sanctions when people supporting the student work with the district to develop a plan for re-entry into school.

Be cautious, however, if the school district requests that your student undergo a risk assessment by a mental health practitioner as a condition of re-entry. Consult an attorney before agreeing to this.

What can I do to prepare for a discipline hearing?

- See Chapter 1 of this Manual. The Section on hearings has many helpful hints on how to prepare for a hearing.
- Look at the school district's evidence. Before the hearing, you have a right to review the information that the school district plans to present. Ask for it. If the school presents information at the hearing that they didn't share with you – object! Ask the hearing officer to keep the materials out. It's not fair for the school to surprise you with new evidence at the hearing. It doesn't allow you time to prepare for it and to respond. Just delaying the hearing isn't fair, either.
- Prepare your case by figuring out where you disagree with the district—think about whether you agree with the facts and the fairness of the discipline. Is there another explanation of what happened? Are there reasons for less or no removal from school?
- Bring documents and witnesses to the hearing. Remember to share documents with the school ahead of time, too. They should support your side of the story or your proposal for corrective action. Make 3 copies of the documents you want to present—one copy for the hearing officer, one copy for the school district, and one copy for you to use. Write out questions that you want to ask your witnesses.
- Think of what school district witnesses might say (or not say) at the hearing. You have a right to ask them questions. You also have the right to question the people accusing the student of bad behavior.
- Bring a lawyer if you can. Students and their families have a right to be represented by legal counsel. See Chapter 7 for a list of resources, including legal services and advocacy groups.

What if we lose the hearing?

You will receive a written hearing decision. It will tell you whether you won or lost the case. Read it and decide if you want to have another decision-maker review it. This is called an appeal. Both the student and family have a right to appeal a hearing officer's decision. The appeal must be requested within 3 school business days of receiving the hearing officer's

decision. The hearing decision should give you instructions on when and how to appeal. If it does not and you want to appeal, submit a new request to the school the same way you made your request for the first appeal hearing.

Appeals are heard by the school board or an appeals council designated by the school board.

A meeting will be set up within 10 school business days of the request for an appeal. The student and family should be given the opportunity to present their case. The school board or an appeals council will decide whether to study the record and make its own decision, hear further argument, or hear the case *de novo* (basically start all over again). Further appeal would be made to superior court within 30 days.

XI. Behavior Charged as a Crime

Where you can have an impact

If you think there is any possibility that the school has or will refer your student to juvenile court, have your student consult the public defender or other criminal defense attorney before speaking with the school, any school security officer, or law enforcement.

If your student needs more time to consult with an attorney, consider either telling the school that you would like to delay your discipline hearing or hold it without the student speaking about the alleged behavior.

Can the school district call the police when a student gets in trouble?

Yes.

Schools can report crimes committed by students. They might not tell you when they have, and it may not always be obvious to you that the alleged behavior could be charged as a crime. Even if no charges have been filed yet, or the police haven't called the student yet, they still could at a later date.

What if the incident is filed as a crime?

If the alleged behavior at school is referred to juvenile court and is charged as a crime, the young person will have either a public defender or other criminal defense attorney to represent him or her on the charges. Be sure to encourage the youth to talk to his or her defense attorney to determine how the school discipline case might affect the criminal case. For example, it may not be a good idea for the student to make statements in a school discipline hearing if the criminal matter has not yet been resolved. Those statements could be used against the student in the criminal case.

The defense attorney should also be made aware of any disabilities that might impact whether the youth should be charged or not. For example, if the young person has a very low

I.Q., the court may decide that it isn't right to take the case through the juvenile court process. If your student allows, it might be helpful for the defense attorney to have access to IEP records.

XII. Education While Suspended or Expelled

Does a general education student have a right to educational services during a suspension or expulsion?

Maybe.

Students have a constitutional right to education in Washington. While it has not yet been decided by a court of law, you should argue that under Washington's Constitution, students are entitled to some kind of basic educational services or alternative schooling while suspended or expelled. Ask the school district for alternative education or other educational services for the student.

XIII. Readmission to School After an Expulsion or Suspension

How and when can an expelled or suspended student get back into school?

There are several ways:

- **Wait** for the time period of the suspension or expulsion to run out.
- **Petition for readmission**—ask to be let back into school. Students have a right to petition for readmission at any time before the expulsion or suspension runs out.
- Ask for **alternative education**.
- Advocate for readmission during a **reengagement meeting**. See Section XII in this Chapter for information about reengagement meetings.
- Try **enrolling in another school** or district.

Where you can have an impact

Positive information is key to successful readmission petitions.

School districts want to hear that the student has learned from their discipline and that they will not engage in the same behavior again. Positive information about what the student has done since the incident, including:

- Getting into counseling
- Completing anger management
- Participating in drug/alcohol treatment
- Attending another school program
- Working
- Participating in activities with peers—sports, arts classes, camp, etc.
- Being involved in organized groups—church, scouts, team sports
- Volunteering and community service

What is alternative education and how do I find out if it is offered in my district?

Alternative education means public education provided in a setting or way that is different from the regular public school. Some school districts offer alternative education through re-entry programs, internet or computer learning classes, community colleges, and special schools. An expelled or suspended student can ask the district for an alternative education program during the time that he or she is not allowed to attend the regular public school.

What is a petition for readmission and how is it done?

Students who have been long-term suspended or expelled from school can ask to be readmitted into school at any time during the exclusion. See WAC 392-400-245(7), 392-400-260(6) and 392-400-275(5) in Appendix D. An example of a readmission petition is also provided in Appendix E.

School districts must develop policies regarding readmission requirements. Ask for a copy of the readmission process. If the school district does not have a readmission policy, ask the Principal or Superintendent's office for information. You can ask questions like:

- Where should the petition for readmission be sent?
- What should be included in the petition?
- Who decides whether to approve or deny the petition?
- Will there be an opportunity to speak to the decision-makers?
- Can the student bring people to help make the case for readmission?
- Are there any expectations that the student should try to meet in order to get the petition approved?

School districts are not required to accept all students who petition for readmission prior to the end of a suspension or expulsion. A petition for readmission might be more successful if the student takes special care in putting it together.

How can I make the petition for readmission strong?

1. Gather information about positive things the student has done since the incident.
2. Ask other adults, mentors, and supervisors to write letters of support.
3. Bring supporters to the meeting where the petition for readmission is reviewed, if there is one.
4. Help the student outline his or her goals, strengths, and interests. Include this information in the petition for readmission. Encourage the student to express in his or her own words why he or she wants to go back to school.
5. Think creatively about ways that the student could return to school. For example, if the district seems reluctant to grant the petition, try proposing that when the student returns to school each day that they check in with a designated school staff person such as a counselor, the student could return to school for a probationary period, attend half days, abide by a behavior plan, or get extra support. The district may be more willing to let the student back in gradually or with support.

XIV. Reengagement Meetings

What should I know about reengagement meetings?

A reengagement meeting is an opportunity for the student, the student's family, and the school to develop a plan to reengage any student excluded from school for more than 10 days. Missing even a short amount of school can cause a student to become very behind in their learning. For students who miss at least 10 days due to an exclusion, a reengagement plan is essential to getting back on track both while the student is out and when they come back to school.

When will it be scheduled?

The school should contact the student and the student's family to schedule a reengagement meeting within 20 days of the beginning of the long-term suspension or expulsion. In no case should the reengagement meeting be scheduled for later than five days before the student's return to school. Thus, if the

**Where you can have
an impact
Caregivers and
Caseworkers**

You can be a strong advocate for the student at reengagement meetings. They provide an opportunity for you to connect with the school and improve your student's ability to succeed in school and life. Go into a reengagement meeting, planning to work collaboratively to develop a plan to return the student to school, amend the situation that led to the student's exclusion, and ensure safety for the student and the school.

student's suspension is for 20 days, the reengagement meeting should be scheduled within 15 days of the beginning of the suspension. The law requiring reengagement meetings went into effect in 2014 and is still a new concept to many schools. Some may wait until the very end of the exclusion to schedule a reengagement meeting, and some might not schedule a reengagement meeting at all. Because of this, it is a good idea for you to request your reengagement meeting as soon as the school exclusion begins. Nothing in the law says that the reengagement meeting cannot be held earlier than the 20th day from the beginning of the exclusion.

What can I expect at the meeting?

The point of the meeting is to develop a reengagement plan. In designing the plan, school districts are required to:

- › Consider shortening the suspension or expulsion.
- › Consider using a different form of discipline.
- › Consider using other supportive interventions to help the student engage in education and stay or get back on track to graduate.
- › Tailor the plan to the student's individual circumstances.
- › Tailor the plan to help the student take steps to better deal with whatever situation led the student's suspension or expulsion.
- › Not treat the reengagement meeting as a replacement for the right to a petition for readmission.

What can I do to prepare for a reengagement meeting?

- › Reflect on how the student's behavior might have looked through the school's eyes.
- › Have the facts as you know them prepared to share with the school.
- › Think of ways the student might be able to keep up academically and earn credits while out of school.
- › Talk with the student and discuss your goals for returning the student to school as soon as possible.

- Reflect on what support, resources, and skills you and the student might need to prevent future problems.
- Think of ways the student may be able to repair damaged relationships with other parties at school.
- Think of positive activities the student could be doing in and out of school.
- Think about what sort of communication about progress you would like to have with the school once the student is returned to school.
- Review the model meeting template as an option for use at the meeting. It is in the back of this Manual in the Forms and Samples section.
- The school administrator(s) running the readmission meeting will likely want to hear most from the student, as well as possibly the parent or guardian. The administrator may ask the student hard and uncomfortable questions as well as lecture the student about his or her past actions. The student and the parent/guardian should be prepared for this environment.

XV. Conclusion

Education is critical to a young person's success, and it is a constitutional right in Washington. When a child or youth in your care misbehaves or has problems in school, have confidence in him or her and be an advocate. Help the student get back on track and back into an educational program.

Keep the lines of communication open with the school, so that you can try to avoid the need for school discipline before it is imposed. Know about the student's behavior at school by keeping in touch with teachers and administrators. Whenever there is an incident at school, ask for a meeting to talk about it. This will help you and the school address problem behavior better and also make sure the school is following the rules when imposing discipline.

When behavior has been a consistent problem, consider making a special education referral to evaluate the student. This could help determine whether there is a more serious emotional or behavioral disorder impairing the student's ability to learn. The student may be eligible for help. See Chapter 3 of this Manual for information on special education referrals. Finally, keep all of the documentation you receive about school discipline.

Action Points – Discipline

- Read the front and back of all notices.
- Look for and follow instructions for requesting a hearing or conference.
- Act quickly to request a hearing. Timelines are short.
- Prepare for a hearing by:
 - Gathering records.
 - Preparing questions for witnesses.
 - Making 3 copies of important documents for the hearing.
 - Bringing a lawyer or advocate to the hearing if you can.
- Talk to a lawyer to get advice on your student's rights.
- Talk to your student's public defender if there are criminal charges.
- Make sure a reengagement meeting is scheduled and prepare to make it meaningful.
- Petition for readmission by writing a letter to the Superintendent.
- Enforce the one-year maximum for expulsions if the school does not successfully apply for an extension.
- Help construct creative ways to deal with problem behavior. Suspension/expulsion is just one way, and it might not be the most effective.

Tips for Youth

School Discipline

If you have been suspended, expelled or just kicked out of school—it makes it hard to get an education. As a student, you have to follow school rules, but even when you are in trouble, you have rights.

If you are removed from school for breaking a rule, the school must:

- Give you notice that tells you what you did wrong and which rule was broken.
- Make the punishment fit the behavior.
- Give you a chance to tell your side of the story in a hearing or a conference with school staff.

If you want to challenge the punishment, you need to:

- Act fast once you receive the notice.
- You have a right to a hearing or informal conference, but you need to request one in writing right away.
- If you don't act fast, you might lose your chance to challenge the disciplinary action.

Second chances.

Even if you are expelled or suspended for a long time, you have a right to ask the superintendent to let you back into school. This is a **Petition for Readmission**. Send your petition for readmission to the Superintendent of your school district. Let the Superintendent know what you are doing and why the district should consider letting you back in. Include with your petition letters and notes from your supporters—counselors, parents, employers, teachers. You also have a right for a **reengagement meeting**, to ensure that you remain engaged with your learning and on track for progress in school while you are out of school and when you get back to school.

You can do things to show you are ready to be back in school:

Participate in counseling
Volunteer
Find a tutor
Get a mentor
Get a job and do well
Ask for help from adults
Do well in another school

Chapter 5

Discipline of Students with Disabilities

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Chapter 5

Discipline of Students with Disabilities

The 3 Most Important Things to Remember about Disciplining Students with Disabilities

- ◆ Students cannot be punished for behavior that is the result of their disabilities.
- ◆ Students who are eligible for special education services have the right to receive education, special education, and related services even if they are expelled or suspended from school.
- ◆ The school administrator who is in charge of disciplining students may not know anything about the special needs of the young person OR the important steps that must be taken before imposing discipline. You may need to tell the administrator about what you know.

I. Introduction

When it comes to discipline, students with disabilities who are eligible for special education services are entitled to unique protections that are more extensive than the protections that apply to general education students. While students with disabilities do have all of the same rights as other students (see Chapter 4), they also have additional, extensive rights that protect them in discipline situations. The law recognizes that many students have disabilities that cause or at least are related to problem behavior. In the past, students with disabilities were excluded from school for behavior even though it was related to their disability. The law seeks to ensure that students with disabilities are not excluded from school and that their disabilities and any resulting behavior are handled in an appropriate manner. To provide that protection, there are very specific limitations on how a student with a disability can be disciplined.

One of the most important laws that applies to students with disabilities is the Individuals with Disabilities Education Act

Congress passed the Individuals with Disabilities Education Improvement Act in 2004. This law is referred to as IDEA, IDEIA, or IDEA 2004. In this manual, we refer to the new law as IDEA 2004.

or IDEA. In 2004, this federal law was changed significantly and the changes became effective nation-wide on July 1, 2005. This law is frequently referred to as IDEA 2004 and had a huge impact on the provision of special education services to students with disabilities. Washington adopted new state regulations to comply with the changes in the federal law and these regulations went into effect on July 30, 2007. Please note that throughout this manual when we are referring to these changes in IDEA, and the corresponding changes to the Washington regulations, we will use the term “**IDEA 2004.**” Be sure to look at the Appendix A which contains a copy of IDEA 2004 and Appendix C which contains a copy of the new Washington special education regulations.

Please note that this manual does not include the recent changes to school discipline enacted in 2016. For more information about those changes, please refer to the [updated handbook](#) on the Office of the Education Ombuds (OEO) website: WWW.OEO.WA.GOV

II. Steps that Schools Must Take

What is a school district supposed to do if a student with a disability breaks a school rule that would normally require suspension for more than 10 school days or an expulsion?

1. Give notice.
2. Have a manifestation determination meeting.
3. Look at the behavior and develop a functional behavior plan.

A change in placement occurs when a special education student is removed from school for a period of more than 10 school days in a row or experiences a pattern of shorter removals that over time exceed 10 school days. Long term suspensions and expulsions are considered a change of placement. If the district wants to order a change of placement for a special education student, it must follow the steps outlined above before the change can be implemented. School district staff may consider any unique circumstances on a case by case basis when deciding whether to order a change in placement for a student with a disability who violates a code of conduct. See 20 U.S.C. § 1415(k)(1)(A) in Appendix A and WAC 392-172A-05145 in Appendix C.

What notice is required when a school district wants to remove a student with disabilities from school for any period of time?

Where you can have an impact

Be sure to contact the person in charge of discipline and let him or her know that the child has a disability.

If the school proposes to keep the student out of school for more than ten school days, it is important that the school district is quick to schedule a meeting regarding the behavior and its relationship to the student's disability.

Being on top of discipline issues and aware of the rights of students with disabilities will reduce the number of days the student is without educational services.

The school district must give written notice of the decision to remove the student AND describe the procedural protections available. Notice must be given no later than the date that the decision to remove the student is made. The law says that the written notice must be given to parents of the disciplined student. Even though they are not always "parents," caregivers can ask that schools contact them in the event that a discipline issue arises. See *20 U.S.C. § 1415(k)(1)(H) in Appendix A and WAC 392-172A-05145(8) in Appendix C.*

What is a manifestation determination and why is it important when a special education student gets disciplined at school?

A manifestation determination is what a district must do when a student is facing a suspension or expulsion for more than 10 school days. The manifestation determination requires the school district, the parent and relevant members of the student's IEP Team to meet and consider whether the student's behavior is related to his or her disability.

This meeting has huge consequences for a student and the stability of the student's educational placement.

If there is a relationship between the disability and the behavior, then the student cannot be punished and several things must happen. The student must be allowed to return to the educational placement that he or she attended prior to the disciplinary removal unless special circumstances (described below) exist or unless the parent and the district agree otherwise. In addition, the student must receive a functional behavior assessment and behavior intervention plan or have his or her existing plan reviewed and modified, as necessary, to address the behavior. See *20 U.S.C. §1415(k)(1)(F) in Appendix A and WAC 392-172A-05145(6) in Appendix C.*

If it is determined that there is no relationship between the disability and the behavior, then the normal disciplinary procedures can be applied and the student can be suspended or expelled. However, the school 1) must

provide educational services to the student, although services may be provided in an interim alternative educational setting and 2) perform, as appropriate, a functional behavior assessment and develop a behavior intervention plan. See 20 U.S.C. § 1415(k)(1)(D) in Appendix A and WAC 392-172A-05145(3) and (4) in Appendix C.

See Section III Weapons, Drugs, Serious Bodily Injury, Dangerous Behavior and Interim Alternative Educational Settings in this chapter for information on special circumstances when a student can be removed from his or her educational placement even if it is decided at a manifestation determination meeting that the student's behavior was related to his or her disability.

Where you can have an impact

Act quickly if the child in your care is excluded from school. It may be several days before you receive notice or information about why he or she is not allowed to return.

Bring the special needs of the student to the attention of school district administration. If you think that the school administration is not listening to you, call the district's Director of Special Education.

Ask for an IEP or 504 meeting.

Ask that educational services be provided during the period of exclusion.

When does the manifestation determination meeting have to take place?

The manifestation determination must take place immediately if possible, but in no case later than 10 school days after the date the district decides to change the placement of the student for disciplinary reasons. See 20 U.S.C. § 1415(k)(1)(E) in Appendix A and WAC 392-172A-05145(5) in Appendix C.

Who is a part of the manifestation determination meeting?

The district, the parent and relevant members of the IEP Team.

An IEP Team includes:

- Parent or guardian (including any individual who meets the definition of parent under IDEA 2004 or who has been appointed by the judge overseeing the child's care to have educational decision making authority)
- At least one of the student's general education teachers (if the student is or may be participating in the general education environment)
- At least one of the student's special education teachers or, where appropriate, special education provider
- A district representative who is qualified in the education of children with disabilities and is knowledgeable about the general curriculum and available resources (such as a director of special education)

- ☑ An individual who can interpret evaluation data (can be one of the above people or the school psychologist)
- ☑ At the discretion of the parent or district, others who have knowledge or special expertise regarding the child
- ☑ The student (if appropriate)
- ☑ Transition service providers (such as vocational specialists or someone from an outside agency such as the Division of Developmental Disabilities (DDD)), when required.

See 20 U.S.C. § 1414(d)(1)(B) in Appendix A and WAC 392-172A-03095 in Appendix C.

Where you can have an impact

Bring information about the student's disability needs to the meeting. You might have recent evaluations, or notes from doctors and counselors. You can ask the student's health care provider for a letter. If you don't have documents, bring a counselor, nurse, doctor, or someone who knows about how the student's disability affects behavior and decision-making.

You may also remember things about that day that can help the team. Did the student take his or her medication? Did something happen at home or in counseling that led to emotional or behavioral reactions at school?

IDEA 2004 says that the manifestation determination team consists of the parent and those members of the IEP Team that the parents and the school district determine to be relevant to the decision making, implying that not all IEP Team members need to be present. See 20 U.S.C. § 1415(k)(1)(E)(i) in Appendix A and WAC 392-172A-05145(5) in Appendix C. Note that you can always ask that certain members be present if you think that his or her information will be valuable to the manifestation determination process. Throughout this chapter, we will refer to the team that makes decisions at a manifestation determination meeting as the "manifestation determination team." If we are referring to situations where the full IEP Team is present, we will indicate "IEP Team." Also read Chapter 3 for more information about IEP Teams.

What does the manifestation determination team consider when conducting the manifestation determination?

The manifestation determination team must take into consideration all relevant information.

The manifestation determination team must consider:

- Evaluation and diagnostic results, including those provided by the parents of the student
- Observations of the student
- The student's individualized education program

What questions must the manifestation determination team ask as part of the manifestation determination?

Under IDEA 2004 and state special education law, the manifestation determination team must ask:

1. Was the child's conduct caused by, or did it have a direct and substantial relationship to, the child's disability?
2. Was the conduct the direct result of the school district's failure to implement the current IEP?

If after consideration the manifestation determination team determines that the answer is "YES" to either of the above questions, then the behavior must be considered a manifestation of the student's disability and the discipline cannot be imposed. The student must be allowed to return to the educational placement that he or she attended prior to the disciplinary removal unless special circumstances exist or unless the parent and the district agree otherwise. See 20 U.S.C. § 1415(k)(1)(E)(ii) and § 1415(k)(1)(F)(iii) in Appendix A and WAC 392-172A-05145 (6) and (7) in Appendix C. If it is determined that the student's behavior was the direct result of the district's failure to implement the student's IEP, the district must take immediate steps to ensure the IEP is implemented. See WAC 392-172A-05145(5)(c) in Appendix C.

In some cases, a student may be acting out because the services or programs outlined in his or her IEP are inappropriate, even though the IEP is being implemented. IDEA 2004 does not prevent the parents or advocate from also asking that the manifestation determination team consider whether the IEP was appropriate at the time the behavior occurred. In addition, you can always ask for another meeting with the IEP Team and request that the IEP Team change the IEP or student's placement because the student needs additional services or a different educational setting to be successful.

What is a functional behavior assessment?

A functional behavior assessment is a way of understanding why and how a student with disabilities is having difficulty in school. There is no exact definition in the law of functional

behavior or how it can be assessed. One way to think about functional behavior is to ask the questions:

Who? What? Where? When? Why? and How?

An example of questions that can be asked when doing a functional behavior assessment

- ?** Who is usually around when the behavior takes place? Who is the behavior directed toward? Who is most successful in managing the behavior when it takes place?
- ?** What happens? What behavior is problematic?
- ?** When does the behavior take place? During passing period, lunch, or other unstructured time? In the morning? At the end of the day? During frustrating lessons? During lectures? During quiet time?
- ?** Where does the behavior take place? In the classroom? On the playground? On the bus?
- ?** Why does the behavior take place? Is the student frustrated with the work or format of the class? Is the student getting picked on and doesn't know how to react? Does the student's medication wear off? Did the student have someone or somewhere safe to go to get help?
- ?** How does the behavior arise? Is it predictable? Are there signs that things are getting out of hand? What are the triggers?

What is a behavior intervention plan?

A behavior intervention plan takes information from the functional behavior assessment and lays out steps to address the problem behavior.

Behavior intervention plans should do several things and should not be focused just on "bad" behavior. The plan should also include rewards for good behavior and acknowledgement of successes that a student has while in school.

A good plan will incorporate more than one strategy. Here are some ideas on how a behavior intervention plan can:

- **Manage the student's behavior.** A behavior intervention plan can reduce or prevent the behavior from taking place by controlling a student's environment and limiting the opportunity for problems to take place. For example, a student's behavior might be managed better if the student checks in with school staff at critical times of the day, eats lunch separate from others, or has an aide in class or during passing periods.
- **Guide teachers to address behaviors.** A behavior intervention plan can be a guide for teachers and school staff to recognize the signs that inappropriate behavior is developing and to prompt or redirect the student before the situation gets out of hand. For example, teachers may know that a student who starts pacing or getting in and out of his seat is becoming frustrated. The teacher can offer the student extra help, a timeout, or a verbal prompt to refocus.
- **Help students learn skills to help themselves.** A behavior intervention plan can work on teaching the student skills to recognize signs that behavior is getting unmanageable and to redirect himself or herself. A student might start to recognize that he gets frustrated when the teacher is giving more than one verbal instruction at a time. Rather than stop paying attention or disrupt the class, the student might ask the teacher to write out the instructions, or ask to have a classroom buddy to help take notes, or request a short break.

See 20 U.S.C. § 1415(k)(1)(D)(ii) in Appendix A .

When do school districts have to look at functional behavior and develop a behavior intervention plan?

IDEA 2004 and state special education laws do not have a definite timeline for when functional behavior assessments must be completed and behavior intervention plans written. However, IDEA 2004 does indicate the situations in which functional behavior assessments and behavior intervention plans must be developed. The district must conduct a functional behavior assessment and implement a behavior intervention plan, or revise an existing behavior intervention plan, if the student's behavior is determined to be related to his or her disability at the manifestation determination meeting. See 20 U.S.C. § 1415(k)(1)(F) in Appendix A and WAC 392-172A-05145(6) in Appendix C. In situations

where the student's behavior is determined not to be related to his or her disability at the manifestation determination meeting and the student is subject to a change in placement or in situations when a student is placed in an interim alternative educational setting for special circumstances (bringing a gun or drugs to school, inflicting serious bodily injury, or by order of a hearing officer), the district must perform a functional behavior assessment and implement a behavior intervention plan when appropriate. See 20 U.S.C. § 1415(k)(1)(D) in Appendix A and WAC 392-172A-05145(4) in Appendix C.

Where you can have an impact.

The functional behavior meeting and the manifestation meeting can take place at different time, or both issues can be discussed at the same meeting.

The functional behavior meeting and the manifestation meeting might not take place right away because the school district doesn't yet know how long the removal will last. For example, the school district might remove a student immediately through an emergency expulsion (see Chapter 4 for more information about emergency expulsions) and then later change the punishment to a short or long-term suspension or expulsion.

If the student is removed from school and you don't get a notice and nothing is happening, request a meeting. Take that opportunity to discuss the proposed discipline and the special needs of the student.

Parents and advocates should ask for the functional behavior assessment and behavior intervention plans to be developed as soon as possible to ensure the student's behavioral needs are being addressed.

Who takes part in the functional behavior assessment and planning meeting?

The IEP Team.

An IEP Team includes:

- Parent or guardian (including any individual who meets the definition of parent under IDEA 2004 or who has been appointed by the judge overseeing the child's care to have educational decision making authority)
- At least one of the student's general education teachers (if the student is or may be participating in the general education environment)
- At least one of the student's special education teachers or, where appropriate, special education provider
- A district representative who is qualified in the education of children with disabilities and is knowledgeable about the general curriculum and available resources (such as a director of special education)
- An individual who can interpret evaluation data (can be one of the above people or the school psychologist)
- At the discretion of the parent or district, others who have knowledge or special expertise regarding the child
- The student (if appropriate)
- Transition service providers (such as vocational specialists or someone from an outside agency such as the Division of Developmental Disabilities (DDD)), when required.

See 20 U.S.C. § 1414(d)(1)(B) in Appendix A and WAC 392-172A-03095 in Appendix C.

The IEP Team must determine if there has ever been a functional behavioral assessment or a behavior intervention plan for the student. If not, the IEP Team must develop a functional behavior assessment and behavior intervention plan. If a student already has a behavior intervention plan, the IEP Team must review the plan and make changes to the plan as necessary to address the current behavior. See 20 U.S.C. § 1415(k)(1)(D) and 20 U.S.C. § 1415(k)(1)(F) in Appendix A and WAC 392-172A-05145 (3) and (6) located in Appendix C.

III. Weapons, Drugs, Serious Bodily Injury, Dangerous Behavior, and Interim Alternative Educational Settings

There are four special circumstances in which a special education student can be removed from his or her current placement immediately and for up to 45 school days (regardless of whether the behavior was a manifestation of the child's disability). When the disciplinary incident involves weapons, drugs or serious bodily injury, a district can decide to remove a student for up to 45 school days.

If a district wants a student removed because it believes that the student is dangerous, the district can ask a judge to order the student removed for up to 45 school days.

No matter how or why the student is removed from school, special education students must continue to get educational services in an alternative setting. This alternative setting is called an **interim alternative education setting** or **IAES**. The IEP Team determines the interim setting.¹ See 20 U.S.C. § 1415(k)(1)(G) and 20 U.S.C. § 1415(k)(3)(B) in Appendix A and WAC 392-172A-05150 in Appendix C.

¹ The full IEP Team must meet to determine the interim alternative educational setting or IAES. Refer back to Chapter 3 of this manual for more information on IEP Teams.

Guns/weapons	District may remove student to an IAES for up to 45 school days
Drugs	District may remove student to an IAES for up to 45 school days
Serious Bodily Injury	District may remove student to an IAES for up to 45 school days
Dangerous Behavior	District may ask a judge to remove a student to an IAES for up to 45 school days

What can happen to a special education student who brings a weapon to school?

Where you can have an impact

Review the IEP. Consider whether the proposed 45-day placement is a setting that can meet the student’s needs. If not, ask the IEP Team to consider additional services or a different setting.

A district can remove a student to another educational setting for up to 45 school days if the student possesses a weapon or carries a weapon to school or to a school function. See 20 U.S.C. § 1415(k)(1)(G)(i) in Appendix A and WAC 392-172A-05145(7)(a) in Appendix C. “Weapon” means a weapon, device, material, or substance, or animate or inanimate instrument that is used for, or is readily capable of, causing death or serious bodily injury. Weapon does not include a pocketknife with a blade of less 2 ½ inches long. See WAC 392-172A-05145(9)(d) in Appendix C. Note that this is a different definition of weapon than the definition used in general education discipline laws and regulations.

What can happen to a special education student with a disability who has, uses, or sells drugs at school?

A district can remove the student to another educational setting for up to 45 school days if the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. See 20 U.S.C. § 1415(k)(1)(G)(ii) in Appendix A and WAC 392-172A-05145(7)(b) in Appendix C.

What can happen to a special education student with a disability who causes serious bodily harm to another person?

IDEA 2004 added a fourth category of misconduct that could lead a school to remove a special education student to an IAES. A district can remove a student to another educational setting for up to 45 school days if the student has inflicted serious bodily injury on another person while at school or at a school function. "Serious bodily injury" means bodily injury which involves 1) a substantial risk of death, 2) extreme physical pain, 3) protracted and obvious disfigurement or 4) protracted loss or impairment of the function of a bodily member, organ or mental faculty. See 20 U.S.C. §1415(k)(1)(G)(iii) in Appendix A and WAC 392-172A-05145(7)(c) and (9)(d) in Appendix C.

What can a district do when it believes a student is too dangerous?

The district's authority to automatically remove a student to an Interim Alternative Educational Setting (IAES) is limited to situations where there are drugs, weapons or serious bodily injury involved. If the district believes that a student is dangerous for another reason and wants to remove him or her from the current special education program, the school needs to request a due process hearing and ask that the hearing officer order the student to an interim alternative educational setting for up to 45 school days. A hearing officer has the authority to change a student's placement for 45 school days if maintaining the current placement is substantially likely to result in injury to the student or to others. See 20 U.S.C. § 1415(k)(3)(B)(ii) in Appendix A and WAC 392-172A-05160 (2)(b) in Appendix C.

If the school district is successful in getting the hearing officer to order the student out of school, the district still has a responsibility to provide the student with an education. See 20 U.S.C. § 1415(k)(1)(D) in Appendix A and WAC 392-172A-05145(4) located in Appendix C.

IV. Limitations on Discipline and Removal of Students with Disabilities

When considering whether to discipline a student with a disability, a district must first comply with the steps outlined

in the previous section— notice, manifestation determination and examination of the functional behavior. If the relevant members of the IEP Team decide that behavior was not a manifestation of the disability, the district may proceed with disciplining the student. But there are still limitations on how the district can discipline special education students.

Where you can have an impact

Keep track of the number of days the student has been out of school. If a removal will result in the student being out for more than 10 school days, ask for educational services to begin on the 11th school day. Put your request in writing.

How long can a special education student be removed from school without educational services?

In general, students with disabilities can be removed from school for up to 10 school days without educational services. The school must start providing educational services on the 11th school day.

Schools can order removals of less than 10 school days in the same school year for separate incidents of misconduct as long as the removals do not constitute a pattern of exclusion which is a change of placement and needs to be addressed through the IEP process. See 20 U.S.C. § 1415(k)(1)(B) in Appendix A and WAC 392-172A-05155 in Appendix C. A series of removals—one day here, another day there—can be a pattern that needs to be discussed by an IEP Team.

To determine whether a series of removals is a pattern, consider the length of removals, the total amount of time, the proximity of one to the other, and the reason for the removals. See WAC 392-172A-05155 in Appendix C.

What educational services should a special education student receive when he or she is removed from school for more than 10 school days in the same school year?

The school must continue to provide the services and program described in the student's IEP, even if the student is suspended or expelled from school.

During any exclusion from school for more than 10 school days in the same school year, the school district **must** provide another educational setting where the student's IEP can be implemented. The setting should be one that allows the student to participate in the general education

curriculum and to progress towards achieving the goals set out in the IEP.

For example, if the student has goals and objectives to help improve social skills with peers, the alternative setting should allow opportunities and instruction for those peer interactions. A tutoring program at home is not enough. The alternative setting should also include services and modifications that are designed to address the behavior that resulted in the removal, so that it does not recur again. The IEP Team² makes the decision on what setting is appropriate if the removal is for more than 10 consecutive school days or constitutes a change of placement. See 20 U.S.C. § 1415(k)(2) in Appendix A and WAC 392-172A-05150 in Appendix C.

V. Protections for Students with Disabilities Who Have Not Been Found Eligible for Special Education

What are the rights of students who may have disabilities but were not evaluated or found eligible for special education before being disciplined?

In some cases students can get the same protections they would have had if they had been eligible for special education services before the disciplinary incident.

If you know a student who is being disciplined who you think may have a disability, and he or she has not yet been found eligible for special education services, then ask this question:

“Did the district know that the student should have been evaluated or should have been receiving special education services?”

A student can get all of the protections for special education students if the district *had knowledge* that the student had a disability before the behavior that resulted in disciplinary action occurred.

² The full IEP Team must meet to determine the interim alternative educational setting or IAES. Refer back to Chapter 3 of this manual for more information on IEP Teams.

What constitutes whether a district “had knowledge” of a student’s disability as described in the law?

Under IDEA 2004 and state special education law, the district had knowledge if:

- The parent of the child expressed concerns in writing to supervisory or administrative staff of the district, or the teacher of the child, that the child was in need of special education and related services or
- The parent has specifically requested an evaluation of the child or
- The child’s teacher has expressed specific concerns about the behavior or performance of the child to the district’s special education director or other special education supervisory personnel.

See 20 U.S.C. § 1415(k)(5)(B) in Appendix A and WAC 392-172A-05170 in Appendix C.

When can a district argue it did not have knowledge that a student had a disability before the behavior resulting in discipline occurred?

There is an important exception for school districts under IDEA 2004. School districts are not considered to have knowledge of a student’s disability if the parent has refused a special education evaluation or special education services or if the student was evaluated and not found to be a student with a disability. See 20 U.S.C. § 1415(k)(5)(C) in Appendix A and WAC 392-172A-05170(3) in Appendix C.

What if the district did not have knowledge that a student had a disability before the behavior resulting in discipline?

An evaluation can still be requested.

If you suspect that a student has some type of disability but the district did not have knowledge that the student has a disability, a request can still be made for an evaluation to see if the student is eligible for and needs special education services. This request for evaluation can take place during the time the student is out of school on the expulsion or suspension.

What if a request for evaluation is made during the time that a student is being disciplined?

The law requires the evaluation to take place quickly.

If an evaluation is requested during a period of disciplinary exclusion, the law requires the evaluation to be completed in an *expedited* or quick manner. It does not matter if the district knew about the disability previously. There is no set timeline in the law for completion of this expedited evaluation. It can probably be assumed that expedited means more quickly than the amount of time allowed when an evaluation is being done under normal circumstances when discipline is not an issue. Under the normal special education procedures, the district has 35 school days to complete the evaluation after receiving parental consent. See Chapter 3 in this Manual for a discussion of special education evaluation procedures.

What if a student is found eligible for special education during the time he or she is suspended or expelled?

If a student is found eligible during the period of removal from school, the school district must start providing special education and related services.

VI. What to do if Students with Disabilities are Wrongly Disciplined

What kind of things might indicate a student with disabilities is being wrongly disciplined?

There are several things to watch out for.

There are a variety of ways that a student with a disability may be wrongly disciplined. Some examples are:

- Notice was not given.
- There are no IEP meetings to discuss functional behavior or a manifestation determination for a change in placement.
- The functional behavior was never properly examined when problems first arose.

- A behavior intervention plan was not put in place to deal with the student's behavior in a good way.
- The manifestation determination was not done correctly:
 - The right questions were not considered.
 - The decision was not based on enough data.
 - The group making the decision was not made up of the right people.
 - The decision that the behavior was not related to the disability seems wrong.
- If discipline is imposed:
 - It is too harsh for the behavior.
 - It is longer than 10 school days in a row.
 - It is more than 10 school days over time and it looks like a pattern that excludes the student from his or her IEP.
 - It is for 45 school days and the incident did not involve drugs, weapons or serious bodily injury, or it was not imposed by a hearing officer at a discipline hearing.
 - The student did not behave in the way the district says he or she behaved.

Where you can have an impact

Students with disabilities have all the rights given to general education students who are disciplined. Review Chapter 4 to learn more about challenging regular education discipline.

Make sure you request a general education discipline hearing within the timelines stated in the discipline notice. You can always cancel the hearing if the situation is resolved through the special education process.

What can be done if a student with disabilities is being wrongly disciplined?

A student can assert all the rights of a general education student, as well as rights under special education law.

Students with disabilities can ask for both a special education due process hearing and a regular education discipline hearing. See Chapter 3 on special education and Chapter 4 on regular education discipline. Note there are limitations on who may ask for a special education due process hearing.

Think of these two procedures as two parallel roads running side by side. There can be cars traveling on both of them, perhaps at different speeds, but both going the same direction. It is the same when both a discipline and special education hearing are being scheduled. The two hearings are addressing some of the same issues, but they may not be directly related.

In most cases, if a special education matter is being pursued, the district should stop the general education discipline hearing process and resolve the special education issues before going on with the general discipline proceedings.

Where you can have an impact

If a student who is eligible for special education services is out of school for more than 10 school days, even for discipline reasons, the district must provide services to implement the student's IEP. If a hearing has been requested and the student is out of school while waiting for the decision, be sure to remind the district of this obligation. You may not be able to assert "stay put" and have the student return to his or her educational placement, but he or she should not sit at home without any services in place!

Ordinarily, if a special education due process hearing is requested, the student has a right to remain in his or her special education program until the hearing is resolved. This right is called "STAY PUT" and it refers to the student's legal right to stay in his or her current educational program until a decision is made in the due process hearing. See Chapter 3 for more information on stay put. Despite stay put, the district may try to have the student removed through a separate court action or hearing.

There is a new and important exception to this rule under IDEA 2004. If the parent requests a hearing to contest the discipline and 1) the student is in an interim alternative educational setting due to special circumstances (weapons, drugs, serious bodily injury or dangerousness) or 2) the student is in an interim alternative educational setting because the student's behavior was not found to be related to his or her disability at the manifestation meeting, the student must remain in the IAES until the hearing officer makes a decision or until the end of the disciplinary removal, whichever comes first. (The parent and the district can agree otherwise.) See 20 U.S.C. § 1415(k)(4)(A) in Appendix A and WAC 392-172A-05165 in Appendix C.

However, the school district must arrange for the hearing to take place within 20 school days of the request, and the hearing officer must make a decision within 10 school days of the hearing. See 20 U.S.C. § 1415(k)(4)(B) in Appendix A and WAC 392-172A-05160(3) in Appendix C. In addition, a new process called a resolution session must take place within 7 calendar days of the request for a hearing unless the district and parent agree in writing to waive this process. See WAC 392-172A-05160(3) in Appendix C. See Chapter 3 for more information on resolution sessions.

VII. Behavior Charged as a Crime

Can the school district call the police when a student with a disability gets in trouble?

Yes, schools may report crimes committed by students with disabilities and general education students.

What if the incident is filed as a crime?

If the misconduct at school is referred to juvenile court and is charged as a crime, the youth will have either a public defender or other criminal defense attorney to advise and represent him or her on these charges. A youth who has been charged with a crime as a result of alleged misbehavior at school should immediately consult with his or her criminal defense attorney before discussing his or her school discipline case with the school district. For example, it may not be a good idea for the youth to make statements in a school discipline or due process hearing if the criminal matter has not yet been resolved. Those statements could be used against the youth in the criminal case.

The defense attorney should also be made aware of any disabilities that might affect whether the youth should be charged. For example, if the young person has a very low I.Q., the court may decide that it isn't right to take care of the matter in juvenile court.

VIII. Conclusion

Students with disabilities cannot be punished in school for behavior that is related to or the result of a disability. School districts must follow specific rules when seeking to punish a disabled student. Notice of the intent to discipline must be given, the behavior must be examined and planned for, and a team of people must determine whether the behavior was related to the disability.

Even if the problem behavior is not related to the disability, there are significant limits on how a student with a disability can be disciplined. Students with disabilities have strong protections under the law that ensure they will not unnecessarily lose their right to education.

Action Points – Discipline of Special Education Students

- Remind the school administrator, director of special education, etc., that the student has an IEP or 504 plan.
- Ask for an IEP meeting if the district suspends or expels a student with disabilities.
- Ask the district to do a manifestation determination and functional behavioral assessment.
- Review the IEP or behavior plan. Was it being followed? Could it be improved so that the behavior is better managed? Make these proposals at the IEP meeting.
- Provide or request new evaluation information that can be used to develop a plan that will prevent the behavior from recurring.
- Insist that the district provide educational services so that the student can make progress on IEP goals, even if the student is not allowed to return to the same school.
- Demand services that fulfill the IEP when a student is suspended for more than 10 school days.
- Request a general education discipline hearing in case the special education process does not resolve the issues.

Tips for Youth

Discipline of students with disabilities

The word “Disability” means a lot of different things—and includes behavior, emotional and other health problems. There are strong laws that protect students with disabilities, giving them the right to the help they need to do well.

You can't be punished for behavior that is the result of your disability.

This doesn't mean you can never be disciplined, it just means that schools must help plan for problems that you have because of your disability.

For example, if you have Attention Deficit Disorder, you can't get in trouble for not paying attention in class. Instead, you and the school have to work on a plan that deals with the attention problem. The school cannot suspend or punish you for something that is the result of your disability.

You have a right to continue your education, no matter how much trouble you're in.

You cannot be permanently removed from school. In fact, you can only be suspended for up to ten days in a school year. If you are suspended or expelled for longer than ten days, you have the right to continue your education—the same kind of program outlined in your IEP. You may end up in a different educational setting but the IEP team, which can include you, must meet to decide that.

Do you think you may need special education?

If you are in trouble and think that you need extra help like special education, ask to be evaluated. There are laws that make the evaluation happen much quicker during the time a student is facing discipline. If you might be disabled in some way, you should get services to help you as soon as possible.

Chapter 6

Entering Adulthood: Resources for 18 to 21 Year-olds

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Chapter 6

Entering Adulthood: Resources for 18 to 21 Year-olds

The 3 Most Important Things to Remember about Services for Young Adults

- ◇ Young people have a right to free public education until they are 21 years old.
- ◇ Housing and public benefits are available for young people who want to live independently but need some support getting started.
- ◇ Start planning early to prepare a young person for independent living. Research suggests that by age 14, there should be planning about transition.

I. Introduction

Becoming an adult can be a difficult process for every young person. This transition, however, presents special challenges to young people in out-of-home care. Studies indicate that out-of-home youth face a greater risk of unemployment, homelessness, and poverty than their peers. Unmet educational needs and limited resources are part of the explanation for the challenges foster children face once they turn 18.

Young people entering adulthood need support. As a caregiver or caseworker, you can help a young person start planning for the future, develop independent living skills for a successful transition to adulthood, and use resources when necessary to provide support.

II. Educational Rights and Opportunities

Can a young person turning 18 still get an education?

Yes!

Young people have a right to educational services until they are 21. These services can be provided in a regular high school, an alternative high school, a GED program, or a high school completion program at a local community college. *RCW 28A.150.220 (3). This law can be found at your local library.*

Do students ages 18 to 21 have to pay for their public school education?

No!

Because students have a right to education until they are 21, the services must be free if they have not completed their high school education. Even after young adults turn 21, Washington state law requires that opportunities for educational advancement be available to those who do not have a high school diploma or certificate. *WAC 180-72. This law can be found at your local library.*

Where you can have an impact:

Caregivers

Start teaching youth in your care how to start advocating for themselves. Model ways of asking for help and explaining needs and goals. Prepare them for taking initiative in educational and life planning. Young people can learn these important skills with your guidance.

What is a GED and is it the same as a high school diploma?

The General Educational Development Test (GED) is not the same as a high school diploma, but it can provide some good options for a young person.

The GED is a set of tests designed to measure skills and knowledge normally gained in four years of high school.

Passing the GED is not exactly the same as getting a high school diploma, although it is sometimes an excellent option for students. Keep in mind that some employers, colleges, and universities will not admit applicants unless they have a high school diploma. Other colleges and employers treat a GED the same as a diploma. If a young person is considering taking the GED, find out whether it will be

accepted by the kind of employers or post-secondary schools in which he or she is interested. Students under age 21 have the option of returning to school to seek a diploma after earning a GED.

Students with disabilities can apply for special accommodations such as extra time for the test or having questions on the test read to them. Ask at GED testing centers how to apply for accommodations.

What can students with disabilities expect when they turn 18?

- Special education and related services must be offered until the student has met high school graduation requirements and earned a regular high school diploma, or through a student's 21st birthday, whichever occurs first.
- Students with disabilities should have access to services that prepare them for life after high school. Special education transition planning and services should begin when the student turns 16.
- 18 year-old students with disabilities become decision-makers in the IEP process.

See Chapter 3 of this Manual for information on special education.

1. Education until 21 years old

Students with disabilities have the right to a free appropriate public education until they earn a regular high school diploma or until they are 21, whichever event occurs first. See WAC 392-172A-02000 in Appendix C. This means that students retain all of the rights they had before they turned 18.

2. Transition services

Older students get additional services through special education to help prepare for life after high school. These services are called **transition services**. Transition services

**Where you can have an impact
Caregivers and caseworkers**

Make sure schools are providing appropriate transition services. Come to meetings with specific ideas about needed services, and ask questions about transition services in the district.

Caseworkers may know more about outside agencies that could provide additional support. Help the school create interagency linkages that will improve the student's transition services.

might include teaching students independent living skills like balancing a checkbook, paying bills, cooking, cleaning, or even basic self-care. Transition services should include vocational education if appropriate. Vocational education might be anything from learning pre-vocational skills (i.e. how to prepare a resume, interview for a job, or get along with co-workers) to supported work experiences.

School districts must start transition planning for older students, beginning no later than the first IEP to be in effect when the student is 16. See 20 U.S.C. § 1414 (d)(1)(A)(i)(VIII) in Appendix A and WAC 392-172A-03090(1)(j) in Appendix C. The IEP must include appropriate, measurable post secondary goals related to training, education, employment and, where appropriate, independent living skills and outline the transition services, including courses of study, the student will need to reach these goals. The kinds of transition services a student receives should take into account his or her interests and preferences and the skills he or she needs to acquire. See 20 U.S.C. § 1414(d)(1)(A)(VIII) in Appendix A and WAC 392-172A-01190 in Appendix C.

Other agencies may also be involved in transition planning. For example, sometimes vocational or other independent living skills are provided by the state Division of Developmental Disabilities (DDD) or the Division of Vocational Rehabilitation (DVR). **If services are supposed to be provided by outside agencies, the district has the responsibility to make sure the services are delivered and to make arrangements for other agencies to provide them if they are not.** Any outside agencies involved should also be invited to IEP meetings with the consent of the parents or a student over the age of 18. See WAC 392-172A-03095(2)(c) in Appendix C.

While students always have an important role to play in the IEP process, their involvement in the planning of transition services is especially important. The IEP Team needs to understand the student's interests and goals so that the transition plans are realistic and appropriate. As a result, school districts must formally invite students to IEP meetings where transition services are being discussed, and

if the student cannot attend, find other ways of making sure his or her preferences and interests are considered. See WAC 392-172A-03095(2)(a) in Appendix C.

3. 18 year-olds become the decision-makers.

Before turning 18, a student's parent or surrogate is in charge of enforcing special education rights. Once a student turns 18, the student can exercise special education rights on his or her own. Students may still ask for help from the network of support created by their caregivers, caseworker, and IEP Team, but the student has the rights of an adult and must sign the IEP and agree to services.

III. Vocational Opportunities

What kind of vocational training is available for young adults?

Where you can have an impact

Sometimes the best vocational education is work experience. Help the young person find a job in the summer, or if appropriate, part-time work during the school year. Provide encouragement and rewards for working. Help arrange job shadowing. Look for mentors in the community. Assign jobs at home and give an allowance.

Vocational training is available:

- At local community colleges and technical schools
- At private schools
- In public high schools or occupational skill centers.

For example, a student might attend classes at a community college to learn a trade like welding or auto repair. Many private agencies train young people in office skills or computer programming. Some school districts offer special programs that allow students to earn their high school credit or a GED while getting vocational training. These programs may cost money, but there is sometimes financial aid available.

Also, contact the U.S. Department of Labor and Washington Employment Security Commission to find out about programs in your community. They make grants to organizations that provide vocational training to young people. JobCorps is a federal program that provides

Where you can have an impact

Planning Ahead

Help the young person gather information, and encourage his or her interest in continuing education after high school. Start planning and preparing early in high school! Introduce youth to college students and recent graduates to help them find out what post-secondary education is like. Help identify the college entry tests and classes that help prepare for those tests.

vocational and educational services in a residential setting for young adults.

If students have disabilities, they may have access to additional services. The Division of Vocational Rehabilitation (DVR) works with individuals with disabilities who need help getting and maintaining employment. Often DVR will not want to be involved until the school district's obligation to provide transition services has ended. But there is nothing to prevent DVR from assisting with the school district services, and young adults who have left school are entitled to support from DVR. DVR might provide an independent living skills instructor to work with a youth, do an assessment of vocational training needs, or help an individual find supported employment.

Similar kinds of services should also be available from the Division of Developmental Disabilities or a community mental health agency. If a person's mental health or developmental disability influences his or her ability to work, he or she can apply for services and request support from his or her case manager.

IV. Education After High School

What should students do if they want to prepare for education after high school?

There are four important steps:

- Step 1** Start early
- Step 2** Set some goals and make a plan
- Step 3** Take college entry tests and classes required for admission
- Step 4** Research financial aid and other scholarships

1. Starting early

The most important thing to do to prepare for education after high school is to start early. Applications to 4-year colleges are generally due in the fall of senior year, so

students interested in attending college should start thinking seriously in their junior year about where they would like to apply. Another reason to start early is that there may be course requirements for entry into some colleges. Find out what classes are needed. Ask the guidance counselor at the high school for information about colleges, and call colleges directly to request materials about their programs. Applications are generally quite time consuming. They require lots of work, including getting recommendations from teachers, writing essays, and collecting school records.

2. Setting goals

Encourage youth to talk with family, guidance counselors, friends, neighbors, and role models. Explore career and future goals. Determine what additional schooling may be needed. Make a plan for post-high school education.

3. Taking college entrance exams

Starting early will also give the student time to prepare for college entry tests like the Scholastic Aptitude Test (SAT) or the American College Testing (ACT) Assessment. These tests are usually taken in the student's junior year, and there are private agencies that provide test preparation classes to help students be successful. A student planning to take the SAT or ACT should strongly consider taking a preparation class. Sometimes the agencies have financial aid for students. Also consider asking the state Division of Children and Family Services (DCFS) to provide special funding for the test preparation course.

Community colleges have a less difficult application process than most 4-year colleges and universities. Check with the community college to find out the minimum requirements for admission. Some community colleges do not require a high school diploma for admission. Also, students do not have to take an entry test to enroll in most community colleges. Finally, community colleges admit students on a continuous basis, so an application can be made at anytime, and students can start at the beginning of the next

Where you can have an impact

Caregivers and Caseworkers

Go with the student to meet with the high school counselor. Help the student define long-term goals and interests.

Be positive!
Be encouraging!
Be a role model!

Where you can have an impact

Early planning is very important. Find out what resources exist in your community. Include the young person in discussions about what kind of support he or she will need to be successful.

- Be open.
- Be supportive.
- Be realistic.

Help youth gain enough skills to be successful.

term. Some community colleges offer GED or high school completion classes. They may be free, with the credits applying toward college graduation.

4. Obtaining financial aid for college

What if a student needs help with tuition? Both 4-year colleges and community colleges have financial aid offices. Contact the financial aid office, and request applications for help. Generally, the kinds of aid available include state or federally subsidized loans, grants, or work-study (a part-time job provided by the school the student attends). As with applying for admission, applying for financial aid should start well before the student finishes high school. There are also opportunities for school-sponsored and private scholarships. There may even be special scholarship money available for young people transitioning out of foster care. For example, many children in state care are automatically eligible for federal PELL grants. Ask the financial aid office for information on scholarships and loans. Or, go to the local library and ask for reference books on college scholarships. The internet is also a source of information about scholarship opportunities. In Washington, there is a Governor's Scholarship for foster youth. Check out <http://www.collegesuccessfoundation.org/gs/index.htm> for more information.

V. Housing for Young Adults

What kind of housing options are there for young people leaving foster care?

Options for young adults are increasing. Laws have changed to provide more options for young adults leaving out-of-home care.

The young person in your care may be ready to live independently but might need some help getting started. Plan on providing guidance to help the young person learn independent living skills. Try to remember the things you wished you knew when you lived on your own for the first time. Recognize that sometimes youth who have not had a

stable home may be lacking in the basic skills needed to be on their own, such as knowing how to keep a bank account, pay bills or manage a home.

Other youth may not be ready to live on their own without support. Generally, dependency ends when a youth turns 18, so young people “age out” of foster care. But DCFS can enter into agreements to support young people who are 18 to 21 years old, as long as the young person is enrolled in high school, vocational education, or some other postsecondary education, such as college. This means that DCFS may continue to pay for placement or help with expenses as the youth becomes independent. Ask caseworkers about entering into a voluntary agreement or other services after age 18.

DCFS also contracts with local agencies to provide independent living support for young people who are leaving foster care. These local agencies provide housing, job training, and other support for young people who need help becoming independent.

During the 2007 Legislative Session in Washington, a new law passed that created the Independent Youth Housing Program. The program provides rental assistance and case management to eligible youth aging out of foster care. To be eligible, a youth must be at least 18, but not yet 23 years old, and must have been a dependent of the state during the month before his or her 18th birthday. There are also income requirements. The Independent Youth Housing Program is a pilot project in three counties: Pierce, Yakima and Thurston. See Chapter 7 for more information about these housing programs.

Under the Foster Care Independence Act of 1999, Congress increased the resources available to states to help youth in foster care make the transition to adulthood. A portion of the funds must be used to serve young people who have left foster care because they turned 18. States must apply for the funding, however.

The Department of Housing and Urban Development (HUD) funds community-based programs that include housing for

Where you can have an impact
Caseworkers

There is often a shortage of supported housing options for people with disabilities. Help youth get on wait lists well before housing is needed. Make written requests for housing and support services, and follow up with strong advocacy.

youth in transition from foster care. For example, the Supportive Housing Program creates transitional housing and provides supportive services to prevent homelessness.

Are there housing options for young adults with disabilities?

Yes.

Young adults with developmental disabilities or significant mental health issues may be eligible for supported housing through the Division of Developmental Disabilities or community mental health agencies. DDD provides housing opportunities for adults who are not yet ready to be independent. Services might be provided in an adult group home, or maybe in an apartment with supervision. One limitation with DDD services is that they are provided only as funding is available, and there is great demand for the services.

Community mental health agencies must provide residential services for Medicaid-eligible adults when such services are necessary to support their mental health needs. Housing provided for young adults with mental health needs must allow them to remain in the community as much as possible. Placement options can range from highly restrictive settings (hospital or other treatment facility) to a much less restrictive setting (a group living program with limited supervision).

VI. Other Support Services for Young Adults

What happens to the social services available to a young person after he or she turns 18?

Many services continue, but be aware of some changes that happen when a youth turns 18 years old.

When youth turns 18, many of the services they had as children follow them, but there are some changes too.

1. Medical insurance/Medicaid

In 2007, the Washington State Legislature passed a law that extends Medicaid coverage to youth who are in foster care. A youth who is in foster care on his or her 18th birthday can receive Medicaid coverage through his or her 21st birthday. The Department of Social and Health Services is required to transition youth from Medicaid coverage provided to foster children to this new type of Medicaid coverage.

After a young adult who left foster care turns 21, he or she may continue to qualify for other state-financed health coverage. Young adults can also continue to qualify for Medicaid if they are eligible for Supplemental Security Income (SSI).

2. Mental health services

Medicaid-eligible young people continue to be eligible for mental health services after they turn 18. In addition, non-Medicaid-eligible individuals may qualify for free mental health care if they meet other income and need-based guidelines.

3. DVR/DDD

Services do not change fundamentally when a youth turns 18. Young adults are eligible for services based primarily on their needs, not their age. Young adults, however, may become eligible for supported housing.

4. SSI

As long as the young adult still meets income and disability requirements, eligibility for SSI continues. The Social Security Administration may send benefits directly to the young person, or if there are significant disability issues, may assign a protective payee to help manage the money.

***Where you can have
an impact
Caseworkers***

Help youth sort through the kinds of support that may be available to them. You will know much more than they about what is available, and the young person is likely to feel overwhelmed as he or she learns to take responsibility for accessing and maintaining services.

Are there new benefits that someone who has turned 18 can access?

Yes, there are benefits that are available only to people 18 years and older.

1. Food stamps

Young adults living independently may be eligible for food stamps. Contact the local DSHS Community Services Office to make an application. (Youth under the age of 18 may also be eligible for food stamps if they meet certain requirements. Contact the local DSHS Community Services Office to find out more information.)

2. DSHS Home and Community Services Division

Young adults may be eligible for support with housing and other services to support self-sufficiency. For example, in-home services are available for disabled adults who would otherwise have to be in a hospital or institution without the support. Ask the local DSHS Community Services office if the young person with disabilities can get these services through such programs as CHORE, COPES and Medicaid Personal Care.

3. Pregnant women

For young women who are pregnant, there are medical and financial resources available. Contact the local DSHS Community Services Office for more information. See Chapter 7 for information about how to contact DSHS and other agencies.

VII. Conclusion

Youth in out-of-home care face big challenges as they transition into adulthood. Many educational opportunities and other services are available for the transitional years, but it often takes planning and some effort to secure those services. Know what is available and advocate for a young person who faces a tough road ahead.

Action Points – Accessing Education and Services for Young Adults

- Start planning early.
- Talk with youth about their lives, goals, interests, and dreams.
- Make a plan for education, work, and housing.
- Talk with the school counselor about education options after high school.
- Review the high school transcript. Check to see that the student has earned all the credits and taken classes needed for graduation and college admissions.
- Ask about financial aid and scholarships. Get the applications and send them in.
- Take the GED tests.
- Take the college entrance exams—SAT and ACT Assessment.
- Request applications for colleges. Check the deadlines and send them in on time!
- Consider vocational education—what are strengths, interests and goals of the young person?
- Participate in transition planning for students with disabilities.
- Make applications and requests for services from the Division of Developmental Disabilities and the Division of Vocational Rehabilitation.
- Create connections between schools, mental health, and other agencies.
- Find job shadowing opportunities and mentors.

Tips for Youth

Entering Adulthood

Becoming an adult is difficult for everyone. It may be exciting to finally be 18, but it can also be overwhelming. If you are between the ages of 18-21, there are services available to help your transition into adulthood.

You can still get an education.

- If you have not completed your GED or received a high school diploma you have the right to continue your education. These services are free.
- You have a right to special education services through your 21st birthday.
- You can get services and help that will prepare you for life after high school.

What should you do if you want to go to college after you graduate?

Start Early. Before you graduate, begin think about what you want to do after graduation. Set goals and make plans.

Take the SAT or ACT and have the credits you need for admission to college.

Use the library and career counselor to research financial aid and scholarships, colleges and vocational programs.

Look for important deadlines for applying for financial aid and admission to different schools.

Things you can do to prepare for adulthood:

- Make sure you have a diploma or GED.
- Talk about your goals with people who can support you.
- Don't be afraid to do research to find out about schools and opportunities.
- If you are in special education program, let your team know that you want to discuss your transition from high school.

Chapter 7

Making Connections and Finding Support: A Guide to Resources

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Chapter 7

Making Connections and Finding Support: A Guide to Resources

The 3 Most Important Things to Remember about Finding Support

- ◆ Don't try to do it alone. Get help.
- ◆ Be persistent in your search for resources.
- ◆ The more support and resources that are available to a student, the more likely that he or she will succeed.

I. Introduction

Out-of-home children and youth face many challenging obstacles. They often need extensive help to deal with issues of abuse and neglect, learning disabilities, emotional problems, and trauma. These issues affect their ability to succeed in school. No one person is equipped to deal with the wide range of possible issues faced by the out-of-home youth.

A wide variety of community, state, and national organizations can help address the issues young people face. Finding the right resources can be the most important thing an education advocate can do. Take the time to know the child or youth you're helping, and to figure out the issues he or she faces.

This Chapter provides information on some basic resources and suggestions on how to find more. They include statewide connections for basic services. Although the resources listed in this Chapter are not exhaustive, you can use them and other methods to get started.

II. The Basics

Example of how to use resources

You're a foster parent and your foster son has just been evaluated for special education services. The district suggests that your son is suffering from "Fetal Alcohol Syndrome" or "FAS." You've heard of it before, but don't know much about it. The district says he will never be able to be in general education classes again. You're afraid your foster son won't get the education he needs. You go to the local library and get help in finding articles that describe FAS and the particular ways children affected with FAS can learn and process information. You read about local support groups for families and a specialized program that works to train teachers on how to work with kids with FAS. With this information you are able to work closely with the school to make sure your foster son gets the program he needs. And, you have contact with support groups that will help you deal better with issues at home.

What resources do the child or youth I am helping need?

Start with the child or youth you are helping. Talk with him or her about the services that would be helpful. Even a very young child can give some helpful input into what he or she needs. Also seek information from others who know the child or young person. Talk to teachers, caseworkers, the CASA/GAL, and others. Ask parents or other caretakers who may have dealt with similar situations what they have found to be helpful.

Where can I start finding resources?

The **blue pages** in your community phone book will list all government services. Many yellow pages list community organizations in the front of the book.

The **local library (and the librarian)** can be very helpful in your search for resources and information.

The **internet** is more and more a place to find local and national help. If you don't own a computer, try the local public library or community center where there are computers for community use.

Word of mouth still works. Even if you end up at an agency or organization that isn't the right one, ask if anyone there would be able to refer you to the right place.

How do I know which resources to turn to?

Call and ask. Be prepared to answer questions about your foster youth's medical, mental, and educational history. Don't be afraid to ask questions. Ask about fees, location, transportation, and wait-lists. If the initial resource doesn't seem to be what you are looking for – don't give up – ask for a referral to another resource. Usually, resources lead to other resources. Keep calling!

What if I can't find what I am looking for?

Don't give up! Keep calling and ask for referrals. Read all you can about your situation—talk to friends, relatives, teachers, and other parents. Become your own resource! Create a file using index cards or a notebook cataloging all of the information you already have collected. If you have already searched the phone book and library, try the internet. Be diligent and persistent in your search and you **will** find the services you need.

III. Resources

Counseling/Mental Health Services

National Alliance on Mental Illness

- NAMI advocates for the needs of individuals with mental illness and their families. NAMI provides information and referral to community resources. It provides personal advocacy for mentally ill individuals on a limited basis.

NAMI Washington
500 108th Avenue NE, Suite 800
Bellevue, WA 98004
(425) 990-6404, (800) 782-9264
www.nami.org

Employment Services

Job Corps

- Job Corps offers education and training for people 16-24 years old who are low income and without a high school diploma. The young person must be a U.S. citizen or lawfully admitted alien to be eligible.

(800) 733-JOBS
<http://www.jobcorps.dol.gov>

Washington State Employment Security Department (ESD)

- The Washington Employment Security Department is the state agency responsible for employment issues. The ESD's Employment and Training Division provides information for job seekers and employers. ESD has information centers throughout the State, which should be listed in the blue pages of your phone book.

The state office for the Employment Security Department is at:

212 Maple Park Avenue
PO Box 9046
Olympia, WA 98507-9046
(360) 902-9500
<http://fortress.wa.gov/esd/portal>

Government Agencies

Washington State Agencies—generally

- A useful listing of all Washington State agencies can be found on the internet.

www.access.wa.gov

Department of Health - Immunization Program

- The Department of Health's Immunization Program will direct you to the Community Health Center in your county that can provide you with immunizations and records.

(360) 236-3595 or (866) 397-0337

www.doh.wa.gov/cfh/immunize/default.htm

Office of Superintendent of Public Instruction (OSPI)

- OSPI is the state agency charged with overseeing schools. It monitors school districts to make sure they fulfill their obligations under the law. OSPI investigates complaints and arranges for mediation and hearings in special education disputes.

PO Box 47200

Olympia, WA 98504-7200

(360)725-6000, (360) 664-3631 TTY

www.k12.wa.us

OSPI Special Education Section

PO Box 47200

Olympia, WA 98504-7200

(360) 725-6075

www.k12.wa.us/specialed

Assessment of Special Education Students

(360) 725-6089

Department of Social and Health Services (DSHS)

- DSHS is a state agency that administers many public benefits and services programs. DSHS is divided into divisions. Several of the divisions are discussed below. A full listing can be found at the DSHS website.

www1.dshs.wa.gov

DSHS Division of Children and Family Services (DCFS)

- DCFS is the division of DSHS that provides child welfare services to children, youth, and families.

General Information – (360) 902-7920, (360) 902-7906 TDD
Region 1 – Spokane – (509) 363-3500
Region 2 – Yakima – (509) 225-6556
Region 3 – Everett – (425) 339-1830
Region 4 – Seattle – (206) 691-2500
Region 5 – Tacoma – (253) 983-6212
Region 6 – Olympia – (360) 725-6701

DSHS Division of Developmental Disabilities (DDD)

- DDD is the division of DSHS that coordinates state-funded services for clients with developmental disabilities. Possible services are residential and employment placement, respite and therapeutic support for families, and arrangement of Medicaid personal care. DDD also monitors employment and residential programs for people with developmental disabilities.

Main Office - (360) 725-3413
Region 1 – Spokane – (509) 329-2900, (800) 462-0624
Region 2 – Yakima – (509) -225-4620, (800) 822-7840
Region 3 – Everett – (425) 339-4833, (800) 788-2053
Region 4 – Seattle – (206) 568-5700, (800) 314-3296
Region 5 – Tacoma – (253) 404-6500, (800) 248-0949
Region 6 – Olympia – (360) 725-4250, (800) 339-8227

DSHS Community Services Division

- Most basic needs assistance programs of DSHS are obtained at local Community Service Offices (CSOs). Individuals should apply at the office that serves their zip code. The following services are available through the CSOs: Alcohol and drug treatment, food stamps, general assistance, grant diversion, refugee assistance, TANF, Washington Quest Card, Working Connections Child Care.

Region 1 – Spokane – (509) 227-2800
Region 2 – Yakima – (509) 225-7900
Region 3 – Everett – (425) 438-4971
Region 4 – Seattle – (206) 272-2140
Region 5 – Tacoma – (253) 476-7000
Region 6 – Olympia – (360) 725-4800

DSHS Infant Toddler Early Intervention Program (ITEIP)

- ITEIP is a state program that coordinates early intervention services for families with children age birth to three that have developmental delays.

(360) 725-3500, (360) 407-1087 TDD
Family Health line: (800) 322-2588

DSHS Mental Health Division

- The Mental Health Division of DSHS contracts with 13 Regional Support Networks (RSNs) for community-based mental health services. The RSNs provide or arrange for mental health services including assessment, treatment, case management, planning, support, and monitoring.

PO Box 45320
Olympia, WA 98504-5320
(360) 902-8070

Chelan-Douglas RSN – (509) 886-6318
Clark RSN – (360) 397-2130
Gray’s Harbor RSN – (360) 532-8665
Greater Columbia RSN – (509) 735-8681
King RSN – (206) 296-5213
North Central RSN – (509) 754-6577
North Sound RSN – (888) 693-7200
Peninsula RSN– (360) 337-4886
Pierce County- Call the DSHS Mental Health Division at (800) 446-0259 for direct contact information for mental health agencies in Pierce County.
Southwest RSN – (800) 803-8833
Spokane RSN – (509) 477-5722
Thurston-Mason RSN – (360) 786-5830
Timberlands RSN – (360) 795-3118

DSHS Division of Vocational Rehabilitation (DVR)

- DVR is the division of DSHS that assists people with disabilities prepare for, obtain and keep employment. Vocational rehabilitation programs are custom-designed for each individual. DVR works in partnership with the community and businesses to develop employment opportunities for persons who have disabilities. Call the main number for contacts in your area of the state.

Main Number – (800) 637-5627

United States Department of Education, Office for Civil Rights, Western Division (OCR)

- The Office for Civil Rights for the Department of Education investigates complaints of discrimination by recipients of federal financial assistance, such as schools.

915 Second Avenue, Room 3362
Seattle, WA 98174-1099
(206) 220-7800

(206) 220-7806 FAX
www.ed.gov/ocr

Office of the Family and Children’s Ombudsman (OFCO)

• The OFCO was established to ensure that government agencies respond appropriately to children in need of state protections, children residing in state care, and families under state supervision due to findings of or allegations of child abuse or neglect. Complaints can be filed with OFCO at

6720 Fort Dent Way, Suite 240
Mail Stop TT-99
Tukwila, WA 98188
(800) 571-7321
<http://www.governor.wa.gov/ofco/contact.asp>

Office of the Education Ombudsman (OEO)

• The OEO was created to assist elementary and secondary public school students and families in Washington. OEO can help families understand how the public school system works, how to find education related resources, and how to resolve conflict with schools. Complaints can also be filed with OEO. For more information, contact OEO at

1110 Capitol Way South, Suite 304
Po Box 40004
Olympia, WA 98504-0004
(866) 297-2597
<http://www.governor.wa.gov/oeo/>

Hearings, Mediation, and Court Services

Office of Administrative Hearings (OAH)

• The Office of Administrative Hearings is the state agency that conducts impartial, administrative hearings for other Washington State agencies. OAH hears special education due process hearings.

PO Box 42488
Olympia, WA 98504-2488
(800) 583-8271
(360) 586-6563 FAX
www.oah.wa.gov

Sound Options Mediation and Training Group, L.L.C.

• Sound Options is the licensed mediation service used by Washington State OSPI. Mediation is the voluntary process used to

help parents and school personnel work out their disagreements about a child's education program.

PO Box 11457
Bainbridge Island, WA 98110 – 5457
(206) 842-2298, (800) 692-2540
www.somtg.com

The Washington State Association of CASA/GAL Programs

- WSACASA/GAL is the contact point for 28 local CASA programs around the state. When a child becomes a dependent of the state due to abuse or neglect, a judge may appoint a specially trained volunteer Court Appointed Special Advocate (CASA) or Guardian ad Litem (GAL) through one of these CASA programs. The CASA/GAL volunteer is responsible for gathering and analyzing background information for the court so that the judge can make a better-informed decision in abuse and neglect cases. Only judges can appoint CASA/GAL's.

603 Stewart Street, Suite 206
Seattle, WA 98101
(206) 667-9716, (800) 530-0045
(206) 667-9753 FAX
www.washingtonstatecasa.org

Housing

Community and Youth Services

- Provides Independent Living Skills Program for youth aged 16-21 who are in foster care or group care for at least sixty days after their 16th birthday. Also administers Transition Living Services program, which administers monetary funds to provide financial support for youth who have exited foster care and are moving into their own apartment.

711 State Ave, NE
Olympia, WA 98506
(360) 943-0780, (888) 698-1816
www.communityyouthservices.org

Pierce County Alliance Youth Services

- Administers the Independent Youth Housing Program (IYHP), which secures housing for youth aging out of foster care with case management and financial assistance. The goal is to help prepare foster youth to become independent and self sufficient so that over time youth will be less dependent on state assistance.

510 Tacoma Ave S
Tacoma, WA 98402
(253) 502-5491
www.pcayouthservices.org

Catholic Family and Child Service

- Administers a Transitional Living Program to youth between the ages of 18-21, offering assistance and mentoring to help establish housing, employment or training and basic educational requirements.

5301 Tieton Drive, Suite C
Yakima, WA 98908-3478
(800) 246-2962
www.ccyakima.org

Legal Services

Northwest Justice Project (NJP)

- NJP is a statewide non-profit organization that receives federal funding to provide free civil legal services to low-income people in Washington. There are offices throughout the state providing legal advice and representation on a variety of issues including education.

Main/Administrative Office
401 Second Avenue South, #407
Seattle, WA 98104
(206) 464-1519
(888) 201-1012, (888) 201-9737 (TTY)
(206) 624-7501 FAX
www.nwjustice.org

Comprehensive Legal Advice, Education and Referral (CLEAR)

- CLEAR is Northwest Justice Project's statewide toll-free telephone service for low-income people to obtain free legal assistance with civil legal problems. The hotline operates between 9:30 a.m. and 12:30 p.m. weekdays. CLEAR is currently not available in King County.

(888) 201-1014, (888) 201-9737 (TTY)
www.nwjustice.org

Columbia Legal Services

- Columbia Legal Services provides legal advice and representation to low-income people on civil legal matters, including public assistance and education issues.

101 Yesler Way, Suite 300
Seattle, WA 98104
(206) 464-1122
www.columbialegal.org

Olympia Office – (360) 943-6260, (800) 260-6260
Tri-Cities Office – (509) 374-9855, (888) 201-9735
Wenatchee Office – (509) 662-9681, (800) 572-9615
Yakima Office – (509) 575-5593, (800) 631-1323

TeamChild

- TeamChild is a non-profit legal advocacy program for youth. It advocates for high-risk youth, helping to access their rights to education, mental and medical health benefits, and safe living situations.

Main Office - King County

1225 South Weller St, Suite 420
Seattle, WA 98144
(206) 322-2444

Spokane County Office

1704 W. Broadway
Spokane, WA 99201
(509) 323-1166

Pierce County Office

715 Tacoma Ave. South
Tacoma, WA 98402
(253) 274-9929

Yakima County Office

32 N. 3rd St, Suite 343
Yakima, WA 98901
(509) 573-4993

Snohomish County Office

2731 Wetmore Ave. Suite 410
Everett, WA 98201
(425) 258-3132

Disability Rights Washington (DRW)

- DRW was formerly known as Washington Protection and Advocacy System (WPAS). DRW is a private, non-profit organization that works to protect the rights of people with disabilities. Services include free legal advocacy to people with disabilities in Washington.

315 Fifth Avenue South, Suite 850
Seattle, WA 98104
(206) 324-1521, (800) 562-2702
(206) 957-0728 TTY, (800) 905-0209 TTY
(206) 957-0729 FAX
www.disabilityrightswa.org

King County Bar Association (KCBA)

- KCBA is a professional association for lawyers. KCBA has a lawyer referral service. In addition, the KCBA's Community Legal Services program provides free legal advice and assistance to low-income people eligible for services.

King County Bar Association
1200 Fifth Avenue, Suite #600
Seattle, WA 98101
(206) 267-7100
(206) 267-7099 FAX
www.kcba.org

Parent Resources

Foster Parent Association of Eastern Washington (FPAS)

- FPAS is an association of foster parents, agency representatives, and members of the community who want to work together to improve the foster care system and enhance the lives of all children and families.

1315 N. Napa
Spokane, WA 99202
(509) 462-3777
www.fpas.org

Parents are Vital in Education (PAVE)

- PAVE conducts workshops and training for parents on special education and related issues. PAVE helps parents increase skills in working with their children's teachers, therapists, and other team members to obtain appropriate educational services for students with disabilities.

Tacoma PAVE (main office)
6316 South 12th Street
Tacoma, WA 98465
(253) 565-2266 (V/TTY)
(800) 5-PARENT (V/TTY)
(253) 566-8052 FAX
www.washingtonpave.com

Spokane PAVE
PMB # 482
816 Francis Avenue
Spokane, WA 99201
(509) 326- 1722
(509) 326-1835 FAX

Sunnyside PAVE
105 South 6th St. #B
Sunnyside, WA 98944
(509) 837-8909 (V/TTY)
(877) 821-4113
(509) 839-5803 FAX

Southwest Region PAVE
P.O. Box 56
Silver Creek, WA 98585
(360) 985-0283

Oak Harbor PAVE
PO Box 2056
Oak Harbor, WA 98277
(360) 279-1415
(877) 279-1416
(360) 279-1203 FAX

North Central PAVE
Po Box 2112
Tonaset, WA 98855
(509) 486-2705

Yakima PAVE
PO Box 8014
Yakima, WA 98908
(509) 972-4659

Within Reach (formerly Healthy Mothers, Health Babies)

- Within Reach maintains current information on public and private early intervention resources, including Family Resource Coordinators. It also provides services and information about immunizations, nutrition, and other children's health services available in Washington State.

11000 Lake City Way NE, Suite 301
Seattle, WA 98125
(206) 284-2465
www.withinreachwa.org

Support Groups: Disability Issues

Children and Adults with Attention Deficit/Hyperactivity Disorder (CHADD)

- CHADD is a national non-profit organization for children and adults with ADD/ADHD. CHADD is dedicated to improving the lives of people with ADD/ADHD through support, education, and advocacy. There are 12 CHADD Chapters in Washington.

8181 Professional Place, Suite #150
Landover, MD 20785
(800) 233-4050, (301) 306-7070
(301) 306-7090 FAX
www.chadd.org

Advocates for the Rights of Citizens with Developmental Disabilities (The Arc)

- The Arc of Washington State is a non-profit organization whose mission is to promote education, self-sufficiency, self-advocacy, and inclusion of individuals with developmental disabilities and their families. There are 11 local Arc Chapters throughout Washington

2600 Martin Way E, Suite B

Olympia, WA 98506
(360) 357-5596, (888) 754-8798
(360) 357-3279 FAX
www.arcwa.org

Autism Society of Washington (ASW)

- The ASW has 10 chapters dedicated to promoting access and opportunities to persons with autism and their families. The ASW promotes advocacy, public awareness, education and research related to autism.

(888) 279-4968
www.autismsocietyofwa.org

Federation of Families for Children’s Mental Health (FFCMH)

- FFCMH is a national organization that serves the needs of children with serious emotional, behavioral, and mental disorders and their families. The FFCMH responds to mail, telephone, in-person, and electronic inquiries by providing publications, information on seminars, workshops, speaker’s bureaus, and crisis intervention and support groups.

Federation of Families
9605 Medical Center Drive, Suite 280
Rockville, MD 20850
(240) 403-1901
(240) 403-1909 FAX
www.ffcmh.org

Fetal Alcohol Syndrome Family Resource Institute

- The Fetal Alcohol Syndrome Family Resource Institute is a non-profit organization that provides information and referral for individuals disabled by prenatal alcohol exposure.

PO Box 2525
Lynnwood, WA 98036
(253) 531-2878, (800) 999-3429
www.fetalalcoholsyndrome.org

Washington State Fetal Alcohol Syndrome Diagnostic and Prevention Network

- FASDPN focuses on screening, diagnosis and prevention of Fetal Alcohol Syndrome (FAS). Its core clinic is housed at the University of Washington. Six other community-based diagnostic clinics are located in Pierce, Snohomish, Spokane, south King, Whitman and Yakima counties. These clinics provide training and diagnostic tools to fight FAS.

University of Washington
Center on Human Development and Disability
Box 357920
Seattle, WA 98195
(206) 685-9888
<http://depts.washington.edu/fasdprn>

National Dissemination Center for Children with Disabilities (NICHCY)

- NICHCY provides information on resource sheets that identify organizations and agencies within each state that address disability-related issues. Resource sheets include agencies that serve children and youth with disabilities, state chapters of disability organizations, parent groups, and parent training and information projects.

PO Box 1492
Washington, DC 20013
(800) 695-0285 (V/TTY)
(202) 884-8441 FAX
www.nichcy.org

Tutoring Services

Learning Disabilities Association of Washington (LDAW)

- LDAW provides a variety of services focused on the education and general welfare of children and adults who have learning disabilities, attention deficit disorders, and related behavioral and social difficulties. LDAW offers tutoring for children and adults with learning disabilities. There is a sliding scale fee for tutoring.

16225 NE 87th Street, Suite B-4
Redmond, WA 98052
(425) 882-0820, (800) 536-2343

Treehouse

- Treehouse provides enrichment support to King County children living in foster care or supervised by Child Protective Services or Family Reconciliation Services. Programs include: tutoring, clothing distribution, and funding for summer camp or community-based recreational and cultural activities. Treehouse also provides educational advocacy across the state.

2100 24th Avenue South, Suite 200
Seattle, WA 98144
(206) 767-7000
(206) 767-7773 FAX
www.treehouseforkids.org

Forms and Samples

1. **Confirming a Phone Conversation – Sample Letter**
2. **Log Sheet - Form**
3. **Records Request – Form Letter**
4. **Request for District Rules and Policies – Form Letter**
5. **Request for IDEA and 504 Evaluations – Sample Letter**
6. **Request for IDEA and 504 Evaluations – Form Letter**
7. **Request for IEP Team Meeting – Form Letter**
8. **Request for Special Education Due Process Hearing – Sample Letter**
9. **Request for Informal Conference – Form Letter**
10. **Request for Discipline Hearing – Form Letter**
11. **Appeal of Discipline Hearing Decision – Form Letter**

Sample Letter: Confirming a Phone Conversation

December 15, 2007

Ms. Jane Doe
Principal
ABC Elementary School
1234 5th Avenue
Anywhere, WA 00000

Identify the student

Re: John Smith, date of birth 12/28/95

Dear Ms. Doe:

State purpose of the letter

Thank you for speaking with me on the phone yesterday. I appreciate you taking the time to schedule a call about my foster son, John Smith. I am writing to confirm the things we talked about.

Describe what was discussed in the conversation

As we discussed, I am concerned that John is not receiving the individual help he needs to make progress in math. John's Section 504 plan requires him to have one-on-one math tutoring twice a week. John says he has not seen his tutor, Ms. Anderson, for three weeks.

Describe agreements made

In our conversation, you agreed to check with Ms. Anderson and John's classroom teacher, Mr. Parks, about whether or not John has been receiving individual help with math. You also agreed to call me by the end of this week to tell me what you found out.

Contact information

Thank you for your help in this matter. I look forward to speaking with you. You may contact me at (555) 555-5555.

Sincerely,

George Johnson
Foster/Surrogate Parent

Records Request

Date: _____

To: _____

Dear _____:

I am writing to request educational records for
_____ (student's name).

Please send the following to me at the address below:

- All academic progress reports, including grade reports and standardized test results
- All attendance reports
- All disciplinary reports, including referrals and notices of suspension and expulsion
- All documentation, correspondence, and emails regarding consideration for special services
- Evaluations, plans (IEP and 504), and all other documentation regarding special education and Section 504 eligibility and services.
- Other _____

Attached is an authorization to release these records to me. If you have any questions, please contact me at

Phone: _____

Address: _____

Sincerely,

(Signature)

Request for District Rules and Policies

Date: _____

To: _____

Dear _____:

I am writing to request a copy of the school district policies regarding the following:

- Rules defining student misconduct and penalties, including exceptional misconduct
- Rules explaining petitions for readmission for suspended or expelled students
- Rules outlining how to make complaints against teachers or administrators
- Rules regarding the referral and evaluation of students for special education or special services under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973

Other: _____

I am making this request pursuant to Chapter 28A.600 of the RCW and Chapters 392-400 and 392-172A of the WAC. Please send these rules and policies to me at

Phone: _____

Address: _____

Sincerely,

(Signature)

Sample Letter: Request for IDEA and 504 Evaluations

December 15, 2007

Ms. Jane Doe - Principal
ABC Elementary School
1234 5th Avenue
Anywhere, WA 00000

Identify the student

Re: John Smith, date of birth 12/28/95

Dear Ms. Doe:

Identify yourself and the reason for the letter: **Referral for evaluation**

I am writing with regard to John Smith, a student in your school. I am John's foster parent, and I believe that he has several impairments that interfere with his ability to learn. I am requesting that the school district evaluate John for special services under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

Identify areas of suspected disability

I am concerned that John might need special education or services in two areas: reading, and his ability to concentrate on a task.

Give examples from personal experience of the areas where the student needs help.

With regard to reading, I have noticed on several occasions that John will not read materials when they are given to him. He later learns the contents of the materials by asking questions of others who have read them.

As for his attention problems, I have found that John has a hard time staying on task. When asked to complete a chore at home, such as taking out the trash, he will start to do it, but within several minutes he becomes distracted. When I remind him that he has a job to do, he usually gets upset and refuses to finish.

If applicable, identify others with concerns and records documenting disabilities.

John's counselor at CDF Mental Health Clinic, David Davidson, is also concerned that John does not read well and may have a disability such as Attention Deficit Disorder. I have enclosed a copy of Mr. Davidson's progress report for John.

State what you expect to happen next

I understand that you need consent to proceed with the evaluation. Please contact me as soon as possible to start this process.

Contact information

Thank you for your prompt attention to my concerns. If you have any questions, I may be reached at (555) 555-5555.

Sincerely,

George Johnson - Foster Parent

Request for IDEA and Section 504 Evaluations

Date: _____

To: _____

Student _____

Dear _____:

I am requesting that the school district evaluate student, _____ [insert student's name], for special services under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

I am concerned about the student for the following reasons:

Attached are records that describe some of these concerns.

Thank you for your prompt attention to my concerns. If you have any questions, please call me at _____.

Sincerely,

(Signature)

Request for IEP Team Meeting

Date: _____

To: _____

Dear _____:

I am writing to request an IEP Team meeting regarding _____ [insert student's name], a child in my care. As a member of the IEP Team, I have concerns that I feel must be addressed by the entire team. The following is a list of my concerns:

Thank you for your prompt attention to my concerns. If you have any questions or need to know my availability to schedule an IEP meeting, please call me at _____.

Sincerely,

(Signature)

Sample Letter: Request for Special Education Due Process Hearing

Be sure to provide the date!

June 1, 2007

Send all special education due process hearing requests to this address of OSPI.

Office of the Superintendent of Public Instruction
Administrative Resources Section
Old Capitol Building
P.O. Box 47200
Olympia, WA 98504

Identify the school district and student

Re: Formal Request for Special Education Due Process Hearing
NAME OF STUDENT (D.O.B. 1-2-00)
NAME OF SCHOOL DISTRICT

To Whom It May Concern:

We/I am requesting an administrative due process hearing on behalf of our/my son/daughter, *NAME OF STUDENT*. I believe the *NAME OF SCHOOL DISTRICT* has violated my child's rights pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq. as amended by P.L. 108-446, and its implementing regulations; Title II of the Americans with Disabilities Act; Section 504 of the Rehabilitation Act of 1973; and WAC 392-172A et seq., as amended. Accordingly, I/we are requesting a due process hearing pursuant to my/our rights under WAC 392-172A-05085.

It is really important to be as specific as you can, but in summary form. This should not exceed 1-2 paragraphs of information. One paragraph is best.

Specifically, I/we believe that the *NAME OF SCHOOL DISTRICT* has failed to . . .

EXPLAIN THE PROBLEM HERE.

List here what you **really** want.

We/I believe the following solutions would resolve our/my concerns: 1) ...2) ...3) ... (i.e. placement in a classroom, provision of a one-on-one trained aide, reimbursement for private school tuition, etc.)

Special Education Hearing Request
June 1, 2007, p. 2

Include work phone if that's where you are normally reached during the day.

We/I currently reside at (*COMPLETE HOME ADDRESS*) We/I can be reached by phone at (*AREA CODE AND HOME PHONE NUMBER*). My child (*NAME OF STUDENT*) is currently attending (*NAME*) Elementary/High School and resides within the boundaries of the (*NAME*) School District.

Explain what you have done to resolve the issues, if not included above. No more than a sentence or two.

We/I believe we/I have made reasonable efforts to resolve this matter. (i.e., meetings you have attended, phone calls, letters, etc.) At the present time, we/I have no expectation that our/my concerns will be resolved unless this matter is presented to an impartial hearing officer. We/I would like to request that you assign an Administrative Law Judge to address this matter as soon as possible. If you have any questions or concerns about this request, please feel free to contact me at you nearest convenience. Thank you.

Very truly yours,

YOUR NAME and SIGNATURE

Request for Informal Conference

Date: _____

To: _____

Student _____

Dear _____:

I have some concerns regarding the school's recent discipline of a child in my care, and I would like to schedule a conference as soon as possible. My concerns are as follows:

I am making this conference request pursuant to Chapter 392-400 of the Washington Administrative Code. Please call me to schedule the conference.

Please contact me at

Phone: _____

Address: _____

Sincerely,

(Signature)

Request for Discipline Hearing

Date: _____

To: _____

Student _____

Dear _____:

I received the school's notice of LONG TERM SUSPENSION / EXPULSION/EMERGENCY EXPULSION issued against a child in my care. I would like to request a hearing under Chapter 392-400 of the Washington Administrative Code in order to contest this action. I understand that I may have a hearing within 3 days of making this request. In order to prepare for the hearing, I request copies of the following documents as soon as possible:

- A list of all witnesses the school expects to call at the hearing
- Copies of all documents the school intends to present at the hearing, including witness statements, statements by my child, and statements by building officials
- Copies of all records in my child's disciplinary file, including referrals, notices of suspension, notices of expulsion, and any behavior intervention or accommodation plans.

Please call me as soon as possible to arrange for the transfer of these copies to me and the date and time of the hearing.

Please contact me at

Phone: _____

Address: _____

Unless this is an emergency expulsion, I understand that the child is entitled to remain in school during the hearing process.

Sincerely,

(Signature)

Appeal of Discipline Hearing Decision

Date: _____

To: _____

Student _____

Dear _____:

I am writing to request an appeal to the school board of the hearing officer's decision to issue a LONG TERM SUSPENSION / EXPULSION/EMERGENCY EXPULSION against a child in my care. Attached is a copy of the hearing officer's decision. I expect to hear from the school board within 10 school business days, with respect to how my appeal will be handled. Please call me as soon as possible if you have any questions regarding this notice of appeal.

Please contact me at

Phone: _____

Address: _____

Sincerely,

(Signature)

Glossary

administrative hearing	A formal process for parents and school districts to resolve disagreements about discipline and special education services. In special education cases, the process is called a “due process hearing.”
administrative law judge (ALJ)	A judge who handles only administrative hearings. In Washington State, ALJs are appointed by the Governor and work for the Washington State Office of Administrative Hearings. ALJs are the judges in special education due process hearings.
advocate	Someone who stands up on behalf of another person. A defender or supporter.
alternate assessment	A method by which schools can assess the progress of students with severe disabilities who cannot take traditional standardized exams. Alternate assessment methods could include assessment by portfolio or assessment by meeting learning competencies or goals established by the IEP Team.
appeal	A request for a person or entity (such as the School Board) to review a decision. The appeal is made to the person or entity with authority to change the earlier decision. Usually appeals must be made within a certain time period.
assistive technology device	Any piece of equipment or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability.
assistive technology service	Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.
behavior intervention plan	A plan to address behavior that may be getting in the way of a student with disabilities success at school.

C.F.R.	Abbreviation for the Code of Federal Regulations. The C.F.R. is the set of federal regulations that federal agencies develop to implement federal laws.
change of placement	A concept in special education law that describes when student with disabilities is moved from one setting to another, or when there are significant changes in a student's individualized education program (IEP).
cross examination	Questions asked of a witness who has already testified in a hearing. In a discipline hearing, the parent or student has a right to cross examine the district's witnesses.
day	In general, a day means a calendar day unless otherwise specified. "Calendar day" means all days, weekdays, and weekends. "School day" means any day, including a partial day, in which students are at school for instructional purposes. "Business day" means Monday through Friday, except for state and federal holidays. Note that in some cases, "business day" <i>includes</i> holidays. What is counted as a day is different under different laws. Be sure to check the definition section of whichever law governs your situation.
Department of Social and Health Services (DSHS)	Also known as DSHS, the state agency charged with providing health and social services for the residents of Washington. Includes the Division of Children and Family Services, the Division of Developmental Disabilities, the Division of Mental Health, and the Division of Vocational Rehabilitation.
Division of Vocational Rehabilitation (DVR)	Also known as DVR. State agency charged with helping people with disabilities prepare for, find, and maintain employment.
discipline	All forms of corrective action or punishment used with students, except a suspension or expulsion from school.
Division of Children and Family Services (DCFS)	Also known as DCFS. State agency responsible for providing services to at-risk and dependent children and their families. Part of the Department of Social and Health Services.

Division of Developmental Disabilities (DDD)	Also known as DDD. State agency charged with providing a broad array of services to children and adults with developmental disabilities.
due process hearing	An administrative hearing presided over by an administrative law judge. Hearings in special education matters are called Due Process Hearings.
due process of law	A legal concept that ensures that a person will be notified and have an opportunity to be heard before a public entity denies, reduces, or terminates a person's rights.
emergency expulsion	Immediate removal from school or class for an indefinite period of time. Though a definite ending time may not be specified when notice is given, emergency expulsions must end within ten days.
expulsion	Removal from school, class, and sometimes district property for up to one calendar year, unless the school petitions the district superintendent for an extension and the superintendent authorizes the extension.
extended school year or ESY	Special education and related services provided beyond the normal school year which are necessary in order for the student to receive a meaningful education.
FAPE or Free Appropriate Public Education	A concept in special education law that describes the right of a student with a disability to special education and other supportive services at no cost. Students with disabilities are entitled to FAPE under the IDEA and Section 504.
FERPA	Abbreviation for Family Educational Rights and Privacy Act — a federal law that governs the disclosure of information from education records.
functional behavioral assessment	An evaluation of the behavior issues of a student with disabilities. Also known as FBA.

Hearing Examiner/Officer	The decision-maker in school discipline hearings. The hearing examiner/officer is often an employee of the school district.
IDEA 2004	See Individuals with Disabilities Education Act.
IFSP	See Individualized Family Service Plan.
Individualized Education Program or IEP	A document that describes the special education services that a student with disabilities will receive. The IEP is specific to each student and tailored to his or her educational needs.
IEP Team	A group of people made up of education professionals, the student's parent, and others who have information about a student and his or her needs. Every student with disabilities must have an IEP Team that is responsible for creating and reviewing the student's IEP and determining where the services will be delivered.
Individualized Family Service Plan (IFSP)	A document that describes the specific services that an infant or toddler with a disability will receive. The IFSP is tailored to the needs of the child and the interests of the family.
Individuals with Disabilities Education Act	Federal law that establishes the right of children with disabilities to special education and describes how services are to be delivered. This law was recently amended in 2004 and renamed the Individuals with Disabilities Education Improvement Act. Also referred to as IDEA 2004 or IDEIA.
Infant Toddler Early Intervention Program (ITEIP)	Collection of services for infants and toddlers with disabilities that is designed to meet the developmental needs of eligible children and provide their families with skills to encourage their development. Also referred to as ITEIP.
interim alternative educational setting	Also referred to as IAES. A placement of up to 45 days for students with disabilities who a) bring weapons to school, b) bring drugs to school, c) inflict serious bodily injury at school, or d) are determined to be dangerous by an administrative law judge. The IAES must be developed so that students can participate in the general education curriculum and progress towards achieving the goals set out in the IEP.

"The Law" as used broadly	A broad range of laws, regulations, and policies. Can refer to federal (national) laws, state laws, local (such as county or city codes), and even school district rules.
long-term suspension	An exclusion from school for more than 10 days.
LRE or least restrictive environment	LRE or least restrictive environment is used to describe the requirement in special education law that children with disabilities be educated, to the maximum extent possible, in regular (also referred to as <i>general education</i>) classes with students who do not have disabilities.
manifestation determination	A process that looks at the relationship between a student's disability and behavior that would normally be subject to discipline, suspension or expulsion. The manifestation determination is made by relevant members of the student's IEP Team, as determined by the school and the parents.
mediation	A free, voluntary process for resolving disputes between school districts and parents/advocates. A trained, neutral mediator helps both parents and school personnel clarify issues and come to a mutually acceptable resolution.
Medicaid	Medical insurance financed by state and federal funds. Eligibility is based on financial need.
notice	Notification of action, such as a school district's suspending a student or changing a special education student's placement. Depending on the action, notices usually contain information about legal rights to appeal the decision.
OCR or Office of Civil Rights	Abbreviation for the Office of Civil Rights for the U.S. Department of Education. OCR enforces the protections of Section 504 and is responsible for investigating civil rights complaints.
OSPI	Abbreviation for the Office of the Superintendent of Public Instruction. OSPI is the state agency that oversees school districts.

petition for readmission	A request to a school district, often made to the superintendent, for a student to return to school prior to the end of an expulsion or suspension.
placement	Refers to how and where special education services described in an IEP or 504 Plan will be provided to a child.
power of attorney	A document that allows a person to assign his or her legal rights (such as a parent's educational decision-making rights) to another person.
RCW	Abbreviation for the Revised Code of Washington. The RCW is the set of state laws enacted by our state Legislature.
reasonable accommodation	The modification of programs in ways that permit students with disabilities to participate more fully. Section 504 requires school districts to provide reasonable accommodations for students with disabilities.
referral	A written request made to a school district to evaluate a child for special education and/or Section 504 eligibility.
related services	Transportation and other supportive services required to help a student with a disability benefit from special education. Includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling, social work services, and parent counseling and training.
resolution session	A meeting between the parents, the school district and relevant members of the IEP Team that is scheduled after a due process hearing is requested. The meeting is to discuss the complaint, the facts forming the basis for it, and to provide an opportunity to resolve the complaint. This meeting can be waived if the parents and the district agree in writing.
SAT or Scholastic Aptitude Test	Test taken by high school students and used by four-year colleges to make admissions decisions. Students usually take the test in their junior year of high school (11th grade).

School Board	The board of directors for a school district. The School Board manages the operation of the school district and has broad power to adopt policies and implement educational programs, activities and services.
school business days	Days when the school district administration office is open for business. Does not include weekends or holidays.
school records	Records can include academic, attendance, discipline, special education, testing, or other information pertaining to a specific student. Federal law defines records to include anything that is recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.
Section 504	Refers to Section 504 of the Rehabilitation Act of 1973. Section 504 is a federal anti-discrimination law that protects the rights of students with disabilities and provides for services and program modifications necessary to meet the needs of such students.
Section 504 plan	A plan for providing services and program modifications necessary to meet the needs of students with disabilities who qualify for Section 504 accommodations. Includes a summary of evaluation data, documentation of the eligibility determination, and a description of accommodations, services and placement.
short-term suspension	Denial of admission to school for up to and including 10 days.
special education	Instruction that is specially designed to meet the individual needs of a child with a disability. Special education is paid for by the school district.
SSI	See Supplemental Security Income.
stay put	A concept describing the right of a student with a disability to remain in his or her current education placement until disputes have been resolved.

Supplemental Security Income	Also referred to as SSI. Federal financial assistance available to financially needy individuals with disabilities. Benefits are administered by the Social Security Administration.
surrogate parent	Individual assigned by the school district or by a judge overseeing a dependency youth's care to act in the place of a parent in special education settings when a student's parent is unavailable or no longer has parental rights.
testifying or testimony	Statements made under oath (where someone swears to tell the truth), usually in a hearing or some other court proceeding.
transition services	A coordinated set of activities for a student with a disability that is designed to help a student move from school to post-school activities, including post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, and community participation.
truancy	Unexcused absence from school by a student who is legally required to attend school.
U.S.C.	Abbreviation for the United States Code. The U.S.C. is the set of federal laws enacted by the U.S. Congress.
U.S. Department of Labor	Federal agency that funds vocational training programs in local communities.
WAC	Abbreviation for the Washington Administrative Code. The WAC is the set of regulations that implement state law.
ward of the state	A student within the jurisdiction of the Department of Social and Health Services, Children's Administration through shelter care, dependency, or other legal proceedings to protect abused and neglected children. Does not include a child who has a foster parent who meets the special education laws' definition of parent.
Washington Employment Security Commission	State agency that funds vocational training programs in local communities.

How to Read Citations and Find Laws

Throughout this Manual, you will find references to “the law.” The references are called citations. The citations refer to a broad range of statutes, regulations, and policies.

Reading the law can be intimidating because the language is not always easy to follow and the organization can be confusing. This guide will explain the basics on how to read citations and find statutes and regulations cited in this Manual.

STATUTE OR LAW—Describes rights and responsibilities that the U.S. Congress or a state legislature has agreed will apply to its citizens.

REGULATION—Sets out the rules and procedures for how a law is to be implemented and enforced. Regulations are written by state and federal administrative agencies.

How are federal law and state law different?

Federal law: Federal law is passed by the U.S. Congress and applies to all states. A federal agency (such as the U.S. Department of Education) is responsible for implementing the law and creating the federal regulations to explain how the law should work in practice. The federal laws and regulations contained in this manual are:

- Individuals with Disabilities Education Act (IDEA) (the citations beginning with “20 U.S.C.”)
- Section 504 of the Rehabilitation Act of 1973 and its regulations (the citations beginning with “34 C.F.R.”)

State law: State law is passed by state legislatures and applies only to that state. Often, the state will pass a law that incorporates the requirements of a federal law. A state agency (such as the Washington State Office of the Superintendent of Public Instruction) then creates detailed regulations to describe how the law is to be implemented. The Washington laws and regulations contained in this manual are taken from:

- Revised Code of Washington (RCW)— the laws of the state

- Washington Administrative Code (WAC)—the state regulations.

If federal and state laws say different things about the same subject, the federal law has priority over the state law.

How can I locate information in the law?

References to various laws and regulations are called legal citations or cites. Citations give you directions for locating specific information contained in a law or regulation.

Here's how to read citations:

20 U.S.C. § 1414(a)(1)(A) is a citation to federal law.

20	U.S.C.	§ 1414	(a)(1)(A)
Title of the law/regulation	Abbreviation for the publication in which the law can be found (United States Code)	Section of the law where information is located.	Sub-sections

This is how the statute appears in a law book.

20 USC § 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements

- (a) **Evaluations**, parental consent, and reevaluations
 - (1) Initial evaluations
 - (A) In general. A state educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b) of this section, before the initial provision of special education and related services to a child with a disability under this part.

WAC 392-172-156(1)(a) is a citation to the state law.

WAC	392	172A	02030	(2)(a)
Abbreviation for the publication in which law or regulation can be found. (WA Administrative Code)	Title	Chapter	Section	Sub-sections

This is how the regulation appears in a law book.

WAC 392-172-162 Physical education. (2) Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless:

- (a) The student is enrolled full time in a separate facility; or
- (b) The student needs specially designed physical education, as described in the student's individualized education program.

IDEA

2004 INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT

20 U.S.C. 1400

Effective: July 01, 2005

§ 1400. Congressional statements and declarations

(a) Short title

This chapter may be cited as the "Individuals with Disabilities Education Act".

(b) Omitted

(c) Findings

Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met because--

(A) the children did not receive appropriate educational services;

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975,

this chapter has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) However, the implementation of this chapter has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by--

(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to--

(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

(C) coordinating this chapter with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

- (F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;
- (G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and
- (H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.
- (6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.
- (7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.
- (8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.
- (9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.
- (10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.
- (B) America's ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.
- (C) Minority children comprise an increasing percentage of public school students.
- (D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the

teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation's students from non-English language backgrounds.

(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.

(D) In the 1998-1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

(E) Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.

(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this chapter, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

(14) As the graduation rates for children with disabilities continue to climb, providing effective

transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

(d) Purposes

The purposes of this chapter are--

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

§ 1401. Definitions

Except as otherwise provided, in this chapter:

(1) Assistive technology device

(A) In general

The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such

device.

(2) Assistive technology service

The term "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--

(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

(3) Child with a disability

(A) In general

The term "child with a disability" means a child--

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term "child with a disability" for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child--

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

(4) Core academic subjects

The term "core academic subjects" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801].

(5) Educational service agency

The term "educational service agency"--

(A) means a regional public multiservice agency--

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

(6) Elementary school

The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(7) Equipment

The term "equipment" includes--

(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(8) Excess costs

The term "excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting--

(A) amounts received--

(i) under part B [subchapter II of this chapter];

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6311 et seq.]; and

(iii) under parts A and B of title III of that Act [20 U.S.C.A. § 6811 et seq. and 20 U.S.C.A. § 6891 et seq.]; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(9) Free appropriate public education

The term "free appropriate public education" means special education and related services that--

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(10) Highly qualified

(A) In general

For any special education teacher, the term "highly qualified" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801], except that such term also--

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) Requirements for special education teachers

When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) Special education teachers teaching to alternate achievement standards

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6311(b)(1)], such term means the teacher, whether new or not new to the profession, may either--

(i) meet the applicable requirements of section

9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) Special education teachers teaching multiple subjects

When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act [20 U.S.C.A. § 7801(23)(C)(ii)], which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act [20 U.S.C.A. § 7801(23)(C)(ii)], which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this section or subchapter shall be construed to create a right of action on

behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) Definition for purposes of the ESEA

A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.].

(11) Homeless children

The term "homeless children" has the meaning given the term "homeless children and youths" in section 11434a of Title 42.

(12) Indian

The term "Indian" means an individual who is a member of an Indian tribe.

(13) Indian tribe

The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(14) Individualized education program; IEP

The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title.

(15) Individualized family service plan

The term "individualized family service plan" has the meaning given the term in section 1436 of this title.

(16) Infant or toddler with a disability

The term "infant or toddler with a disability" has the meaning given the term in section 1432 of this title.

(17) Institution of higher education

The term "institution of higher education"--

(A) has the meaning given the term in section 1001 of this title; and

(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978 [25 U.S.C.A. § 1801 et seq.].

(18) Limited English proficient

The term "limited English proficient" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801].

(19) Local educational agency

(A) In general

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

(B) Educational service agencies and other public institutions or agencies

The term includes--

(i) an educational service agency; and

(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) BIA funded schools

The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(20) Native language

The term "native language", when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

(21) Nonprofit

The term "nonprofit", as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(22) Outlying area

The term "outlying area" means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(23) Parent

The term "parent" means--

(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

(B) a guardian (but not the State if the child is a ward of the State);

(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(D) except as used in sections 1415(b)(2) of this title and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

(24) Parent organization

The term "parent organization" has the meaning given the term in section 1471(g) of this title.

(25) Parent training and information center

The term "parent training and information center" means a center assisted under section 1471 or 1472 of this title.

(26) Related services

(A) In general

The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(27) Secondary school

The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(28) Secretary

The term "Secretary" means the Secretary of Education.

(29) Special education

The term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(30) Specific learning disability

(A) In general

The term "specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) Disorders included

Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) Disorders not included

Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(31) State

The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(32) State educational agency

The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(33) Supplementary aids and services

The term "supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 1412(a)(5) of this title.

(34) Transition services

The term "transition services" means a coordinated set of activities for a child with a disability that--

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from

school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(35) Universal design

The term "universal design" has the meaning given the term in section 3002 of Title 29.

(36) Ward of the State

(A) In general

The term "ward of the State" means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

(B) Exception

The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

§ 1402. Office of Special Education Programs

(a) Establishment

There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in the Department for administering and carrying out this chapter and other programs and activities concerning the education of children with disabilities.

(b) Director

The Office established under subsection (a) of this section shall be headed by a Director who shall be

selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

(c) Voluntary and uncompensated services

Notwithstanding section 1342 of Title 31, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this chapter.

§ 1403. Abrogation of State sovereign immunity

(a) In general

A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this chapter.

(b) Remedies

In a suit against a State for a violation of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

(c) Effective date

Subsections (a) and (b) of this section apply with respect to violations that occur in whole or part after October 30, 1990.

§ 1404. Acquisition of equipment; construction or alteration of facilities

(a) In general

If the Secretary determines that a program authorized under this chapter will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

(b) Compliance with certain regulations

Any construction of new facilities or alteration of existing facilities under subsection (a) of this section shall comply with the requirements of--

(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Accessibility Guidelines for Buildings and Facilities"); or

(2) appendix A of subpart 101-19.6 of title 41, Code of

Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").

§ 1405. Employment of individuals with disabilities

The Secretary shall ensure that each recipient of assistance under this chapter makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this chapter.

§ 1406. Requirements for prescribing regulations

(a) In general

In carrying out the provisions of this chapter, the Secretary shall issue regulations under this chapter only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this chapter.

(b) Protections provided to children

The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this chapter that--

(1) violates or contradicts any provision of this chapter; or

(2) procedurally or substantively lessens the protections provided to children with disabilities under this chapter, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

(c) Public comment period

The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under subchapter II [20 U.S.C.A § 1411 et seq.] or subchapter III [20 U.S.C.A. § 1431 et seq.] of this chapter on which an opportunity for public comment is otherwise required by law.

(d) Policy letters and statements

The Secretary may not issue policy letters or other statements (including letters or statements regarding

issues of national significance) that--

(1) violate or contradict any provision of this chapter; or

(2) establish a rule that is required for compliance with, and eligibility under, this chapter without following the requirements of section 553 of Title 5.

(e) Explanation and assurances

Any written response by the Secretary under subsection (d) of this section regarding a policy, question, or interpretation under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.] shall include an explanation in the written response that--

(1) such response is provided as informal guidance and is not legally binding;

(2) when required, such response is issued in compliance with the requirements of section 553 of Title 5; and

(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

(f) Correspondence from Department of Education describing interpretations of this chapter

(1) In general

The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this chapter or the regulations implemented pursuant to this chapter.

(2) Additional information

For each item of correspondence published in a list under paragraph (1), the Secretary shall--

(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

(B) ensure that all such correspondence is issued, where applicable, in compliance with the

requirements of section 553 of Title 5.

§ 1407. State administration

(a) Rulemaking

Each State that receives funds under this chapter shall--

(1) ensure that any State rules, regulations, and policies relating to this chapter conform to the purposes of this chapter;

(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this chapter and Federal regulations; and

(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this chapter.

(b) Support and facilitation

State rules, regulations, and policies under this chapter shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

§ 1408. Paperwork reduction

(a) Pilot program

(1) Purpose

The purpose of this section is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this chapter, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

(2) Authorization

(A) In general

In order to carry out the purpose of this section, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.] for a period of time not to exceed 4 years with respect to not more than 15 States based on proposals submitted by States to reduce excessive

paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

(B) Exception

The Secretary shall not waive under this section any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

(C) Rule of construction

Nothing in this section shall be construed to--

(i) affect the right of a child with a disability to receive a free appropriate public education under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.]; and

(ii) permit a State or local educational agency to waive procedural safeguards under section 1415 of this title.

(3) Proposal

(A) In general

A State desiring to participate in the program under this section shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

(B) Content

The proposal shall include--

(i) a list of any statutory requirements of, or regulatory requirements relating to, subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.] that the State desires the Secretary to waive, in whole or in part; and

(ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

(4) Termination of waiver

The Secretary shall terminate a State's waiver under this section if the Secretary determines that the State--

(A) needs assistance under section 1416(d)(2)(A)(ii) of this title and that the waiver has contributed to or caused such need for assistance;

(B) needs intervention under section 1416(d)(2)(A)(iii) of this title or needs substantial intervention under section 1416(d)(2)(A)(iv) of this title; or

(C) failed to appropriately implement its waiver.

(b) Report

Beginning 2 years after December 3, 2004, the Secretary shall include in the annual report to Congress submitted pursuant to section 3486 of this title information related to the effectiveness of waivers granted under subsection (a) of this section, including any specific recommendations for broader implementation of such waivers, in--

(1) reducing--

(A) the paperwork burden on teachers, principals, administrators, and related service providers; and

(B) noninstructional time spent by teachers in complying with subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.];

(2) enhancing longer-term educational planning;

(3) improving positive outcomes for children with disabilities;

(4) promoting collaboration between IEP Team members; and

(5) ensuring satisfaction of family members.

§ 1409. Freely associated States

The Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall continue to be eligible for competitive grants administered by the Secretary under this chapter to the extent that such grants continue to be available to States and local educational agencies under this chapter.

**Subchapter II.
Assistance for Education of All
Children with Disabilities**

§ 1411. Authorization; allotment; use of funds; authorization of appropriations

(a) Grants to States

(1) Purpose of grants

The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this subchapter.

(2) Maximum amount

The maximum amount of the grant a State may receive under this section--

(A) for fiscal years 2005 and 2006 is--

(i) the number of children with disabilities in the State who are receiving special education and related services--

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

(B) for fiscal year 2007 and subsequent fiscal years is--

(i) the number of children with disabilities in the 2004-2005 school year in the State who received special education and related services--

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

(iii) the rate of annual change in the sum of--

(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II) of this section; and

(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III) of this section.

(b) Outlying areas and freely associated States;

Secretary of the Interior

(1) Outlying areas and freely associated States

(A) Funds reserved

From the amount appropriated for any fiscal year under subsection (i) of this section, the Secretary shall reserve not more than 1 percent, which shall be used--

(i) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this subchapter, but only if the freely associated State meets the applicable requirements of this subchapter, as well as the requirements of section 1411(b)(2)(C) of this title as such section was in effect on the day before December 3, 2004.

(B) Special rule

The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

(C) Definition

In this paragraph, the term "freely associated States" means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(2) Secretary of the Interior

From the amount appropriated for any fiscal year under subsection (i) of this section, the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (h) of this section.

(c) Technical assistance

(1) In general

The Secretary may reserve not more than 1/2 of 1 percent of the amounts appropriated under this subchapter for each fiscal year to provide technical assistance activities authorized under section 1416(i) of this title.

(2) Maximum amount

The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(d) Allocations to States

(1) In general

After reserving funds for technical assistance, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) of this section for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

(2) Special rule for use of fiscal year 1999 amount

If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(3) Increase in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Allocation of increase

(i) In general

Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year--

(I) to each State the amount the State received under this section for fiscal year 1999;

(II) 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free

appropriate public education under this subchapter; and

(III) 15 percent of those remaining funds to States on the basis of the States' relative populations of children described in subclause (II) who are living in poverty.

(ii) Data

For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) Limitations

Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) Preceding year allocation

No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) Minimum

No State's allocation shall be less than the greatest of--

(I) the sum of--

(aa) the amount the State received under this section for fiscal year 1999; and

(bb) 1/3 of 1 percent of the amount by which the amount appropriated under subsection (i) of this section for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

(II) the sum of--

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of--

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

(iii) Maximum

Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of--

(I) the amount the State received under this section for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(C) Ratable reduction

If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

(4) Decrease in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Amounts greater than fiscal year 1999 allocations

If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of--

(i) the amount the State received under this section for fiscal year 1999; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(B) Amounts equal to or less than fiscal year 1999 allocations

(i) In general

If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

(ii) Ratable reduction

If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

(e) State-level activities

(1) State administration

(A) In general

For the purpose of administering this subchapter, including paragraph (3), section 1419 of this title, and the coordination of activities under this subchapter with, and providing technical assistance to, other programs that provide services to children with disabilities--

(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or \$800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) of this section for the fiscal year or \$35,000, whichever is greater.

(B) Cumulative annual adjustments

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust--

(i) the maximum amount the State was eligible to reserve for State administration under this subchapter for fiscal year 2004; and

(ii) \$800,000,

by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(C) Certification

Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 1412(a)(12)(A) of this title are current.

(D) Subchapter III

Funds reserved under subparagraph (A) may be used for the administration of subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.], if the State educational agency is the lead agency for the State under such subchapter.

(2) Other State-level activities

(A) State-level activities

(i) In general

Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) of this section for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(ii) Small State adjustment

Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than \$850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) of this section for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban

Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(iii) Exception

If a State does not reserve funds under paragraph (3) for a fiscal year, then--

(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting "9.0 percent" for "10 percent"; and

(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting "9.5 percent" for "10.5 percent".

(B) Required activities

Funds reserved under subparagraph (A) shall be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation.

(ii) To establish and implement the mediation process required by section 1415(e) of this title, including providing for the cost of mediators and support personnel.

(C) Authorized activities

Funds reserved under subparagraph (A) may be used to carry out the following activities:

(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

(iii) To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum

for children with disabilities.

(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.

(vii) To assist local educational agencies in meeting personnel shortages.

(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 6311(b) and 7301 of this title.

(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 6316(e) of this title to children with disabilities, in schools or local educational agencies identified for improvement under section 6316 of this title on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 6311(b)(2)(G) of this title.

(3) Local educational agency risk pool

(A) In general

(i) Reservation of funds

For the purpose of assisting local educational agencies (including a charter school that is a local

educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)--

(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and

(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).

(ii) Definition of local educational agency

In this paragraph the term "local educational agency" includes a charter school that is a local educational agency, or a consortium of local educational agencies.

(B) Limitation on uses of funds

(i) Establishment of high cost fund

A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

(ii) Innovative and effective cost sharing

A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i) for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

(C) State plan for high cost fund

(i) Definition

The State educational agency shall establish the State's definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.

(ii) State plan

The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall--

(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum--

(aa) addresses the financial impact a high need child with a disability has on the budget of the child's local educational agency; and

(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 7801 of this title) in that State;

(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;

(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (II); and

(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

(iii) Public availability

The State shall make its final State plan publicly available not less than 30 days before the beginning of the school year, including dissemination of such information on the State website.

(D) Disbursements from the high cost fund

(i) In general

Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

(ii) Use of disbursements

Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

(iii) Appropriate costs

The costs associated with educating a high need child with a disability under subparagraph (C)(i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's IEP.

(E) Legal fees

The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a free appropriate public education for such child.

(F) Assurance of a free appropriate public education

Nothing in this paragraph shall be construed--

(i) to limit or condition the right of a child with a disability who is assisted under this subchapter to receive a free appropriate public education pursuant to section 1412(a)(1) of this title in the least restrictive environment pursuant to section 1412(a)(5) of this title; or

(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

(G) Special rule for risk pool and high need assistance programs in effect as of January 1, 2004

Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

(H) Medicaid services not affected

Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act [42 U.S.C.A. § 1396 et seq.].

(I) Remaining funds

Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) of this section for the succeeding fiscal year.

(4) Inapplicability of certain prohibitions

A State may use funds the State reserves under paragraphs (1) and (2) without regard to--

(A) the prohibition on commingling of funds in section 1412(a)(17)(B) of this title; and

(B) the prohibition on supplanting other funds in section 1412(a)(17)(C) of this title.

(5) Report on use of funds

As part of the information required to be submitted to the Secretary under section 1412 of this title, each State shall annually describe how amounts under this section--

(A) will be used to meet the requirements of this chapter; and

(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

(6) Special rule for increased funds

A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

(7) Flexibility in using funds for subchapter III

Any State eligible to receive a grant under section 1419 of this title may use funds made available under

paragraph (1)(A), subsection (f)(3) of this section, or section 1419(f)(5) of this title to develop and implement a State policy jointly with the lead agency under subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.] and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.] to children with disabilities who are eligible for services under section 1419 of this title and who previously received services under subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.] until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(f) Subgrants to local educational agencies

(1) Subgrants required

Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) of this section to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 1413 of this title for use in accordance with this subchapter.

(2) Procedure for allocations to local educational agencies

For each fiscal year for which funds are allocated to States under subsection (d) of this section, each State shall allocate funds under paragraph (1) as follows:

(A) Base payments

The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 1411(d) of this title as section 1411(d) of this title was then in effect.

(B) Allocation of remaining funds

After making allocations under subparagraph (A), the State shall--

(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's

jurisdiction; and

(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(3) Reallocation of funds

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this subchapter that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

(g) Definitions

In this section:

(1) Average per-pupil expenditure in public elementary schools and secondary schools in the United States

The term "average per-pupil expenditure in public elementary schools and secondary schools in the United States" means--

(A) without regard to the source of funds--

(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

(ii) any direct expenditures by the State for the operation of those agencies; divided by

(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(2) State

The term "State" means each of the 50 States, the

District of Columbia, and the Commonwealth of Puerto Rico.

(h) Use of amounts by Secretary of the Interior

(1) Provision of amounts for assistance

(A) In general

The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (b)(2) of this section for that fiscal year. Of the amount described in the preceding sentence--

(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

(ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

(B) Calculation of number of children

In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (referred to in this subsection as the "BIA") schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to October 7, 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this subchapter for those children, in accordance with paragraph (2).

(C) Additional requirement

With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this subchapter are implemented.

(2) Submission of information

The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the

Secretary of Education information that--

(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 1412 of this title (including monitoring and evaluation activities) and 1413 of this title;

(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this subchapter with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in subparagraph (A);

(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 1418 of this title;

(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this subchapter, and will fulfill its duties under this subchapter.

(3) Applicability

The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary

withholds payments under section 1416(e)(6) of this title.

(4) Payments for education and services for Indian children with disabilities aged 3 through 5

(A) In general

With funds appropriated under subsection (i) of this section, the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 450b of Title 25) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2) of this section.

(B) Distribution of funds

The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(C) Submission of information

To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

(D) Use of funds

The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these

activities. The tribe or tribal organization shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(E) Biennial report

To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

(F) Prohibitions

None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(5) Plan for coordination of services

The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this chapter. Such plan shall provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State educational agencies and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

(6) Establishment of advisory board

To meet the requirements of section 1412(a)(21) of this title, the Secretary of the Interior shall establish, under the BIA, an advisory board composed of

individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 1441 of this title in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall--

(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(B) advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in this subsection;

(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

(E) provide assistance in the preparation of information required under paragraph (2)(D).

(7) Annual reports

(A) In general

The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(B) Availability

The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

(i) Authorization of appropriations

For the purpose of carrying out this subchapter, other than section 1419 of this title, there are authorized to be appropriated--

- (1) \$12,358,376,571 for fiscal year 2005;
- (2) \$14,648,647,143 for fiscal year 2006;
- (3) \$16,938,917,714 for fiscal year 2007;
- (4) \$19,229,188,286 for fiscal year 2008;
- (5) \$21,519,458,857 for fiscal year 2009;
- (6) \$23,809,729,429 for fiscal year 2010;
- (7) \$26,100,000,000 for fiscal year 2011; and
- (8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

§ 1412. State eligibility

(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(1) Free appropriate public education

(A) In general

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) Limitation

The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children--

- (i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and
- (ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this subchapter be provided to

children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility--

(I) were not actually identified as being a child with a disability under section 1401 of this title; or

(II) did not have an individualized education program under this subchapter.

(C) State flexibility

A State that provides early intervention services in accordance with subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.] to a child who is eligible for services under section 1419 of this title, is not required to provide such child with a free appropriate public education.

(2) Full educational opportunity goal

The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

(3) Child find

(A) In general

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) Construction

Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.

(4) Individualized education program

An individualized education program, or an individualized family service plan that meets the requirements of section 1436(d) of this title, is developed, reviewed, and revised for each child with a

disability in accordance with section 1414(d) of this title.

(5) Least restrictive environment

(A) In general

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) Additional requirement

(i) In general

A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

(ii) Assurance

If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

(6) Procedural safeguards

(A) In general

Children with disabilities and their parents are afforded the procedural safeguards required by section 1415 of this title.

(B) Additional procedural safeguards

Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this chapter will be selected and administered so as not to be racially or

culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(7) Evaluation

Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 1414 of this title.

(8) Confidentiality

Agencies in the State comply with section 1417(c) of this title (relating to the confidentiality of records and information).

(9) Transition from subchapter III to preschool programs

Children participating in early intervention programs assisted under subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.], and who will participate in preschool programs assisted under this subchapter, experience a smooth and effective transition to those preschool programs in a manner consistent with section 1437(a)(9) of this title. By the third birthday of such a child, an individualized education program or, if consistent with sections 1414(d)(2)(B) and 1436(d) of this title, an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 1435(a)(10) of this title.

(10) Children in private schools

(A) Children enrolled in private schools by their parents

(i) In general

To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this subchapter by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f) of this section:

(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this subchapter.

(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

(ii) Child find requirement

(I) In general

The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

(II) Equitable participation

The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

(III) Activities

In carrying out this clause, the local educational

agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

(IV) Cost

The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

(V) Completion period

Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

(iii) Consultation

To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--

(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children

with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

(iv) Written affirmation

When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

(v) Compliance

(I) In general

A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(II) Procedure

If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and

the State educational agency shall forward the appropriate documentation to the Secretary.

(vi) Provision of equitable services

(I) Directly or through contracts

The provision of services pursuant to this subparagraph shall be provided--

(aa) by employees of a public agency; or

(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

(II) Secular, neutral, nonideological

Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

(vii) Public control of funds

The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer the funds and property.

(B) Children placed in, or referred to, private schools by public agencies

(i) In general

Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) Standards

In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational

agencies and that children so served have all the rights the children would have if served by such agencies.

(C) Payment for education of children enrolled in private schools without consent of or referral by the public agency

(i) In general

Subject to subparagraph (A), this subchapter does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) Reimbursement for private school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) Limitation on reimbursement

The cost of reimbursement described in clause (ii) may be reduced or denied--

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in

item (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) Exception

Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement--

(I) shall not be reduced or denied for failure to provide such notice if--

(aa) the school prevented the parent from providing such notice;

(bb) the parents had not received notice, pursuant to section 1415 of this title, of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--

(aa) the parent is illiterate or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

(11) State educational agency responsible for general supervision

(A) In general

The State educational agency is responsible for ensuring that--

(i) the requirements of this subchapter are met;

(ii) all educational programs for children with

disabilities in the State, including all such programs administered by any other State agency or local agency--

(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

(II) meet the educational standards of the State educational agency; and

(iii) in carrying out this subchapter with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(B) Limitation

Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

(C) Exception

Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this subchapter are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(12) Obligations related to and methods of ensuring services

(A) Establishing responsibility for services

The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

(i) Agency financial responsibility

An identification of, or a method for defining, the

financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

(ii) Conditions and terms of reimbursement

The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) Interagency disputes

Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Coordination of services procedures

Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) Obligation of public agency

(i) In general

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 1401(1) of this title relating to assistive technology devices, 1401(2) of this title relating to assistive technology services, 1401(26) of this title relating to related services, 1401(33) of this title relating to supplementary aids and services, and 1401(34) of this title relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either

directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

(ii) Reimbursement for services by public agency

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

(C) Special rule

The requirements of subparagraph (A) may be met through--

(i) State statute or regulation;

(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

(13) Procedural requirements relating to local educational agency eligibility

The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this subchapter without first affording that agency reasonable notice and an opportunity for a hearing.

(14) Personnel qualifications

(A) In general

The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained,

including that those personnel have the content knowledge and skills to serve children with disabilities.

(B) Related services personnel and paraprofessionals

The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that--

(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this subchapter to be used to assist in the provision of special education and related services under this subchapter to children with disabilities.

(C) Qualifications for special education teachers

The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 6319(a)(2) of this title.

(D) Policy

In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this subchapter to children with disabilities.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this paragraph shall be

construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this subchapter.

(15) Performance goals and indicators

The State--

(A) has established goals for the performance of children with disabilities in the State that--

(i) promote the purposes of this chapter, as stated in section 1400(d) of this title;

(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 6311(b)(2)(C) of this title;

(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and

(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 6311(b)(2)(C)(v)(II)(cc) of this title; and

(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 6311(h) of this title.

(16) Participation in assessments

(A) In general

All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 6311 of this title, with appropriate accommodations and alternate assessments where necessary and as

indicated in their respective individualized education programs.

(B) Accommodation guidelines

The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

(C) Alternate assessments

(i) In general

The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

(ii) Requirements for alternate assessments

The guidelines under clause (i) shall provide for alternate assessments that--

(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 6311(b)(1) of this title, measure the achievement of children with disabilities against those standards.

(iii) Conduct of alternate assessments

The State conducts the alternate assessments described in this subparagraph.

(D) Reports

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided

accommodations in order to participate in those assessments.

(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

(E) Universal design

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

(17) Supplementation of state, local, and other Federal funds

(A) Expenditures

Funds paid to a State under this subchapter will be expended in accordance with all the provisions of this subchapter.

(B) Prohibition against commingling

Funds paid to a State under this subchapter will not be commingled with State funds.

(C) Prohibition against supplantation and conditions for waiver by Secretary

Except as provided in section 1413 of this title, funds paid to a State under this subchapter will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this subchapter and in no case to supplant such Federal, State, and local funds, except that, where the State

provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

(18) Maintenance of State financial support

(A) In general

The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) Reduction of funds for failure to maintain support

The Secretary shall reduce the allocation of funds under section 1411 of this title for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) Waivers for exceptional or uncontrollable circumstances

The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that--

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this subchapter.

(D) Subsequent years

If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(19) Public participation

Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(20) Rule of construction

In complying with paragraphs (17) and (18), a State may not use funds paid to it under this subchapter to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

(21) State advisory panel

(A) In general

The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(B) Membership

Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including--

- (i) parents of children with disabilities (ages birth through 26);
- (ii) individuals with disabilities;
- (iii) teachers;
- (iv) representatives of institutions of higher education that prepare special education and related services personnel;
- (v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);
- (vi) administrators of programs for children with disabilities;

(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(viii) representatives of private schools and public charter schools;

(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(x) a representative from the State child welfare agency responsible for foster care; and

(xi) representatives from the State juvenile and adult corrections agencies.

(C) Special rule

A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(D) Duties

The advisory panel shall--

- (i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;
- (ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;
- (iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 1418 of this title;
- (iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this subchapter; and
- (v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

(22) Suspension and expulsion rates

(A) In general

The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are

occurring in the rate of long-term suspensions and expulsions of children with disabilities--

- (i) among local educational agencies in the State; or
- (ii) compared to such rates for nondisabled children within such agencies.

(B) Review and revision of policies

If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this chapter.

(23) Access to instructional materials

(A) In general

The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

(B) Rights of State educational agency

Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(C) Preparation and delivery of files

If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after December 3, 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to--

(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(D) Assistive technology

In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

(E) Definitions

In this paragraph:

(i) National Instructional Materials Access Center

The term "National Instructional Materials Access Center" means the center established pursuant to section 1474(e) of this title.

(ii) National Instructional Materials Accessibility Standard

The term "National Instructional Materials Accessibility Standard" has the meaning given the term in section 1474(e)(3)(A) of this title.

(iii) Specialized formats

The term "specialized formats" has the meaning given the term in section 1474(e)(3)(D) of this title.

(24) Overidentification and disproportionality

The State has in effect, consistent with the purposes of this chapter and with section 1418(d) of this title, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 1401 of this title.

(25) Prohibition on mandatory medication

(A) In general

The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 1414 of this title, or receiving services under this chapter.

(B) Rule of construction

Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

(b) State educational agency as provider of free appropriate public education or direct services

If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency--

(1) shall comply with any additional requirements of section 1413(a) of this title, as if such agency were a local educational agency; and

(2) may use amounts that are otherwise available to such agency under this subchapter to serve those children without regard to section 1413(a)(2)(A)(i) of this title (relating to excess costs).

(c) Exception for prior State plans

(1) In general

If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a) of this section, including any policies and procedures filed under this subchapter as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this subchapter.

(2) Modifications made by State

Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in

effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

(3) Modifications required by the Secretary

If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this chapter are amended (or the regulations developed to carry out this chapter are amended), there is a new interpretation of this chapter by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this subchapter.

(d) Approval by the Secretary

(1) In general

If the Secretary determines that a State is eligible to receive a grant under this subchapter, the Secretary shall notify the State of that determination.

(2) Notice and hearing

The Secretary shall not make a final determination that a State is not eligible to receive a grant under this subchapter until after providing the State--

(A) with reasonable notice; and

(B) with an opportunity for a hearing.

(e) Assistance under other Federal programs

Nothing in this chapter permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act [42 U.S.C.A. §§ 701 et seq. and 1396 et seq.] with respect to the provision of a free appropriate public education for children with disabilities in the State.

(f) By-pass for children in private schools

(1) In general

If, on December 2, 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A) of this section, or if the Secretary determines that a State educational agency, local

educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements that shall be subject to the requirements of such subsection.

(2) Payments

(A) Determination of amounts

If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing--

- (i) the total amount received by the State under this subchapter for such fiscal year; by
- (ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 1418 of this title.

(B) Withholding of certain amounts

Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

(C) Period of payments

The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A) of this section.

(3) Notice and hearing

(A) In general

The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

(B) Review of action

If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of Title 28.

(C) Review of findings of fact

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Jurisdiction of court of appeals; review by United States Supreme Court

Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

§ 1413. Local educational agency eligibility

(a) In general

A local educational agency is eligible for assistance under this subchapter for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

(1) Consistency with State policies

The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 1412 of this title.

(2) Use of amounts

(A) In general

Amounts provided to the local educational agency under this subchapter shall be expended in accordance with the applicable provisions of this subchapter and--

(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

(B) Exception

Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to--

(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

(ii) a decrease in the enrollment of children with disabilities;

(iii) the termination of the obligation of the agency, consistent with this subchapter, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child--

(I) has left the jurisdiction of the agency;

(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

(III) no longer needs such program of special education; or

(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(C) Adjustment to local fiscal effort in certain fiscal years

(i) Amounts in excess

Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 1411(f) of this title exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

(ii) Use of amounts to carry out activities under ESEA

If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.].

(iii) State prohibition

Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) of this section or the State educational agency has taken action against the local educational agency under section 1416 of this title, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

(iv) Special rule

The amount of funds expended by a local educational agency under subsection (f) of this section shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

(D) Schoolwide programs under title I of the ESEA

Notwithstanding subparagraph (A) or any other provision of this subchapter, a local educational agency may use funds received under this subchapter for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965

[20 U.S.C.A. § 6314], except that the amount so used in any such program shall not exceed--

(i) the number of children with disabilities participating in the schoolwide program; multiplied by

(ii)(I) the amount received by the local educational agency under this subchapter for that fiscal year; divided by

(II) the number of children with disabilities in the jurisdiction of that agency.

(3) Personnel development

The local educational agency shall ensure that all personnel necessary to carry out this subchapter are appropriately and adequately prepared, subject to the requirements of section 1412(a)(14) of this title and section 2122 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6622].

(4) Permissive use of funds

(A) Uses

Notwithstanding paragraph (2)(A) or section 1412(a)(17)(B) of this title (relating to commingled funds), funds provided to the local educational agency under this subchapter may be used for the following activities:

(i) Services and aids that also benefit nondisabled children

For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

(ii) Early intervening services

To develop and implement coordinated, early intervening educational services in accordance with subsection (f) of this section.

(iii) High cost education and related services

To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the

local educational agency is a part, to pay for high cost special education and related services.

(B) Administrative case management

A local educational agency may use funds received under this subchapter to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

(5) Treatment of charter schools and their students

In carrying out this subchapter with respect to charter schools that are public schools of the local educational agency, the local educational agency--

(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

(B) provides funds under this subchapter to those charter schools--

(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

(6) Purchase of instructional materials

(A) In general

Not later than 2 years after December 3, 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 1412(a)(23) of this title.

(B) Rights of local educational agency

Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(7) Information for State educational agency

The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this subchapter, including, with respect to paragraphs (15) and (16) of [section 1412\(a\)](#) of this title, information relating to the performance of children with disabilities participating in programs carried out under this subchapter.

(8) Public information

The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this subchapter.

(9) Records regarding migratory children with disabilities

The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 [[20 U.S.C.A. § 6398](#)] to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

(b) Exception for prior local plans

(1) In general

If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a) of this section, including any policies and procedures filed under this subchapter as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the State educational

agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this subchapter.

(2) Modification made by local educational agency

Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

(3) Modifications required by State educational agency

If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this chapter are amended (or the regulations developed to carry out this chapter are amended), there is a new interpretation of this chapter by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this subchapter or State law.

(c) Notification of local educational agency or State agency in case of ineligibility

If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

(d) Local educational agency compliance

(1) In general

If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a) of this section, the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

(2) Additional requirement

Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

(3) Consideration

In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 1415 of this title that is adverse to the local educational agency or State agency involved in that decision.

(e) Joint establishment of eligibility

(1) Joint establishment

(A) In general

A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(B) Charter school exception

A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

(2) Amount of payments

If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 1411(f) of this title if such agencies were eligible for such payments.

(3) Requirements

Local educational agencies that establish joint eligibility under this subsection shall--

(A) adopt policies and procedures that are consistent

with the State's policies and procedures under section 1412(a) of this title; and

(B) be jointly responsible for implementing programs that receive assistance under this subchapter.

(4) Requirements for educational service agencies

(A) In general

If an educational service agency is required by State law to carry out programs under this subchapter, the joint responsibilities given to local educational agencies under this subsection shall--

(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

(ii) be carried out only by that educational service agency.

(B) Additional requirement

Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 1412(a)(5) of this title.

(f) Early intervening services

(1) In general

A local educational agency may not use more than 15 percent of the amount such agency receives under this subchapter for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C) of this section, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) 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.

(2) Activities

In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include--

(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Construction

Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this subchapter.

(4) Reporting

Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on--

(A) the number of students served under this subsection; and

(B) the number of students served under this subsection who subsequently receive special education and related services under this chapter during the preceding 2-year period.

(5) Coordination with Elementary and Secondary Education Act of 1965

Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.] if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

(g) Direct services by the State educational agency

(1) In general

A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by

that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be--

(A) has not provided the information needed to establish the eligibility of such local educational agency or State agency under this section;

(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) of this section;

(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

(2) Manner and location of education and services

The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State educational agency considers appropriate. Such education and services shall be provided in accordance with this subchapter.

(h) State agency eligibility

Any State agency that desires to receive a subgrant for any fiscal year under section 1411(f) of this title shall demonstrate to the satisfaction of the State educational agency that--

(1) all children with disabilities who are participating in programs and projects funded under this subchapter receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this subchapter; and

(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

(i) Disciplinary information

The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement

may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

(j) State agency flexibility

(1) Adjustment to State fiscal effort in certain fiscal years

For any fiscal year for which the allotment received by a State under section 1411 of this title exceeds the amount the State received for the previous fiscal year and if the State in school year 2003-2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 1412(a) of this title and section 1412(b) of this title, may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

(2) Prohibition

Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this subchapter, or that the State needs assistance, intervention, or substantial intervention under section 1416(d)(2)(A) of this title, the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

(3) Education activities

If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.] or to support need based student or teacher higher education programs.

(4) Report

For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

(5) Limitation

Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this chapter and State funds received from the State educational agency.

§ 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements

(a) Evaluations, parental consent, and reevaluations

(1) Initial evaluations

(A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b) of this section, before the initial provision of special education and related services to a child with a disability under this part.

(B) Request for initial evaluation

Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) Procedures

(i) In general

Such initial evaluation shall consist of procedures--

(I) to determine whether a child is a child with a disability (as defined in section 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the

evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(ii) Exception

The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

(D) Parental consent

(i) In general

(I) Consent for initial evaluation

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(II) Consent for services

An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

(ii) Absence of consent

(I) For initial evaluation

If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

(II) For services

If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.

(III) Effect on agency obligations

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

(iii) Consent for wards of the State

(I) In general

If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) Exception

The agency shall not be required to obtain

informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(E) Rule of construction

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

(2) Reevaluations

(A) In general

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c) of this section--

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

(B) Limitation

A reevaluation conducted under subparagraph (A) shall occur--

(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

(ii) at least once every 3 years, unless the parent and the local educational agency agree that a

reevaluation is unnecessary.

(b) Evaluation procedures

(1) Notice

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

(2) Conduct of evaluation

In conducting the evaluation, the local educational agency shall--

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--

(i) whether the child is a child with a disability; and

(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements

Each local educational agency shall ensure that--

(A) assessments and other evaluation materials used to assess a child under this section--

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not

feasible to so provide or administer;

(iii) are used for purposes for which the assessments or measures are valid and reliable;

(iv) are administered by trained and knowledgeable personnel; and

(v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(4) Determination of eligibility and educational need

Upon completion of the administration of assessments and other evaluation measures--

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title);

(B) lack of instruction in math; or

(C) limited English proficiency.

(6) Specific learning disabilities

(A) In general

Notwithstanding section 1406(b) of this title, when determining whether a child has a specific learning disability as defined in section 1401 of this title, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) Additional authority

In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

(c) Additional requirements for evaluation and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall--

(A) review existing evaluation data on the child, including--

(i) evaluations and information provided by the parents of the child;

(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) observations by teachers and related services providers; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

(i) whether the child is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a

reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of academic achievement and related developmental needs of the child;

(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

(2) Source of data

The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) Parental consent

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D) of this section, prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency--

(A) shall notify the child's parents of--

(i) that determination and the reasons for the determination; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

(B) shall not be required to conduct such an assessment unless requested to by the child's

parents.

(5) Evaluations before change in eligibility

(A) In general

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) Exception

(i) In general

The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this subchapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(ii) Summary of performance

For a child whose eligibility under this subchapter terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(d) Individualized education programs

(1) Definitions

In this chapter:

(A) Individualized education program

(i) In general

The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

(I) a statement of the child's present levels of academic achievement and functional performance, including--

(aa) how the child's disability affects the

child's involvement and progress in the general education curriculum;

(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(II) a statement of measurable annual goals, including academic and functional goals, designed to--

(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(bb) meet each of the child's other educational needs that result from the child's disability;

(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which

the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter--

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

(ii) Rule of construction

Nothing in this section shall be construed to require--

(I) that additional information be included in a

child's IEP beyond what is explicitly required in this section; and

(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

(B) Individualized education program team

The term "individualized education program team" or "IEP Team" means a group of individuals composed of--

- (i)** the parents of a child with a disability;
- (ii)** not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
- (iii)** not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;
- (iv)** a representative of the local educational agency who--
 - (I)** is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (II)** is knowledgeable about the general education curriculum; and
 - (III)** is knowledgeable about the availability of resources of the local educational agency;
- (v)** an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);
- (vi)** at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (vii)** whenever appropriate, the child with a disability.

(C) IEP Team attendance

- (i)** Attendance not necessary

A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the

parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

- (ii)** Excusal

A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

- (I)** the parent and the local educational agency consent to the excusal; and
- (II)** the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

- (iii)** Written agreement and consent required

A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

(D) IEP Team transition

In the case of a child who was previously served under subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.], an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the subchapter III service coordinator or other representatives of the subchapter III system to assist with the smooth transition of services.

(2) Requirement that program be in effect

(A) In general

At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) Program for child aged 3 through 5

In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in section 1436 of this title, and that is developed in accordance with

this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is--

- (i) consistent with State policy; and
- (ii) agreed to by the agency and the child's parents.

(C) Program for children who transfer school districts

(i) In general

(I) Transfer within the same State

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) Transfer outside State

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1) of this section, if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(ii) Transmittal of records

To facilitate the transition for a child described in clause (i)--

(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous

school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

(3) Development of IEP

(A) In general

In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

(B) Consideration of special factors

The IEP Team shall--

- (i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- (ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;
- (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- (iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full

range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) consider whether the child needs assistive technology devices and services.

(C) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

(D) Agreement

In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

(E) Consolidation of IEP Team meetings

To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(F) Amendments

Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

(4) Review and revision of IEP

(A) In general

The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team--

(i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being

achieved; and

(ii) revises the IEP as appropriate to address--

(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

(II) the results of any reevaluation conducted under this section;

(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B) of this section;

(IV) the child's anticipated needs; or

(V) other matters.

(B) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

(5) Multi-year IEP demonstration

(A) Pilot program

(i) Purpose

The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

(ii) Authorization

In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

(iii) Proposal

(I) In general

A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as

the Secretary may reasonably require.

a review of the child's multi-year IEP rather than or subsequent to an annual review.

(II) Content

(B) Report

The proposal shall include--

Beginning 2 years after December 3, 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including--

(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

(cc) a list of required elements for each multi-year IEP, including--

(i) reducing--

(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

(II) noninstructional time spent by teachers in complying with this subchapter;

(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

(ii) enhancing longer-term educational planning;

(iii) improving positive outcomes for children with disabilities;

(dd) a description of the process for the review and revision of each multi-year IEP, including--

(iv) promoting collaboration between IEP Team members; and

(v) ensuring satisfaction of family members.

(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

(C) Definition

(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

In this paragraph, the term "natural transition points" means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

(6) Failure to meet transition objectives

If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(DD) at the request of the parent, a requirement that the IEP Team shall conduct

(7) Children with disabilities in adult prisons

(A) In general

The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 1412(a)(16) of this title and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).

(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this subchapter will end, because of such children's age, before such children will be released from prison.

(B) Additional requirement

If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 1412(a)(5)(A) of this title and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(e) Educational placements

Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(f) Alternative means of meeting participation

When conducting IEP Team meetings and placement meetings pursuant to this section, section 1415(e) of this title, and section 1415(f)(1)(B) of this title, and carrying out administrative matters under section 1415 of this title (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

§ 1414a. Omitted

§ 1415. Procedural safeguards

(a) Establishment of procedures

Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of procedures

The procedures required by this section shall include the following:

(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of--

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

(ii) an unaccompanied homeless youth as defined in section 11434a(6) of Title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1) of this section, whenever the local educational agency--

(A) proposes to initiate or change; or

(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free

appropriate public education to the child.

(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

(5) An opportunity for mediation, in accordance with subsection (e) of this section.

(6) An opportunity for any party to present a complaint--

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) of this section shall apply to the timeline described in this subparagraph.

(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) of this section (which shall remain confidential)--

(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

(ii) that shall include--

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of Title 42, available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) Notification requirements

(1) Content of prior written notice

The notice required by subsection (b)(3) of this section shall include--

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency's proposal or refusal.

(2) Due process complaint notice

(A) Complaint

The due process complaint notice required under subsection (b)(7)(A) of this section shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A) of this section.

(B) Response to complaint

(i) Local educational agency response

(I) In general

If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--

(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(dd) a description of the factors that are relevant to the agency's proposal or refusal.

(II) Sufficiency

A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

(ii) Other party response

Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

(C) Timing

The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

(D) Determination

Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall

make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A) of this section, and shall immediately notify the parties in writing of such determination.

(E) Amended complaint notice

(i) In general

A party may amend its due process complaint notice only if--

(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B) of this section; or

(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(ii) Applicable timeline

The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B) of this section.

(d) Procedural safeguards notice

(1) In general

(A) Copy to parents

A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents--

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6) of this section; and

(iii) upon request by a parent.

(B) Internet website

A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

(2) Contents

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to--

- (A) independent educational evaluation;
- (B) prior written notice;
- (C) parental consent;
- (D) access to educational records;
- (E) the opportunity to present and resolve complaints, including--
 - (i) the time period in which to make a complaint;
 - (ii) the opportunity for the agency to resolve the complaint; and
 - (iii) the availability of mediation;
- (F) the child's placement during pendency of due process proceedings;
- (G) procedures for students who are subject to placement in an interim alternative educational setting;
- (H) requirements for unilateral placement by parents of children in private schools at public expense;
- (I) due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (J) State-level appeals (if applicable in that State);
- (K) civil actions, including the time period in which to file such actions; and
- (L) attorneys' fees.

(e) Mediation

(1) In general

Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and

implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6) of this section, to resolve such disputes through a mediation process.

(2) Requirements

Such procedures shall meet the following requirements:

- (A) The procedures shall ensure that the mediation process--
 - (i) is voluntary on the part of the parties;
 - (ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f) of this section, or to deny any other rights afforded under this subchapter; and
 - (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) Opportunity to meet with a disinterested party

A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with--

- (i) a parent training and information center or community parent resource center in the State established under section 1471 or 1472 of this title; or
- (ii) an appropriate alternative dispute resolution entity,
 - to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) List of qualified mediators

The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) Costs

The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Scheduling and location

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) Written agreement

In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) Mediation discussions

Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(f) Impartial due process hearing

(1) In general

(A) Hearing

Whenever a complaint has been received under subsection (b)(6) or (k) of this section, the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(B) Resolution session

(i) Preliminary meeting

Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local

educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint--

(I) within 15 days of receiving notice of the parents' complaint;

(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e) of this section.

(ii) Hearing

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this subchapter shall commence.

(iii) Written settlement agreement

In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--

(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(iv) Review period

If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's

execution.

(2) Disclosure of evaluations and recommendations

(A) In general

Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

(B) Failure to disclose

A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) Limitations on hearing

(A) Person conducting hearing

A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum--

(i) not be--

(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) possess knowledge of, and the ability to understand, the provisions of this chapter, Federal and State regulations pertaining to this chapter, and legal interpretations of this chapter by Federal and State courts;

(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) Subject matter of hearing

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under

subsection (b)(7) of this section, unless the other party agrees otherwise.

(C) Timeline for requesting hearing

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

(E) Decision of hearing officer

(i) In general

Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(ii) Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(g) Appeal

(1) In general

If the hearing required by subsection (f) of this section is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

(2) Impartial review and independent decision

The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

(h) Safeguards

Any party to a hearing conducted pursuant to subsection (f) or (k) of this section, or an appeal conducted pursuant to subsection (g) of this section, shall be accorded--

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions--

(A) shall be made available to the public consistent with the requirements of section 1417(b) of this title (relating to the confidentiality of data, information, and records); and

(B) shall be transmitted to the advisory panel

established pursuant to section 1412(a)(21) of this title.

(i) Administrative procedures

(1) In general

(A) Decision made in hearing

A decision made in a hearing conducted pursuant to subsection (f) or (k) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) of this section and paragraph (2).

(B) Decision made at appeal

A decision made under subsection (g) of this section shall be final, except that any party may bring an action under paragraph (2).

(2) Right to bring civil action

(A) In general

Any party aggrieved by the findings and decision made under subsection (f) or (k) of this section who does not have the right to an appeal under subsection (g) of this section, and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

(B) Limitation

The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows.

(C) Additional requirements

In any action brought under this paragraph, the court--

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of

the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of district courts; attorneys' fees

(A) In general

The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) Award of attorneys' fees

(i) In general

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs--

(I) to a prevailing party who is the parent of a child with a disability;

(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(ii) Rule of construction

Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(C) Determination of amount of attorneys' fees

Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) Prohibition of attorneys' fees and related costs for certain services

(i) In general

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if--

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) IEP Team meetings

Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) of this section.

(iii) Opportunity to resolve complaints

A meeting conducted pursuant to subsection (f)(1)(B)(i) of this section shall not be considered--

(I) a meeting convened as a result of an administrative hearing or judicial action; or

(II) an administrative hearing or judicial action for purposes of this paragraph.

(E) Exception to prohibition on attorneys' fees and related costs

Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Reduction in amount of attorneys' fees

Except as provided in subparagraph (G), whenever

the court finds that--

(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A) of this section,

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) Exception to reduction in amount of attorneys' fees

The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) Maintenance of current educational placement

Except as provided in subsection (k)(4) of this section, during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then- current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) Placement in alternative educational setting

(1) Authority of school personnel

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of

student conduct.

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall--

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the

parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the

behavior is determined to be a manifestation of the child's disability, in cases where a child--

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement

of a child with a disability. In such situations, the hearing officer may--

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency--

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services

(A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions

In this subsection:

(A) Controlled substance

The term "controlled substance" means a drug or other substance identified under schedule I, II, III, IV, or V in section 812(c) of Title 21.

(B) Illegal drug

The term "illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Weapon

The term "weapon" has the meaning given the term "dangerous weapon" under section 930(g)(2) of Title 18.

(D) Serious bodily injury

The term "serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of Title 18.

(l) Rule of construction

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C.A. § 791 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

(m) Transfer of parental rights at age of majority

(1) In general

A State that receives amounts from a grant under this subchapter may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--

(A) the agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this subchapter transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this subchapter transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this subchapter.

(n) Electronic mail

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail

(e-mail) communication, if the agency makes such option available.

(o) Separate complaint

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

§ 1416. Monitoring, technical assistance, and enforcement

(a) Federal and State monitoring

(1) In general

The Secretary shall--

(A) monitor implementation of this subchapter through--

(i) oversight of the exercise of general supervision by the States, as required in section 1412(a)(11) of this title; and

(ii) the State performance plans, described in subsection (b) of this section;

(B) enforce this subchapter in accordance with subsection (e) of this section; and

(C) require States to--

(i) monitor implementation of this subchapter by local educational agencies; and

(ii) enforce this subchapter in accordance with paragraph (3) and subsection (e) of this section.

(2) Focused monitoring

The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on--

(A) improving educational results and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) Monitoring priorities

The Secretary shall monitor the States, and shall

require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment.

(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 1401(34) and 1437(a)(9) of this title.

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) Permissive areas of review

The Secretary shall consider other relevant information and data, including data provided by States under section 1418 of this title.

(b) State performance plans

(1) Plan

(A) In general

Not later than 1 year after December 3, 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this subchapter and describes how the State will improve such implementation.

(B) Submission for approval

Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c) of this section.

(C) Review

Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

(2) Targets

(A) In general

As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3) of this section.

(B) Data collection

(i) In general

Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3) of this section.

(ii) Rule of construction

Nothing in this chapter shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this subchapter.

(C) Public reporting and privacy

(i) In general

The State shall use the targets established in the plan and priority areas described in subsection (a)(3) of this section to analyze the performance of each local educational agency in the State in implementing this subchapter.

(ii) Report

(I) Public report

The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

(II) State performance report

The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

(iii) Privacy

The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

(c) Approval process

(1) Deemed approval

The Secretary shall review (including the specific provisions described in subsection (b) of this section) each performance plan submitted by a State pursuant to subsection (b)(1)(B) of this section and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b) of this section.

(2) Disapproval

The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

(3) Notification

If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall--

(A) give the State notice and an opportunity for a hearing; and

(B) notify the State of the finding, and in such notification shall--

(i) cite the specific provisions in the plan that do not meet the requirements; and

(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

(4) Response

If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with

the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of--

(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

(B) the expiration of the 120-day period described in paragraph (1).

(5) Failure to respond

If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

(d) Secretary's review and determination

(1) Review

The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) of this section in accordance with this section.

(2) Determination

(A) In general

Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State--

(i) meets the requirements and purposes of this subchapter;

(ii) needs assistance in implementing the requirements of this subchapter;

(iii) needs intervention in implementing the requirements of this subchapter; or

(iv) needs substantial intervention in implementing the requirements of this subchapter.

(B) Notice and opportunity for a hearing

For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

(e) Enforcement

(1) Needs assistance

If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) of this section in implementing the requirements of this subchapter, the Secretary shall take 1 or more of the following actions:

(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include--

(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under subchapter IV of this chapter [20 U.S.C.A. § 1450 et seq.], and private providers of scientifically based technical assistance.

(B) Direct the use of State-level funds under section 1411(e) of this title on the area or areas in which the State needs assistance.

(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this subchapter.

(2) Needs intervention

If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) of this section in implementing the requirements of this subchapter, the following shall apply:

(A) The Secretary may take any of the actions described in paragraph (1).

(B) The Secretary shall take 1 or more of the following actions:

(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act [20 U.S.C.A. § 1234f], if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 1411(e) of this title, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seek to recover funds under section 452 of the General Education Provisions Act [20 U.S.C.A. § 1234a].

(v) Withhold, in whole or in part, any further payments to the State under this subchapter pursuant to paragraph (5).

(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(3) Needs substantial intervention

Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this subchapter or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this subchapter, the Secretary shall take 1 or more of the following actions:

(A) Recover funds under section 452 of the General Education Provisions Act [20 U.S.C.A. § 1234a].

(B) Withhold, in whole or in part, any further

payments to the State under this subchapter.

(C) Refer the case to the Office of the Inspector General at the Department of Education.

(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(4) Opportunity for hearing

(A) Withholding funds

Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

(B) Suspension

Pending the outcome of any hearing to withhold payments under subsection (b) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this subchapter, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this subchapter should not be suspended.

(5) Report to Congress

The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

(6) Nature of withholding

(A) Limitation

If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine--

(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2) of this section; or

(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that

caused or were involved in the Secretary's determination under subsection (d)(2) of this section.

(B) Withholding until rectified

Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified--

(i) payments to the State under this subchapter shall be withheld in whole or in part; and

(ii) payments by the State educational agency under this subchapter shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2) of this section, as the case may be.

(7) Public attention

Any State that has received notice under subsection (d)(2) of this section shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

(8) Judicial review

(A) In general

If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 1412 of this title, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of Title 28.

(B) Jurisdiction; review by United States Supreme Court

Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

(C) Standard of review

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

(f) State enforcement

If a State educational agency determines that a local educational agency is not meeting the requirements of this subchapter, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 1413(a)(2)(C) of this title for any fiscal year.

(g) Rule of construction

Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this chapter.

(h) Divided State agency responsibility

For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 1412(a)(11)(C) of this title, the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this subchapter, except that--

(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 1411 of this title to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this subchapter.

(i) Data capacity and technical assistance review

The Secretary shall--

(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

(2) provide technical assistance (from funds reserved under section 1411(c) of this title), where needed, to improve the capacity of States to meet the data collection requirements.

§ 1417. Administration

(a) Responsibilities of Secretary

The Secretary shall--

(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to--

(A) the education of children with disabilities; and

(B) carrying out this subchapter; and

(2) provide short-term training programs and institutes.

(b) Prohibition against Federal mandates, direction, or control

Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.

(c) Confidentiality

The Secretary shall take appropriate action, in accordance with section 1232g of this title, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this subchapter.

(d) Personnel

The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) of this section, under section 1418 of this

title, and under part D of subchapter IV of this chapter [20 U.S.C.A. § 1481 et seq.], without regard to the provisions of Title 5, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than 20 such personnel shall be employed at any time.

(e) Model forms

Not later than the date that the Secretary publishes final regulations under this chapter, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers--

(1) a model IEP form;

(2) a model individualized family service plan (IFSP) form;

(3) a model form of the notice of procedural safeguards described in section 1415(d) of this title; and

(4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 1415 of this title that is consistent with the requirements of this subchapter and is sufficient to meet such requirements.

§ 1418. Program information

(a) In general

Each State that receives assistance under this subchapter, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:

(i) Receiving a free appropriate public education.

(ii) Participating in regular education.

(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

(iv) For each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma),

or other reasons, and the reasons why those children stopped receiving special education and related services.

(v)(I) Removed to an interim alternative educational setting under section 1415(k)(1) of this title.

(II) The acts or items precipitating those removals.

(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

(B) The number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services.

(C) The number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

(F) The number of due process complaints filed under section 1415 of this title and the number of hearings conducted.

(G) The number of hearings requested under section 1415(k) of this title and the number of changes in placements ordered as a result of those hearings.

(H) The number of mediations held and the number of settlement agreements reached through such mediations.

(2) The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 1432 of this title), and who are receiving early intervention services under subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.].

(3) Any other information that may be required by the Secretary.

(b) Data reporting

(1) Protection of identifiable data

The data described in subsection (a) of this section shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

(2) Sampling

The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) of this section through sampling.

(c) Technical assistance

The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this chapter.

(d) Disproportionality

(1) In general

Each State that receives assistance under this subchapter, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to--

(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 1401(3) of this title;

(B) the placement in particular educational settings of such children; and

(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) Review and revision of policies, practices, and procedures

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall--

(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply

with the requirements of this chapter;

(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 1413(f) of this title to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

§ 1419. Preschool grants

(a) In general

The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this subchapter--

(1) to children with disabilities aged 3 through 5, inclusive; and

(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

(b) Eligibility

A State shall be eligible for a grant under this section if such State--

(1) is eligible under section 1412 of this title to receive a grant under this subchapter; and

(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

(c) Allocations to States

(1) In general

The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

(2) Increase in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this

section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Allocation

(i) In general

Except as provided in subparagraph (B), the Secretary shall--

(I) allocate to each State the amount the State received under this section for fiscal year 1997;

(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and

(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

(ii) Data

For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) Limitations

Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) Preceding years

No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) Minimum

No State's allocation shall be less than the greatest of--

(I) the sum of--

(aa) the amount the State received under this section for fiscal year 1997; and

(bb) 1/3 of 1 percent of the amount by which the amount appropriated under subsection (j) of this section for the fiscal year exceeds the amount appropriated for this section for fiscal

year 1997;

for fiscal year 1997; and

(II) the sum of--

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated under this section from the preceding fiscal year exceeds 1.5 percent; or

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(III) the sum of--

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(B) Ratable reductions

If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

(iii) Maximum

Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of--

(I) the amount the State received under this section for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(d) Reservation for State activities

(1) In general

Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f) of this section.

(2) Amount described

For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of--

(C) Ratable reductions

If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(3) Decrease in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(e) State administration

(1) In general

For the purpose of administering this section (including the coordination of activities under this subchapter with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) of this section for any fiscal year.

(A) Allocations

If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of--

(i) the amount the State received under this section

(2) Administration of subchapter III

Funds described in paragraph (1) may also be used for the administration of subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.].

(f) Other State-level activities

Each State shall use any funds the State reserves under subsection (d) of this section and does not use for administration under subsection (e) of this section--

(1) for support services (including establishing and implementing the mediation process required by section 1415(e) of this title), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

(2) for direct services for children eligible for services under this section;

(3) for activities at the State and local levels to meet the performance goals established by the State under section 1412(a)(15) of this title;

(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year;

(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.] to children with disabilities who are eligible for services under this section and who previously received services under subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.] until such children enter, or are eligible under State law to enter, kindergarten; or

(6) at the State's discretion, to continue service coordination or case management for families who receive services under subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.].

(g) Subgrants to local educational agencies

(1) Subgrants required

Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds

that the State does not reserve under subsection (d) of this section to local educational agencies in the State that have established their eligibility under section 1413 of this title, as follows:

(A) Base payments

The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 1419(c)(3) of this title, as such section was then in effect.

(B) Allocation of remaining funds

After making allocations under subparagraph (A), the State shall--

(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(2) Reallocation of funds

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by the local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

(h) Subchapter III inapplicable

Subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.] does not apply to any child with a disability receiving a free appropriate public education, in accordance with this subchapter, with funds received under this section.

(i) State defined

In this section, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary.

Subchapter III. Infants and Toddlers with Disabilities

§ 1431. Findings and policy

(a) Findings

Congress finds that there is an urgent and substantial need--

(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life;

(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(3) to maximize the potential for individuals with disabilities to live independently in society;

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.

(b) Policy

It is the policy of the United States to provide financial assistance to States--

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention

services for infants and toddlers with disabilities and their families;

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

§ 1432. Definitions

In this subchapter:

(1) At-risk infant or toddler

The term "at-risk infant or toddler" means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

(2) Council

The term "council" means a State interagency coordinating council established under section 1441 of this title.

(3) Developmental delay

The term "developmental delay", when used with respect to an individual residing in a State, has the meaning given such term by the State under section 1435(a)(1) of this title.

(4) Early intervention services

The term "early intervention services" means developmental services that--

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

- (i) physical development;
 - (ii) cognitive development;
 - (iii) communication development;
 - (iv) social or emotional development; or
 - (v) adaptive development;
- (D)** meet the standards of the State in which the services are provided, including the requirements of this subchapter;
- (E)** include--
- (i) family training, counseling, and home visits;
 - (ii) special instruction;
 - (iii) speech-language pathology and audiology services, and sign language and cued language services;
 - (iv) occupational therapy;
 - (v) physical therapy;
 - (vi) psychological services;
 - (vii) service coordination services;
 - (viii) medical services only for diagnostic or evaluation purposes;
 - (ix) early identification, screening, and assessment services;
 - (x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
 - (xi) social work services;
 - (xii) vision services;
 - (xiii) assistive technology devices and assistive technology services; and
 - (xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;
- (F)** are provided by qualified personnel, including--
- (i) special educators;
 - (ii) speech-language pathologists and audiologists;
 - (iii) occupational therapists;
 - (iv) physical therapists;
 - (v) psychologists;
 - (vi) social workers;
 - (vii) nurses;
 - (viii) registered dietitians;
 - (ix) family therapists;
 - (x) vision specialists, including ophthalmologists and optometrists;
 - (xi) orientation and mobility specialists; and
 - (xii) pediatricians and other physicians;
- (G)** to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and
- (H)** are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title.
- (5)** Infant or toddler with a disability
- The term "infant or toddler with a disability"--
- (A)** means an individual under 3 years of age who needs early intervention services because the individual--
- (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
 - (ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and
- (B)** may also include, at a State's discretion--
- (i) at-risk infants and toddlers; and

(ii) children with disabilities who are eligible for services under section 1419 of this title and who previously received services under this subchapter until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this subchapter serving such children shall include--

(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this subchapter or participate in preschool programs under section 1419 of this title.

§ 1433. General authority

The Secretary shall, in accordance with this subchapter, make grants to States (from their allotments under section 1443 of this title) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

§ 1434. Eligibility

In order to be eligible for a grant under section 1433 of this title, a State shall provide assurances to the Secretary that the State--

(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

(2) has in effect a statewide system that meets the requirements of section 1435 of this title.

§ 1435. Requirements for statewide system

(a) In general

A statewide system described in section 1433 of this title shall include, at a minimum, the following components:

(1) A rigorous definition of the term "developmental delay" that will be used by the State in carrying out programs under this subchapter in order to appropriately identify infants and toddlers with disabilities that are in need of services under this subchapter.

(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.

(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 1436 of this title, including service coordination services in accordance with such service plan.

(5) A comprehensive child find system, consistent with subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.], including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this subchapter that will reduce the need for future services.

(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this subchapter and of services under section 1419 of this title, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

(7) A central directory that includes information on

early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that--

(A) shall include--

(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this subchapter; and

(iii) training personnel to coordinate transition services for infants and toddlers served under this subchapter from a program providing early intervention services under this subchapter and under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.] (other than section 1419 of this title), to a preschool program receiving funds under section 1419 of this title, or another appropriate program; and

(B) may include--

(i) training personnel to work in rural and inner-city areas; and

(ii) training personnel in the emotional and social development of young children.

(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this subchapter (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this subchapter to infants and toddlers with disabilities.

(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out--

(A) the general administration and supervision of programs and activities receiving assistance under section 1433 of this title, and the monitoring of programs and activities used by the State to carry out this subchapter, whether or not such programs or activities are receiving assistance made available under section 1433 of this title, to ensure that the State complies with this subchapter;

(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

(C) the assignment of financial responsibility in accordance with section 1437(a)(2) of this title to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this subchapter in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) The resolution of intra- and interagency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this subchapter, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this subchapter in accordance with section 1440(a) of this title.

(13) Procedural safeguards with respect to programs under this subchapter, as required by section 1439 of this title.

(14) A system for compiling data requested by the Secretary under section 1418 of this title that relates to this subchapter.

(15) A State interagency coordinating council that meets the requirements of section 1441 of this title.

(16) Policies and procedures to ensure that, consistent with section 1436(d)(5) of this title--

(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

(b) Policy

In implementing subsection (a)(9) of this section, a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9) of this section.

(c) Flexibility to serve children 3 years of age until entrance into elementary school

(1) In general

A statewide system described in section 1433 of this title may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 1419 of this title and previously received services under this subchapter, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this subchapter until such children enter, or are eligible under State law to enter, kindergarten.

(2) Requirements

If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that--

(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains--

(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.]; and

(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.], including--

(I) types of services and the locations at which the services are provided;

(II) applicable procedural safeguards; and

(III) possible costs (including any fees to be charged to families as described in section 1432(4)(B) of this title), if any, to parents of infants or toddlers with disabilities;

(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.];

(D) all early intervention services outlined in the child's individualized family service plan under section 1436 of this title are continued while any eligibility determination is being made for services under this subsection;

(E) the parents of infants or toddlers with disabilities (as defined in section 1432(5)(A) of this title) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

(F) the requirements under section 1437(a)(9) of this title shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 10420 of Title 42).

(3) Reporting requirement

If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 1437(b)(4)(A) of this title, a report on the number and percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this subchapter.

(4) Available funds

If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 1432(4)(B) of this title.

(5) Rules of construction

(A) Services under subchapter II

If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a disability who is eligible for services under section 1419 of this title shall not be required to provide the child with a free appropriate public education under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.] for the period of time in which the child is receiving services under this subchapter.

(B) Services under this subchapter

Nothing in this subsection shall be construed to require a provider of services under this subchapter to provide a child served under this subchapter with a free appropriate public education.

§ 1436. Individualized family service plan

(a) Assessment and program development

A statewide system described in section 1433 of this title shall provide, at a minimum, for each infant or toddler

with a disability, and the infant's or toddler's family, to receive--

(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e) of this section, including a description of the appropriate transition services for the infant or toddler.

(b) Periodic review

The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) Promptness after assessment

The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) of this section is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

(d) Content of plan

The individualized family service plan shall be in writing and contain--

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the

results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this subchapter) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

(e) Parental consent

The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

§ 1437. State application and assurances

(a) Application

A State desiring to receive a grant under section 1433 of this title shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain--

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 1433 of this title;

(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 1440(b) of this title are current as of the date of submission of the certification;

(3) information demonstrating eligibility of the State under section 1434 of this title, including--

(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 1433 of this title; and

(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

(5) a description of the uses for which funds will be expended in accordance with this subchapter;

(6) a description of the State policies and procedures that require the referral for early intervention services under this subchapter of a child under the age of 3 who--

(A) is involved in a substantiated case of child abuse or neglect; or

(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

(7) a description of the procedure used to ensure that resources are made available under this subchapter for all geographic areas within the State;

(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this subchapter, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(9) a description of the policies and procedures to be used--

(A) to ensure a smooth transition for toddlers receiving early intervention services under this subchapter (and children receiving those services

under section 1435(c) of this title) to preschool, school, other appropriate services, or exiting the program, including a description of how--

(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 1435(a)(10) of this title will--

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.], as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.], to discuss the appropriate services that the child may receive;

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

(10) a description of State efforts to promote collaboration among Early Head Start programs under section 9840a of Title 42, early education and child care programs, and services under subchapter III of this chapter [20 U.S.C.A. § 1431 et seq.]; and

(11) such other information and assurances as the Secretary may reasonably require.

(b) Assurances

The application described in subsection (a) of this section--

(1) shall provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State will be expended in accordance with this subchapter;

(2) shall contain an assurance that the State will comply with the requirements of section 1440 of this title;

(3) shall provide satisfactory assurance that the control of funds provided under section 1443 of this title, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this subchapter and that a public agency will administer such funds and property;

(4) shall provide for--

(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this subchapter; and

(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this subchapter;

(5) provide satisfactory assurance that Federal funds made available under section 1443 of this title to the State--

(A) will not be commingled with State funds; and

(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 1443 of this title to the State;

(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this subchapter; and

(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

(c) Standard for disapproval of application

The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

(d) Subsequent State application

If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this subchapter (as in effect before December 3, 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this subchapter.

(e) Modification of application

An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

(f) Modifications required by the Secretary

The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this subchapter, if--

- (1) an amendment is made to this chapter, or a Federal regulation issued under this chapter;
- (2) a new interpretation of this chapter is made by a Federal court or the State's highest court; or
- (3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

§ 1438. Uses of funds

In addition to using funds provided under section 1433 of this title to maintain and implement the statewide system required by such section, a State may use such funds--

- (1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this subchapter that are not otherwise funded through other

public or private sources;

(2) to expand and improve on services for infants and toddlers and their families under this subchapter that are otherwise available;

(3) to provide a free appropriate public education, in accordance with subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.], to children with disabilities from their third birthday to the beginning of the following school year;

(4) with the written consent of the parents, to continue to provide early intervention services under this subchapter to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.]; and

(5) in any State that does not provide services for at-risk infants and toddlers under section 1437(a)(4) of this title, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of--

- (A) identifying and evaluating at-risk infants and toddlers;
- (B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and
- (C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this subchapter.

§ 1439. Procedural safeguards

(a) Minimum procedures

The procedural safeguards required to be included in a statewide system under section 1435(a)(13) of this title shall provide, at a minimum, the following:

- (1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the

complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this subchapter in accordance with State law without jeopardizing other early intervention services under this subchapter.

(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) The right of parents to use mediation in accordance with section 1415 of this title, except that--

(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 1435(a)(10) of this title;

(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this subchapter, as the case may be; and

(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

(b) Services during pendency of proceedings

During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

§ 1440. Pavor of last resort

(a) Nonsubstitution

Funds provided under section 1443 of this title may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this subchapter, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 1443 of this title may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

(b) Obligations related to and methods of ensuring services

(1) Establishing financial responsibility for services

(A) In general

The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure--

(i) the provision of, and financial responsibility for, services provided under this subchapter; and

(ii) such services are consistent with the requirements of section 1435 of this title and the State's application pursuant to section 1437 of this title, including the provision of such services during the pendency of any such dispute.

(B) Consistency between agreements or mechanisms under subchapter II of this chapter [20 U.S.C.A. § 1411 et seq.]

The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 1412(a)(12) of this title, where appropriate.

(2) Reimbursement for services by public agency

(A) In general

If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

(B) Reimbursement

Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

(3) Special rule

The requirements of paragraph (1) may be met through--

(A) State statute or regulation;

(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(C) other appropriate written methods as determined by the Chief Executive Officer of the State or

designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 1437 of this title.

(c) Reduction of other benefits

Nothing in this subchapter shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act [42 U.S.C.A. § 1396 et seq.] (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

§ 1441. State interagency coordinating council

(a) Establishment

(1) In general

A State that desires to receive financial assistance under this subchapter shall establish a State interagency coordinating council.

(2) Appointment

The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

(3) Chairperson

The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 1435(a)(10) may not serve as the chairperson of the council.

(b) Composition

(1) In general

The council shall be composed as follows:

(A) Parents

Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

(B) Service providers

Not less than 20 percent of the members shall be public or private providers of early intervention services.

(C) State legislature

Not less than 1 member shall be from the State legislature.

(D) Personnel preparation

Not less than 1 member shall be involved in personnel preparation.

(E) Agency for early intervention services

Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

(F) Agency for preschool services

Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

(G) State medicaid agency

Not less than 1 member shall be from the agency responsible for the State medicaid program.

(H) Head Start agency

Not less than 1 member shall be a representative from a Head Start agency or program in the State.

(I) Child care agency

Not less than 1 member shall be a representative from a State agency responsible for child care.

(J) Agency for health insurance

Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.

(K) Office of the Coordinator of Education of

Homeless Children and Youth

Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

(L) State foster care representative

Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.

(M) Mental health agency

Not less than 1 member shall be a representative from the State agency responsible for children's mental health.

(2) Other members

The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

(c) Meetings

The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) Management authority

Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this subchapter to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this subchapter.

(e) Functions of council

(1) Duties

The council shall--

(A) advise and assist the lead agency designated or

established under section 1435(a)(10) of this title in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

(2) Authorized activity

The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

(f) Conflict of interest

No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

§ 1442. Federal administration

Sections 1416, 1417, and 1418 of this title shall, to the extent not inconsistent with this subchapter, apply to the program authorized by this subchapter, except that--

(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 1435(a)(10) of this title;

(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this subchapter; and

(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

§ 1443. Allocation of funds

(a) Reservation of funds for outlying areas

(1) In general

From the sums appropriated to carry out this subchapter for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this subchapter.

(2) Consolidation of funds

The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this subchapter.

(b) Payments to Indians

(1) In general

The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 450b of Title 25), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this subchapter for such fiscal year.

(2) Allocation

For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

(3) Information

To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

(4) Use of funds

The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this subchapter. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) Reports

To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 1411(h)(3)(E) of this title. The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) Prohibited uses of funds

None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) State allotments

(1) In general

Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the

reservation and payments under subsections (a), (b), and (e) of this section, the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(2) Minimum allotments

Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of--

(A) 1/2 of 1 percent of the remaining amount described in paragraph (1); or

(B) \$500,000.

(3) Ratable reduction

(A) In general

If the sums made available under this subchapter for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

(B) Additional funds

If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

(4) Definitions

In this subsection--

(A) the terms "infants" and "toddlers" mean children under 3 years of age; and

(B) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) Reallotment of funds

If a State elects not to receive its allotment under subsection (c) of this section, the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

(e) Reservation for State incentive grants

(1) In general

For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 1444 of this title exceeds \$460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 1435(c) of this title in order to facilitate the implementation of such policy.

(2) Amount of grant

(A) In general

Notwithstanding paragraphs (2) and (3) of subsection (c) of this section, the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.

(B) Maximum amount

No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

(3) Carryover of amounts

(A) First succeeding fiscal year

Pursuant to section 1225(b) of this title, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

(B) Second succeeding fiscal year

Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 1433 of this title (from their allotments under this section) during such second succeeding fiscal year.

§ 1444. Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated such sums as may be

necessary for each of the fiscal years 2005 through 2010.

§ 1445. Omitted

**Subchapter IV.
National Activities to Improve
Education of Children with
Disabilities**

§ 1450. Findings

Congress finds the following:

(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling those children to lead productive and independent adult lives.

(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

(4) An effective educational system serving students with disabilities should--

(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to

participate and learn in school and the community.

(5) The availability of an adequate number of qualified personnel is critical--

(A) to serve effectively children with disabilities;

(B) to assume leadership positions in administration and direct services;

(C) to provide teacher training; and

(D) to conduct high quality research to improve special education.

(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

(9) Training, technical assistance, support, and dissemination activities are necessary to ensure that subchapters II and III of this chapter [20 U.S.C.A. § § 1411 et seq. and 1431 et seq.] are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

(10) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

(11) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in--

(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating

open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

(D) providing such parents information on their rights, protections, and responsibilities under this chapter to ensure improved early intervention, educational, and transitional results for children with disabilities;

(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 1473(b)(6) of this title;

(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

(12) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

The following sections have been taken out of this copy of the IDEA. Please refer to 20 U.S.C. 151 et. seq.

Part A. State Personnel Development Grants (Refs & Annos)

§ 1451. Purpose; definition of personnel; program authority

§ 1452. Eligibility and collaborative process

§ 1453. Applications

§ 1454. Use of funds

§ 1455. Authorization of appropriations

Part B. Personnel Preparation, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

§ 1461. Purpose; definition of eligible entity

§ 1462. Personnel development to improve services and results for children with disabilities

§ 1463. Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research

§ 1464. Studies and evaluations

§ 1465. Interim alternative educational settings, behavioral supports, and systemic school interventions

§ 1466. Authorization of appropriations

**TITLE 34 EDUCATION CHAPTER I--
OFFICE FOR CIVIL RIGHTS--
DEPARTMENT OF EDUCATION
PART 104 NONDISCRIMINATION ON
THE BASIS OF HANDICAP
IN PROGRAMS AND ACTIVITIES
RECEIVING FEDERAL FINANCIAL
ASSISTANCE
(34 C.F.R. Part 104)**

**Subpart A
General Provisions**

Sec. 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Sec. 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

Sec. 104.3 Definitions.

As used in this part, the term:

- (a) The Act** means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.
- (b) Section 504** means section 504 of the Act.
- (c) Education of the Handicapped Act** means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.
- (d) Department** means the Department of Education.
- (e) Assistant Secretary** means the Assistant Secretary for Civil Rights of the Department of Education.
- (f) Recipient** means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of: (1) Funds; (2) Services of Federal personnel; or (3) Real and personal property or any interest in or use of such property, including: (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) Handicapped person--(1) Handicapped persons means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. (2) As used in paragraph (j)(1) of this section, the phrase: (i) Physical or mental impairment means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (iii) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. (iv) Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B)

has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) Qualified handicapped person means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; (2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and (3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; (4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

Sec. 104.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. (b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap: (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective

as that provided to others; (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others; (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program; (vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. (2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs. 3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different. (4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State. (5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing

the accomplishment of the objectives of the program or activity with respect to handicapped persons. (6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance. (c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

Sec. 104.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department. (b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. (2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property. (3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended. (c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the

provision of similar services or benefits. (2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property. (3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

Sec. 104.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination. (2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action. (3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred. (b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome

the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons. (c) Self-evaluation. (1) A recipient shall, within one year of the effective date of this part: (i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part; (ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and (iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices. (2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) A list of the interested persons consulted, (ii) A description of areas examined and any problems identified, and (iii) A description of any modifications made and of any remedial steps taken.

Sec. 104.7 Designation of responsible employee and adoption of grievance procedures. (a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part. (b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

Sec. 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees,

including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications. (b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

Sec. 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with Secs. 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

Sec. 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession. (b) The obligation to comply with this part is not obviated or alleviated because employment opportunities

in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart D- Preschool, Elementary, and Secondary Education

Sec. 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually: (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Sec. 104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. (b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Secs. 104.34, 104.35, and 104.36. (2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section. (3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient

remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred. (c) Free education--(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person. (2) Transportation. If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient. (3) Residential placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian. (4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and Sec. 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Sec. 104.36. (d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary

education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

Sec. 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home. (b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question. (c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Sec. 104.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement. (b) Evaluation

procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that: (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). (c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Sec. 104.34. (d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

Sec. 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of

handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Sec. 104.37 Nonacademic services.

(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities. (2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment. (b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. (c) Physical education and athletics. (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities. (2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Sec. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to

participate in courses that are not separate or different.

Sec. 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

Sec. 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Sec. 104.33(b)(1), within the recipient's program. (b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient. (c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Secs. 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Secs. 104.34, 104.37, and 104.38.

**Subpart E-
Postsecondary Education**

Sec. 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 104.42 Admissions and recruitment.

(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in

admission or recruitment by a recipient to which this subpart applies. (b) Admissions. In administering its admission policies, a recipient to which this subpart applies: (1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted; (2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available. (3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and (4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation. (c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Sec. 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Sec. 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, Provided, That: (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and (2) The recipient

states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part. (d) Validity studies. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

Sec. 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies. (b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons. (c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity. (d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

Sec. 104.44 Academic adjustments.

(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted

for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. (b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity. (c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure). (d) Auxiliary aids. (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. (2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Sec. 104.45 Housing.

(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of

living accommodations is, as a whole, comparable to that of nonhandicapped students. (b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

Sec. 104.46 Financial and employment assistance to students.

(a) Provision of financial assistance. (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not, (i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap. (2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap. (b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient. (c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates subpart B.

Sec. 104.47 Nonacademic services.

(a) Physical education and athletics. (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped

students an equal opportunity for participation in these activities. (2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of Sec. 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different. (b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers. (c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Chapter 392-172A WAC RULES FOR THE PROVISION OF SPECIAL EDUCATION

(Effective July 1, 2007)

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GENERAL

WAC 392-172A-01000 Authority. The state authority for this chapter is RCW 28A.155.090(7). This authority enables the superintendent of public instruction to promulgate rules and regulations to implement chapter 28A.155 RCW. This authority is supplemented by RCW 28A.300.070 which authorizes the superintendent of public instruction to receive federal funds in accordance with the provisions of federal law. Federal authority for this chapter is 20 U.S.C. Sec. 1400 et seq., the Individuals with Disabilities Education Act.

WAC 392-172A-01005 Purposes. The purposes of this chapter are to:

- (1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.;
- (2) Ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- (3) Ensure that the rights of students eligible for special education and their parents are protected;
- (4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education; and
- (5) Assess and ensure the effectiveness of efforts to educate students eligible for special education.

WAC 392-172A-01010 Applicability. (1)(a) The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of students eligible for special education, including:

- (i) The OSPI to the extent that it receives payments under Part B and exercises supervisory authority over the provision of the delivery of special education services by school districts and other public agencies;
 - (ii) School districts and educational service districts; and
 - (iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, state schools for the deaf and blind established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates established and operated pursuant to chapter 28A.193 RCW; and
- (b) Are binding on each public agency in the state that provides special education and related services to students eligible for special education, regardless of whether that agency is receiving funds under Part B of

the act.

(2) Each school district or public agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education who are:

- (a) Referred to or placed in private schools and facilities by that public agency under the provisions of WAC 392-172A-04080 through 392-172A-04110; or
- (b) Placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

DEFINITIONS

WAC 392-172A-01020 Act. Act means Part B of the Individuals With Disabilities Education Act, as amended.

WAC 392-172A-01025 Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device.

WAC 392-172A-01030 Assistive technology service. Assistive technology service means any service that directly assists a student eligible for special education in the selection, acquisition, or use of an assistive technology device. The term includes:

- (1) The evaluation of the needs of a student, including a functional evaluation of the student in the student's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students eligible for special education;
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for a student eligible for special education or, if appropriate, that student's family; and
- (6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life

functions of that student.

WAC 392-172A-01035 Child with a disability or student eligible for special education. (1)(a) Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: Mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in subsection (1)(a) of this section, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(c) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational

performance is adversely affected primarily because the student has an emotional behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," for students three through eight may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant

impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior;

physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

WAC 392-172A-01040 Consent. (1) Consent means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive. This means that it does not undo an action that occurred after consent was given and before the consent was revoked.

WAC 392-172A-01045 Core academic subjects. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

WAC 392-172A-01050 Day--Business day--School day. (1) Day means calendar day unless otherwise indicated as business day or school day.

(2) Business day means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of a business day, in other sections of this chapter.

(3) School day means any day, including a partial day that students are in attendance at school for instructional purposes, including students with and without disabilities.

WAC 392-172A-01055 Educational service district. Educational service district means a regional public multiservice agency:

(1) Authorized under chapter 28A.310 RCW to develop, manage, and provide services or programs to students eligible for special education within school districts.

(2) Recognized as an administrative agency for

purposes of the provision of special education and related services provided within public elementary schools and secondary schools.

WAC 392-172A-01060 Elementary or secondary school. Elementary or secondary school means a public school, a nonprofit institutional day or residential school that provides education to students in any combination of kindergarten through twelfth grade. The definition does not include any education beyond grade twelve.

WAC 392-172A-01065 Equipment. Equipment means:

(1) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(2) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

WAC 392-172A-01070 Evaluation. Evaluation means procedures used in accordance with WAC 392-172A-03005 through 392-172A-03080 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.

WAC 392-172A-01075 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in a school district during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

(1) Amounts received:

(a) Under Part B of the act;

(b) Under Part A of Title I of the ESEA; and

(c) Under Parts A and B of Title III of the

ESEA; and

(2) Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subsection (1) of this section, but excluding any amounts for capital outlay or debt service.

WAC 392-172A-01080 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that:

- (1) Are provided at public expense, under public supervision and direction, and without charge;
- (2) Meet the standards of the OSPI, and the act;
- (3) Include an appropriate preschool, elementary school, or secondary school education in the state; and
- (4) Are provided in conformity with an individualized education program (IEP) that meets the requirements of WAC 392-172A-03090 through 392-172A-03135.

WAC 392-172A-01085 Highly qualified special education teachers. (1)(a) For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56; and in addition, to meet the definition of highly qualified, public elementary school or secondary school special education teachers must have a bachelors degree and obtained full certification as a teacher and a special education endorsement, which can include certification obtained through alternative routes to certification, or a continuing certificate.

(b) A teacher does not meet the highly qualified definition if he or she is teaching pursuant to a temporary out-of-endorsement assignment or is teaching special education with a preendorsement waiver.

(c) A teacher will be considered to meet the highly qualified standard in (a) of this subsection if that teacher is participating in an alternative route to special education certification program under which the teacher:

- (i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
- (ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
- (iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
- (iv) Demonstrates satisfactory progress toward full certification according to the state professional standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(2) Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the state certification requirements and has an endorsement in special education, or holds a continuing

certificate.

(3) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to students who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(b) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, based on the state professional standards board's certification requirements.

(4) Requirements for special education teachers teaching multiple subjects. Subject to subsection (5) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to students eligible for special education, highly qualified means that the teacher may:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 (b) or (c);

(b) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(c) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

(5) Teachers may meet highly qualified standards through use of the state's HOUSSE which meets all the requirements for a HOUSSE for a general education teacher.

(6) Notwithstanding any other individual right of action that a parent or student may maintain under this

chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular school district employee to be highly qualified, or to prevent a parent from filing a state citizen complaint under WAC 392-172A-05025 through 392-172A-05040 about staff qualifications with the OSPI.

(7)(a) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(b) A certified general education teacher who subsequently receives a special education endorsement is a new special education teacher when first hired as a special education teacher.

(8) Teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by school districts to provide equitable services to parentally placed private school students eligible for special education are not required to meet highly qualified standards addressed in this section. However, nonpublic agencies are required to ensure that teachers providing services to students placed by a school district meet the certification and special education endorsement standards established by the professional educators standards board in Title 181 WAC and in accordance with WAC 392-172A-04095.

WAC 392-172A-01090 Homeless children.

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. Sec. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. Sec. 11431 et seq.

WAC 392-172A-01095 Include. Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

WAC 392-172A-01100 Individualized education program. Individualized education program or IEP means a written statement of an educational program for a student eligible for special education that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 392-172A-03135.

WAC 392-172A-01105 Individualized education program team. Individualized education program team or IEP team means a group of individuals described in WAC 392-172A-03095, responsible for developing, reviewing, or revising an IEP.

WAC 392-172A-01110 Limited English proficient. Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

WAC 392-172A-01115 Local educational

agency or school district. (1) Local educational agency or school district means a public board of education with administrative control and direction of any combination of public kindergarten through grade 12 in a school district.

(2) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including the school for the deaf and the school for the blind.

(3) For the purposes of this chapter, use of the term school district includes public agencies described in WAC 392-172A-01150 who provide special education and/or related services.

WAC 392-172A-01120 Native language. (1) Native language, when used with respect to an individual who is limited English proficient, means the following:

(a) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in (b) of this subsection.

(b) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.

(2) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

WAC 392-172A-01125 Parent. (1) Parent means:

(a) A biological or adoptive parent of a child;

(b) A foster parent;

(c) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the student, but not the state, if the student is a ward of the state;

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

(e) A surrogate parent who has been appointed in accordance with WAC 392-172A-05130.

(2)(a) Except as provided in (b) of this subsection, if the biological or adoptive parent is attempting to act as the parent under this chapter, and when more than one party meets the qualifications to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the student.

(b) If a judicial decree or order identifies a specific person or persons under subsection (1)(a) through (d) of

this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this section.

(3) The use of the term, "parent," includes adult students whose rights have transferred to them pursuant to WAC 392-172A-05135.

WAC 392-172A-01130 Parent training and information center. Parent training and information center means a center assisted under sections 671 or 672 of the act.

WAC 392-172A-01135 Part-time enrollment. Part-time enrollment means a student eligible for special education who is home schooled or attends private school, and whose parent chooses to enroll the student in his or her resident school district for special education or related services pursuant to RCW 28A.150.350 and chapter 392-134 WAC.

WAC 392-172A-01140 Personally identifiable. Personally identifiable means information that contains:

- (1) The name of the student, the student's parent, or other family member;
- (2) The address of the student;
- (3) A personal identifier, such as the student's Social Security number or student number; or
- (4) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

WAC 392-172A-01145 Private school. Private school means a nonpublic school or school district conducting a program consisting of kindergarten and at least grade one, or a program of any combination of grades one through twelve and meeting minimum state board private school approval standards as outlined in chapter 180-90 WAC.

WAC 392-172A-01150 Public agency. Public agency includes school districts, ESDs, state operated programs identified in WAC 392-172A-02000 and any other political subdivisions of the state that are responsible for providing special education or related services or both to students eligible for special education.

WAC 392-172A-01155 Related services. (1) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(2) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. Nothing in this subsection:

- (a) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP team to be necessary for the student to receive FAPE;
 - (b) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or
 - (c) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.
- (3) Individual related services terms used in this definition are defined as follows:
- (a) Audiology includes:
 - (i) Identification of students with hearing loss;
 - (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
 - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;
 - (iv) Creation and administration of programs for prevention of hearing loss;
 - (v) Counseling and guidance of students, parents, and teachers regarding hearing loss; and
 - (vi) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
 - (b) Counseling services means services provided

by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(c) Early identification and assessment of disabilities in students means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(d) Interpreting services includes:

(i) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for students who are deaf or hard of hearing; and

(ii) Special interpreting services for students who are deaf-blind.

(e) Medical services means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

(f) Occupational therapy means services provided by a qualified occupational therapist and includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing through early intervention, initial or further impairment or loss of function.

(g) Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and can include teaching the student:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(i) Physical therapy means services provided by a qualified physical therapist.

(j) Psychological services includes:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(k) Recreation includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sec. 701 et seq.

(m) School health services and school nurse services means health services that are designed to enable a student eligible for special education to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(n) Social work services in schools includes:

(i) Preparing a social or developmental history on a student eligible for special education;

(ii) Group and individual counseling with the student and family;

(iii) Working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(o) Speech-language pathology services includes:

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (p) Transportation includes:
 - (i) Travel to and from school and between schools;
 - (ii) Travel in and around school buildings; and
 - (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student eligible for special education.

WAC 392-172A-01160 Residency or resident student. Residency or resident student has the same meaning as is defined in WAC 392-137-115.

- WAC 392-172A-01165 Scientifically based research.** Scientifically based research:
- (1) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and
 - (2) Includes research that:
 - (a) Employs systematic, empirical methods that draw on observation or experiment;
 - (b) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - (c) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
 - (d) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random assignment experiments, or other designs to the extent that those designs contain within condition or across condition controls;
 - (e) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 - (f) Has been accepted by a peer-reviewed journal

or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

WAC 392-172A-01170 Services plan. Services plan means a written statement that describes the special education and related services the school will provide to a parentally placed student eligible for special education who is enrolled in a private school who has been designated to receive services. The plan will include the location of the services and any transportation necessary. The plan will be developed using the procedures for development and implementation of an IEP.

WAC 392-172A-01175 Special education. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

- (2) Special education includes:
 - (a) The provision of speech-language pathology, occupational therapy, audiology, and physical therapy service as defined in WAC 392-172A-01155 when it meets the criteria in WAC 392-172A-01035 (1)(c);
 - (b) Travel training; and
 - (c) Vocational education.
- (3) The terms in this section are defined as follows:
 - (a) At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.
 - (b) Physical education means the development of:
 - (i) Physical and motor fitness;
 - (ii) Fundamental motor skills and patterns; and
 - (iii) Skills in aquatics, dance, and individual and group games and sports including intramural and lifetime sports; and
 - (iv) Includes special physical education, adapted physical education, movement education, and motor development.
 - (c) Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction:
 - (i) To address the unique needs of the student that result from the student's disability; and
 - (ii) To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.
 - (d) Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other eligible students who require

this instruction, to enable them to:

- (i) Develop an awareness of the environment in which they live; and
- (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- (e) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

WAC 392-172A-01180 State educational agency. State educational agency or SEA means the office of superintendent of public instruction (OSPI).

WAC 392-172A-01185 Supplementary aids and services. The term "supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements in WAC 392-172A-02050 through 392-172A-02065.

WAC 392-172A-01190 Transition services. (1) Transition services means a coordinated set of activities for a student eligible for special education that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes:

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(2) Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education to benefit from special education.

WAC 392-172A-01195 Universal design. The term universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. Sec. 3002. It means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

WAC 392-172A-01200 Ward of the state. Ward of the state means a student within the jurisdiction of the department of social and health services, children's administration through shelter care, dependency or other proceedings to protect abused and neglected children, except that it does not include a foster child who has a foster parent who meets the definition of a parent in WAC 392-172A-01125.

FAPE REQUIREMENTS

WAC 392-172A-02000 Student's rights to a free appropriate public education. (1) Each school district, public agency, and residential or day schools operated pursuant to chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education between the age of three and twenty-one years, a free appropriate public education program (FAPE). The right to a FAPE includes special education for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does

not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The 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.

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1) A student eligible for special education residing in a state adult correctional facility is eligible for special education services pursuant to chapter 28A.193 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapter 28A.193 RCW.

(2)(a) Students determined eligible for special education services and incarcerated in other adult correctional facilities will be provided special education and related services.

(b) Subsection (2)(a) of this section does not apply to students aged eighteen to twenty-one if they:

(i) Were not actually identified as being a student eligible for special education; and

(ii) Did not have an IEP; unless the student:

(A) Had been identified as a student eligible for special education and had received services in accordance with an IEP, but who left school prior to incarceration; or

(B) Did not have an IEP in his or her last education setting, but who had actually been identified as a student eligible for special education.

WAC 392-172A-02010 Methods of payment for FAPE. (1) If the delivery of services in a public or private residential educational program is necessary to provide special education services to an eligible student, the program, including nonmedical care and room and board, must be at no cost to the parents of the student. Nothing in this chapter limits the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a FAPE to students eligible for special education.

(2) Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to students eligible for special education.

(3) Consistent with the IEP provisions in this chapter, the OSPI shall ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

WAC 392-172A-02015 Availability of assistive technology. (1) Each school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a student eligible for special education if required as part of the student's:

(a) Special education;

(b) Related services; or

(c) Supplementary aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

WAC 392-172A-02020 Extended school year services. (1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education:

(a) Beyond the normal school year;

(b) In accordance with the student's IEP; and

(c) Are provided at no cost to the parents of the student.

(2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.

(3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.

(4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

(5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

(6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.

(7) For the purposes of subsection (6) of this

section:

(a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;

(b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

WAC 392-172A-02025 Nonacademic services.

(1) Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students eligible for special education an equal opportunity for participation in those services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

WAC 392-172A-02030 Physical education. (1) Physical education services, specially designed if necessary, must be made available to every student receiving FAPE.

(2) Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless:

(a) The student is enrolled full time in a separate facility; or

(b) The student needs specially designed physical education, as described in the student's individualized education program.

(3) If specially designed physical education is required in a student's individualized education program, the school district shall ensure that the public agency responsible for the education of that student provides the service directly, or makes arrangements for it to be provided through other public or private programs.

(4) The school district shall ensure that any student eligible for special education who is enrolled in a separate facility will be provided with appropriate physical education services.

WAC 392-172A-02035 Program options. Each school district shall ensure that its students eligible for special education have available to them the variety of

educational programs and services available to nondisabled students in the school district's area, including art, music, industrial arts, consumer and homemaking education, and vocational education.

WAC 392-172A-02040 Child find. (1) The school district shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing in the district whether or not they are enrolled in school. Students attending private elementary or secondary schools located within the district shall be located, identified and evaluated consistent with WAC 392-172A-04005. Districts will conduct child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade.

(3) The local school district shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include but are not limited to activities such as:

(a) Written notification to all parents of students in the district's jurisdiction regarding access to and the use of its child find system;

(b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of special education programs;

(c) Offering preschool developmental screening;

(d) Conducting local media informational campaigns;

(e) Coordinating distribution of information with other child find programs within public and private agencies; and

(f) Internal district review of students such as screening district-wide test results, in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

WAC 392-172A-02045 Routine checking of hearing aids and external components of surgically

implanted medical devices. (1) Hearing aids. Each school district must ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.

(2) External components of surgically implanted medical devices. Each school district must ensure that the external components of surgically implanted medical devices are functioning properly.

(3) A school district is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

LEAST RESTRICTIVE ENVIRONMENT

WAC 392-172A-02050 Least restrictive environment. Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

(2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

WAC 392-172A-02055 Continuum of alternative placements. (1) Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.

(2) The continuum required in this section must:

(a) Include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and

(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

WAC 392-172A-02060 Placements. (1) When determining the educational placement of a student eligible for special education including a preschool

student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(2) The selection of the appropriate placement for each student shall be based upon:

(a) The student's IEP;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

(4) A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum.

(5) Notwithstanding subsections (1) through (4) of this section, an IEP team, or other team making placement decisions for a student convicted as an adult and receiving educational services in an adult correctional facility, may modify the student's placement if there is a demonstrated bona fide security or compelling penological interest that cannot otherwise be accommodated.

WAC 392-172A-02065 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, each public agency must ensure that each student eligible for special education participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency must ensure that each student eligible for special education has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

WAC 392-172A-02070 Students in public or private institutions. The state shall make arrangements with public and private institutions as may be necessary to ensure that the least restrictive environment provisions in this chapter are effectively implemented.

OTHER REQUIREMENTS

WAC 392-172A-02075 Prohibition on mandatory medication. (1) School district personnel are prohibited from requiring parents to obtain a prescription for substances identified under Schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. Sec. 812 (c)) for a student as a condition of attending school, receiving an evaluation, or receiving special education services.

(2) Nothing in subsection (1) of this section shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

WAC 392-172A-02080 Transition of children from the Part C program to preschool programs. Each school district shall have policies and procedures for transition to preschool programs to ensure that:

(1) Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with the Part C requirements.

(2) Each school district will participate in transition planning conferences arranged by the designee of the lead agency for Part C in the state. A transition planning conference will be convened for each student who may be eligible for preschool services at least ninety days prior to the student's third birthday.

(3) By the third birthday of a student described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172A-02000(1).

WAC 392-172A-02085 Homeless children. In carrying out the provisions of this chapter, school districts shall ensure that the rights of homeless children and youth are protected consistent with the requirements under the McKinney-Vento Homeless Assistance Act, as amended.

WAC 392-172A-02090 Personnel qualifications. (1) In addition to the highly qualified requirements for teachers, pursuant to WAC 392-172A-01085, all school district personnel providing special education services shall meet the following qualifications:

(a) All employees shall hold such credentials,

certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement of this subsection (1), all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special education shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) Other certificated related services personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

(d) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early childhood special education assignment must be given first to employees having early childhood special education endorsement.

(e) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

(f) Paraprofessional staff and aides shall present evidence of skills and knowledge necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate, as provided in (g) of this subsection. Paraprofessional staff in Title One school-wide programs shall meet ESEA standards for paraprofessionals. Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.310.

(g) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the

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

(2) School districts must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain highly qualified teachers, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet state board criteria pursuant to WAC 181-81-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment 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 such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course work which are applicable to an endorsement in special education. The following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher,

and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(D) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 181-16-195.

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of highly qualified.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee to be highly qualified, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

WAC 392-172A-02095 Transportation. (1) Methods. Transportation options for students eligible for special education shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents. Board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of the student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of the student shall be in accordance with rules of the OSPI governing transportation by public school districts.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district.

(4) Special equipment. Special equipment may include lifts, wheelchair holders, restraints, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the OSPI.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(7) Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district or other public agency pursuant to an interagency agreement-- i.e., an appropriate placement in the least restrictive environment.

WAC 392-172A-02100 Home/hospital instruction. Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of physical disability or illness. As conditions to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a special education student for the purposes of generating state or federal special education funds. A school district shall not pay the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education. It shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.

EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

Consent

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations.

(1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond or refuses to consent to services the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to

the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the public agency requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the due process procedures to override consent or mediation to obtain an agreement from the parent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the public agency, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the

school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

EVALUATIONS AND REEVALUATIONS

WAC 392-172A-03005 Referral and timelines for initial evaluations. (1) A parent of a child, a school district, a public agency, other persons knowledgeable about the child may initiate a request for an initial evaluation to determine if the student is eligible for special education. The request will be in writing, unless the person is unable to write.

(2) The school district must document the referral and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within twenty-five school days after receipt of the referral, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or

(b) Thirty-five school days after the date the refusal of the parent is obtained by agreement through mediation, or overridden by due process procedures; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) A student enrolls in another school after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district

agree to a specific time when the evaluation will be completed.

WAC 392-172A-03010 Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

WAC 392-172A-03015 Reevaluation timelines.

(1) A school district must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when:

(a) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation.

(2) A reevaluation conducted under subsection (1) of this section:

(a) May occur not more than once a year, unless the parent and the school district agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

(3) Reevaluations shall be completed within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent;

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, within the time frames in subsection (2) of this section.

WAC 392-172A-03020 Evaluation procedures.

(1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

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

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

WAC 392-172A-03025 Review of existing data for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be

needed to produce the data identified in subsection (1) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

WAC 392-172A-03030 Evaluations before change in eligibility. (1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

WAC 392-172A-03035 Evaluation report. (1) The evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education and

related services needed by the student;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

WAC 392-172A-03040 Determination of eligibility. (1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

ADDITIONAL PROCEDURES FOR IDENTIFYING STUDENTS WITH SPECIFIC LEARNING DISABILITIES

WAC 392-172A-03045 District procedures for specific learning disabilities. In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of:

(1) A severe discrepancy between intellectual ability and achievement; or

(2) A process based on the student's response to scientific, research-based intervention; or

(3) A combination of both.

WAC 392-172A-03050 Additional members of the evaluation group. The determination of whether the student is eligible for special education services in the specific learning disability category shall be made by the student's parent and a group of qualified professionals which must include:

(1) The student's general education classroom teacher; or

(2) If the student does not have a general education classroom teacher, a general education classroom teacher qualified to teach a student of his or her age; or

(3) For a student of less than school age, an individual qualified to teach a student of his or her age; and

(4) At least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher.

WAC 392-172A-03055 Specific learning disability--Determination. The group described in WAC 392-172A-03050 may determine that a student has a specific learning disability if:

(1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:

(a) Oral expression.

(b) Listening comprehension.

(c) Written expression.

(d) Basic reading skill.

(e) Reading fluency skills.

(f) Reading comprehension.

(g) Mathematics calculation.

(h) Mathematics problem solving.

(2)(a) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in subsection (1) of this section when using a process based on the student's

response to scientific, research-based intervention or the group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas identified in subsection (1) of this section; and

(b) When considering eligibility under (a) of this subsection, the group may also consider whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data.

(3) The group determines that its findings under subsection (2) of this section are not primarily the result of:

- (a) A visual, hearing, or motor disability;
- (b) Mental retardation;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

(4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider:

(a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(5) The district or other public agency must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the time frames for an initial evaluation under WAC 392-172A-03005:

(a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection (4)(a) and (b) of this section; or

(b) Whenever a student is referred for an evaluation.

WAC 392-172A-03060 Process based on a student's response to scientific research-based intervention. (1) School districts using a process based on a student's response to scientific, research-based interventions to determine if a student has a specific learning disability shall adopt procedures to ensure that such process includes the following elements:

(a) Universal screening and/or benchmarking at fixed intervals at least three times throughout the school year;

(b) A high quality core curriculum designed to meet the instructional needs of all students;

(c) Scientific research-based interventions as defined in WAC 392-172A-01165 are identified for use with students needing additional instruction;

(d) Scientific research-based interventions used with a student are appropriate for the student's identified need and are implemented with fidelity;

(e) A multitiered model is developed for delivering both the core curriculum and strategic and intensive scientific research-based interventions in the general education setting;

(f) Frequent monitoring of individual student progress occurs in accordance with the constructs of the multitiered delivery system implemented in the school consistent with the intervention and tier at which it is being applied; and

(g) Decision making using problem solving or standard treatment protocol techniques is based upon, but not limited to, student centered data including the use of curriculum based measures, available standardized assessment data, intensive interventions, and instructional performance level.

(2) Such policies and procedures outlined in subsection (1) of this section shall be designed so that districts can establish that:

(a) The student's general education core curriculum instruction provided the student the opportunity to increase her or his rate of learning;

(b) Two or more intensive scientific research-based interventions, identified to allow the student to progress toward his or her improvement targets, were implemented with fidelity and for a sufficient duration to establish that the student's rate of learning using intensive scientific research-based interventions in the general education setting, in addition to or in place of the core curriculum, did not increase or allow the student to reach the targets identified for the student;

(c) The duration of the intensive scientific research-based interventions that were implemented was long enough to gather sufficient data points below the student's aim line to demonstrate student response for each of the interventions through progress monitoring to determine the effectiveness of the interventions.

(3) OSPI has developed guidelines for using response to intervention to assist districts in developing the procedures required under this section.

WAC 392-172A-03065 Use of discrepancy tables for determining severe discrepancy. (1) If the school district uses a severe discrepancy model, it will use the OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement.

(2) The tables are developed on the basis of a regressed standard score discrepancy method that includes:

- (a) The reliability coefficient of the intellectual ability test;
 - (b) The reliability coefficient of the academic achievement test; and
 - (c) An appropriate correlation between the intellectual ability and the academic achievement tests.
- (3) The regressed standard score discrepancy method is applied at a criterion level of 1.55.

WAC 392-172A-03070 Method for documenting severe discrepancy. (1) For the purposes of applying the severe discrepancy tables, the following scores shall be used:

- (a) A total or full scale intellectual ability score;
- (b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and
- (c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the areas addressed in WAC 392-172A-03055(1) shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above.

(2) Where the evaluation results do not appear to accurately represent the student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group, described in WAC 392-172A-03050, may apply professional judgment in order to determine the presence of a specific learning disability. Data obtained from formal assessments, reviewing of existing data, assessments of student progress, observation of the student, and information gathered from all other evaluation processes for students being identified for a specific learning disability must be used when applying professional judgment to determine if a severe discrepancy exists. When applying professional judgment, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy, including a description of all data used to make the determination through the use of professional judgment.

WAC 392-172A-03075 Observation of students

suspected of having a specific learning disability. (1) School districts must ensure that a student who is suspected of having a specific learning disability is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty.

(2) The evaluation group must:

- (a) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or
- (b) Have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained.

(3) In the case of a student of less than school age or out of school, a group member must observe the student in a learning environment appropriate for that student.

WAC 392-172A-03080 Specific documentation for the eligibility determination of students suspected of having specific learning disabilities. (1) In addition to the requirements for evaluation reports under WAC 392-172A-03035, for a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

- (a) Whether the student has a specific learning disability;
- (b) The basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040;
- (c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;
- (d) Any educationally relevant medical findings;

(e) Whether:

(i) The student does not achieve adequately for the student's age or meet state grade level standards in one or more of the areas described in WAC 392-172A-03055(1); and

(ii)(A) The student does not make sufficient progress to meet age or state grade level standards when using a process based on the student's response to scientific research-based interventions consistent with WAC 392-172A-03060; or

(B) The student meets eligibility through a severe discrepancy model consistent with WAC 392-172A-03070; and

(C) If used as part of the eligibility determination under (A) or (B) of this subsection, a discussion of the student's pattern of strengths and weaknesses in

performance, achievement or both, relative to age, state grade level standards, or intellectual development.

(f) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

(g) If the student has participated in a process that assesses the student's response to scientific, research-based intervention:

(i) The instructional strategies used and the student-centered data collected in accordance with the district's response to intervention procedures; and

(ii) The documentation that the student's parents were notified about:

(A) State and school district policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the student's rate of learning; and

(C) The parents' right to request an evaluation.

(2) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

INDIVIDUALIZED EDUCATION PROGRAMS

WAC 392-172A-03090 Definition of individualized education program. (1) The term IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

(i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b)(i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational

needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and districtwide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) Aversive interventions, if any, required for the student.

(i) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

(j) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if

determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services including courses of study needed to assist the student in reaching those goals.

(k) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

WAC 392-172A-03095 IEP team membership.

(1) School districts must ensure that the IEP team for each student eligible for special education includes:

(a) The parents of the student;

(b) Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment;

(c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(d) A representative of the public agency who:

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the school district.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(g) Whenever appropriate, the student.

(2)(a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student

and the transition services needed to assist the student in reaching those goals.

(b) If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.

(4) A school district may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the district representative, if the criteria in subsection (1)(d) of this section are satisfied.

(5)(a) A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

(6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives as specified by the state lead agency for Part C to assist with the smooth transition of services.

WAC 392-172A-03100 Parent participation. A

school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

(b) Identify any other agency that will be invited to send a representative.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(7) The school district must 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.

(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

WAC 392-172A-03105 When IEPs must be in effect. (1) At the beginning of each school year, each school district must have an IEP in effect, for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the

student, from the previous school in which the student was enrolled, pursuant to RCW 28A.225.335 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

WAC 392-172A-03110 Development, review, and revision of IEP. (1) In developing each student's IEP, the IEP team must consider:

- (a) The strengths of the student;
- (b) The concerns of the parents for enhancing the education of their student;
- (c) The results of the initial or most recent evaluation of the student; and
- (d) The academic, developmental, and functional needs of the student.

(2)(a) When considering special factors unique to a student, the IEP team must:

(i) Consider the use of positive behavioral interventions and supports, and other strategies, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and

(ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;

(iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

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

(v) Consider whether the student needs assistive technology devices and services.

(b) A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:

(i) Appropriate positive behavioral interventions and supports and other strategies for the student; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.

(c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).

(d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section. In the case of a student whose behavior continues to impede the progress of the student or others despite the use of positive behavioral support strategies: Consider the need for aversive interventions only as a last resort, if positive behavior supports have been used in accordance with the student's IEP, the use of positive behavior supports has been documented to be ineffective, and the IEP team, consistent with WAC 392-172A-03120 through 392-172A-03135 determines that an aversive intervention plan is necessary for the student.

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education participate in district or statewide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

WAC 392-172A-03115 Educational placements.

Consistent with WAC 392-172A-05000 (3)(a), each school district must ensure that the parents of each student eligible for special education are members of any group that makes decisions on the educational placement of the student.

AVERSIVE INTERVENTIONS

WAC 392-172A-03120 Aversive interventions definition and purpose. (1) The term "aversive interventions" means the systematic use of stimuli or other treatment which a student is known to find

unpleasant for the purpose of discouraging undesirable behavior on the part of the student. The term does not include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior which poses one of the following dangers:

(a) A clear and present danger of serious harm to the student or another person.

(b) A clear and present danger of serious harm to property.

(c) A clear and present danger of seriously disrupting the educational process.

(2) The purpose is to assure that students eligible for special education are safeguarded against the use and misuse of various forms of aversive interventions. Each school district shall take steps to assure that each employee, volunteer, contractor, and other agent of the district or other public agency responsible for the education, care, or custody of a special education student is aware of aversive intervention requirements and the conditions under which they may be used. No school district or other public agency and no educational service district shall authorize, permit, or condone the use of aversive interventions which violates WAC 392-172A-03120 through 392-172A-03135 by any employee, volunteer, contractor or other agent of the district or other public agency responsible for the education, care, or custody of a special education student. Aversive interventions, to the extent permitted, shall only be used as a last resort. Positive behavioral supports interventions shall be used by the school district and described in the individualized education program prior to the determination that the use of aversive intervention is a necessary part of the student's program.

WAC 392-172A-03125 Aversive intervention prohibitions. There are certain interventions that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their legality. The purpose of this section is to uniformly prohibit their use with students eligible for special education as follows:

(1) Electric current. No student may be stimulated by contact with electric current.

(2) Food services. No student who is willing to consume subsistence food or liquid when the food or liquid is customarily served may be denied or subjected to an unreasonable delay in the provision of the food or liquid.

(3)(a) Force and restraint in general. No force or restraint which is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law may be used. See RCW 9A.16.100 which cites the following uses of force or restraint as uses which are presumed to

be unreasonable and therefore unlawful:

- (i) Throwing, kicking, burning, or cutting a student.
 - (ii) Striking a student with a closed fist.
 - (iii) Shaking a student under age three.
 - (iv) Interfering with a student's breathing.
 - (v) Threatening a student with a deadly weapon.
 - (vi) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.
- (b) The statutory listing of worst case uses of force or restraint described in this subsection may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.
- (4) Hygiene care. No student may be denied or subjected to an unreasonable delay in the provision of common hygiene care.
- (5) Isolation. No student may be excluded from his or her regular instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-03130.
- (6) Medication. No student may be denied or subjected to an unreasonable delay in the provision of medication.
- (7) Noise. No student may be forced to listen to noise or sound that the student finds painful.
- (8) Noxious sprays. No student may be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.
- (9) Physical restraints. No student may be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392-172A-03130.
- (10) Taste treatment. No student may be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.
- (11) Water treatment. No student's head may be partially or wholly submerged in water or any other liquid.

WAC 392-172A-03130 Aversive interventions--Conditions. Use of various forms of aversive interventions which are not prohibited by WAC 392-172A-03125 warrant close scrutiny. Accordingly, the use of aversive interventions involving bodily contact, isolation, or physical restraint not prohibited is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Bodily contact. The use of any form of aversive interventions which involves contacting the body of a student shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(2) Isolation. The use of aversive interventions which involves excluding a student from his or her regular instructional area and isolation of the student within a room or any other form of enclosure is subject to each of the following conditions:

(a) The isolation, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(b) The enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) 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.

(3) Physical restraint. The use of aversive interventions which involves physically restraining or immobilizing a student by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object is subject to each of the following conditions:

(a) The restraint shall only be used when and to the extent it is reasonably necessary to protect the student, other persons, or property from serious harm.

(b) The restraint, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172A-03135.

(c) The restraint shall not interfere with the student's breathing.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the restraint or the student shall continuously remain within view of an adult responsible for supervising the student.

WAC 392-172A-03135 Aversive interventions--Individualized education program requirements. (1) If the need for use of aversive interventions is determined appropriate by the IEP team, the individualized education program shall:

(a) Be consistent with the recommendations of the IEP team which includes a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(b) Specify the aversive interventions that may be used.

(c) State the reason the aversive interventions are judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(d) Describe the circumstances under which the aversive interventions may be used.

(e) Describe or specify the maximum duration of each isolation or restraint.

(f) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(g) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(h) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation, to occur no less than four times a school year.

(2) School districts shall document each use of an aversive intervention, circumstances under which it was used, and the length of time of use.

STUDENTS IN PRIVATE SCHOOLS

Students Eligible for Special Education Enrolled by Their Parents in Private Schools

WAC 392-172A-04000 Definition of parentally placed private school students. Parentally placed private school students means students eligible for special education services enrolled by their parents in private, including religious, elementary or secondary schools. It does not include students placed by a school district in a nonpublic agency for the provision of FAPE.

WAC 392-172A-04005 Child find for parentally placed private school students eligible for special education. (1) Each school district must locate, identify, and evaluate all students who may be eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district, in accordance with general child find procedures and

subsections (2) through (5) of this section.

(2) The child find process must be designed to ensure:

(a) The equitable participation of parentally placed private school students; and

(b) An accurate count of those students.

(3) In carrying out the requirements of this section, the school district must undertake activities similar to the activities undertaken for the school district's public school students.

(4) The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the school district has met its proportional share obligation under WAC 392-172A-04015.

(5) The child find process must be completed in a time period comparable to that for students attending public schools in the school district.

(6) Each school district in which private, including religious, elementary schools and secondary schools are located must include parentally placed private school students who reside in another state but attend the private school located within the school district boundaries.

WAC 392-172A-04010 Provision of services for parentally placed private school students eligible for special education. (1) In addition to the provisions addressed in this section, parents who have placed their children in private school are entitled to enroll their children part-time in their resident district for any course, activity or ancillary service, not provided by the private school under chapter 392-134 WAC and pursuant to WAC 392-172A-01135. Parents who elect to enroll part-time in their resident district in order to receive special education and/or related services are served through an IEP and are counted for federal and state special education reimbursement.

(2) To the extent consistent with the number and location of students eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district boundaries, and who are not part-time enrolled for special education services under chapter 392-134 WAC, districts must allow for the participation of those students by providing them with special education and related services, including direct services determined in accordance with WAC 392-172A-04035.

(3) In accordance with subsection (2) of this section and WAC 392-172A-04035 through 392-172A-04070, a services plan must be developed and implemented for each private school student eligible for special education who has been designated by the school district to receive special education and related services.

(4) Each school district must maintain in its records, and provide to the OSPI, the following information related to parentally placed private school students:

- (a) The number of students evaluated;
- (b) The number of students determined eligible for special education; and
- (c) The number of students served through a services plan.

WAC 392-172A-04015 Expenditures. (1) To meet the requirement of WAC 392-172A-04010(2), each school district must spend the following on providing special education and related services, including direct services to parentally placed private students eligible for special education.

(a) For students eligible for special education aged three through twenty-one, an amount that is the same proportion of the school district's total subgrant under section 611(f) of the act as the number of private school students eligible for special education aged three through twenty-one who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through twenty-one.

(b)(i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under section 619(g) of the act as the number of parentally placed private school students eligible for special education aged three through five who are enrolled by their parents in a private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education in its jurisdiction aged three through five.

(ii) As described in (b)(i) of this subsection, students aged three through five are considered to be parentally placed private school students enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school kindergarten level or above.

(c) If a school district has not expended for equitable services all of the funds described in (a) and (b) of this subsection by the end of the fiscal year for which Congress appropriated the funds, the school district must obligate the remaining funds for special education and related services to parentally placed private school students eligible for special education during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed private school students eligible for special education, the school district, after timely and meaningful consultation with representatives of private schools

under WAC 392-172A-04020, must conduct a thorough and complete child find process to determine the number of parentally placed students eligible for special education attending private schools located in the school district.

(3)(a) After timely and meaningful consultation with representatives of parentally placed private school students eligible for special education, school districts must:

(i) Determine the number of parentally placed private school students eligible for special education attending private schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally placed private school students eligible for special education in the next subsequent fiscal year.

(4) State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed private school students eligible for special education.

WAC 392-172A-04020 Consultation. To ensure timely and meaningful consultation, a school district must consult with private school representatives and representatives of parents of parentally placed private school students eligible for special education during the design and development of special education and related services for the students regarding the following:

(1) The child find process, including:

(a) How parentally placed private school students suspected of having a disability can participate equitably; and

(b) How parents, teachers, and private school officials will be informed of the process.

(2) The determination of the proportionate share of federal funds available to serve parentally placed private school students eligible for special education including the determination of how the district calculated the proportionate share of those funds.

(3) The consultation process among the school district, private school officials, and representatives of parents of parentally placed private school students eligible for special education, including how the process will operate throughout the school year to ensure that parentally placed students eligible for special education identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom special education and related services will be provided for parentally

placed private school students eligible for special education, including a discussion about:

- (a) The types of services, including direct services and alternate service delivery mechanisms; and
- (b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and
- (c) How and when those decisions will be made.
- (5) How, if the school district disagrees with the views of the private school officials on the provision of services or the types of services, the school district will provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

WAC 392-172A-04025 Written affirmation. (1) When timely and meaningful consultation has occurred, the school district must obtain a written affirmation signed by the representatives of participating private schools after timely and meaningful consultation.

(2) If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the OSPI.

WAC 392-172A-04030 Compliance with procedures for consultation. (1) A private school official has the right to submit a complaint to the OSPI, special education section that the school district:

- (a) Did not engage in consultation that was meaningful and timely; or
 - (b) Did not give due consideration to the views of the private school official.
- (2)(a) If the private school official wishes to submit a complaint, the official must provide to the OSPI special education section, the basis of the noncompliance by the school district with the applicable private school provisions in this part; and
- (b) The school district must forward the appropriate documentation to OSPI.
- (3) If the private school official is dissatisfied with the decision of the OSPI, the official may submit a complaint to the Secretary of the Department of Education by providing the information on noncompliance described in subsections (1) and (2) of this section and the OSPI must forward the appropriate documentation to the Secretary.

WAC 392-172A-04035 Determination of equitable services. (1) A parentally placed private school student does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled full- or part-time in a public school.

(2) Decisions about the services that will be

provided to parentally placed private school students eligible for special education disabilities under WAC 392-172A-04010 through 392-172A-04070 must be made in accordance with subsection (4) of this section and the consultation process.

(3) The school district must make the final decisions with respect to the services to be provided to eligible parentally placed private school students eligible for special education.

(4) If a student eligible for special education is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a school district, the school district must:

- (a) Initiate and conduct meetings to develop, review, and revise a services plan for the student; and
- (b) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

WAC 392-172A-04040 Equitable services provided. (1) The services provided to parentally placed private school students eligible for special education must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school students eligible for special education do not have to meet the highly qualified special education teacher requirements.

(2) Parentally placed private school students eligible for special education may receive a different amount of services than students eligible for special education attending public schools.

(3) Each parentally placed private school student eligible for special education who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education.

(4) The services plan must, to the extent appropriate:

- (a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and
 - (b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.
- (5) The provision of services must be provided:
- (a) By employees of a school district or ESD; or
 - (b) Through contract by the school district with an

individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed private school students eligible for special education, including materials and equipment, must be nonsecular, neutral, and nonideological.

WAC 392-172A-04045 Location of services and transportation. (1) Services to parentally placed private school students eligible for special education may be provided on the premises of private, nonsectarian schools.

(2) If necessary for the student to benefit from or participate in the services provided, a parentally placed private school student eligible for special education must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home, depending on the timing of the services.

(3) School districts are not required to provide transportation from the student's home to the private school.

(4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district has met its proportional share requirement.

WAC 392-172A-04050 Due process and state complaints regarding parentally placed students in a private school. (1) Due process procedures are not available for complaints that a school district has failed to meet the requirements regarding consultation, determination of need and provision of services, including the provision of services indicated on the student's services plan.

(2) Due process procedures may be used by a parent who is alleging that a school district has failed to meet child find requirements related to the parentally placed students in private schools.

(3) Any due process request regarding the child find requirements described in subsection (2) of this section must be filed with the school district in which the private school is located and a copy must be forwarded to the OSPI in accordance with the due process procedures in WAC 392-172A-05080 through 392-172A-05125.

(4) State complaints. Any complaint that OSPI or a school district has failed to meet the requirements in WAC 392-172A-04010 through 392-172A-04015 and 392-172A-04025 through 392-172A-04075 must be filed in accordance with the state complaint procedures described in WAC 392-172A-05025 through 392-172A-05040.

(5) A complaint filed by a private school official under WAC 392-172A-04030 must be filed with the OSPI in accordance with the procedures in that section.

WAC 392-172A-04055 Requirement that funds not benefit a private school. Public funds provided and property derived from those funds shall not benefit any private school or agency.

A school district must use funds provided under the act to meet the special education and related services needs of students enrolled in private schools, but not for:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

WAC 392-172A-04060 Use of personnel. (1) School district or other public agency personnel may be made available to nonsectarian private schools and agencies only to the extent necessary to provide services required by the special education student if those services are not normally provided by the private school.

(2) Each school district or other public agency providing services to students enrolled in nonsectarian private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school special education students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

WAC 392-172A-04065 Prohibition on the use of separate classes. A school district may not use federal funds available under section 611 or 619 of the act for classes that are organized separately on the basis of school enrollment or religion of the students if:

(1) The classes are at the same site; and

(2) The classes include students enrolled in public schools and students enrolled in private schools.

WAC 392-172A-04070 Property, equipment and supplies. (1) A school district must control and administer the funds used to provide special education and related services for students eligible for those services in private schools, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the act.

(2) Equipment and supplies used with students in a private school or agency may be placed on nonsectarian private school premises for the period of time necessary for the program. Equipment and supplies placed on

private school premises will be used only for Part B purposes.

(3) Records shall be kept of equipment and supplies and an accounting made of the equipment and supplies which shall assure that the equipment is used solely for the purposes of the program. Equipment and supplies placed in private schools must be able to be removed from the private school without remodeling the private school facility.

(4) The equipment and supplies shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for Part B purposes.

(5) Funds shall not be used for repairs, minor remodeling, or to construct facilities for private schools or agencies.

WAC 392-172A-04075 Other service arrangements for students, including students placed in sectarian schools. (1) In addition to services to private school students who are unilaterally enrolled by their parents, private school students and home schooled students are entitled to enroll on a part-time basis in their resident district and receive special education and related services for which they are enrolled, pursuant to chapter 392-134 WAC.

(2) No services, material, or equipment of any nature shall be provided to any private school or agency subject to sectarian (i.e., religious) control or influence.

(3) No services, material, or equipment of any nature shall be provided to students on the site of any private school or agency subject to sectarian control or influence.

STUDENTS IN PRIVATE OR PUBLIC SCHOOLS PLACED OR REFERRED BY SCHOOL DISTRICTS

WAC 392-172A-04080 Applicability and authorization. (1) The provisions of WAC 392-172A-04080 through 392-172A-04095 apply only to students eligible for special education who have been placed in or referred to a nonpublic agency or another public agency or school district by a resident school district as a means of providing special education and related services.

(2) School districts are authorized to:

(a) Enter into interdistrict agreements with other school districts pursuant to chapter 392-135 WAC; or
(b) Contract with nonpublic agencies pursuant to this chapter and WAC 392-121-188 and public agencies to provide special education and related services to eligible students if the school district cannot provide an appropriate education for the student within the district.

WAC 392-172A-04085 Responsibility of the school district. (1) A school district who places a student eligible for special education with another public agency or approved nonpublic agency for special education and related services shall develop a written contract, interdistrict or interagency agreement which shall include, but not be limited to, the following elements:

- (a) Names of the parties involved;
- (b) The name(s) of the special education student(s) for whom the contract is drawn;
- (c) Location and setting of the services to be provided;
- (d) Description of services provided, program administration and supervision;
- (e) Charges and reimbursement including billing and payment procedures;
- (f) Total contract cost;
- (g) Other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency, other public agency, or other school district is provided special education and related services:

- (a) In conformance with an IEP that meets the requirements of this chapter;
- (b) At no cost to the parents.
- (3) The student shall be provided with a FAPE that meet all general and special education regulations that apply to the student, except that the certificated special education endorsed teachers providing special education services do not have to meet the highly qualified standards for core academic content areas as described in section 9101 of the ESEA.

(4) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that the nonpublic agency, or other public agency conduct evaluations or IEP meetings, the district will ensure that all applicable requirements of Part B of the act are met.

(5) The student has all of the rights of a student eligible for special education who is served within the school district.

WAC 392-172A-04090 Approval of nonpublic agencies. (1) A school district shall not award a contract to a nonpublic agency to provide special education to a student until the OSPI approves the nonpublic agency.

(2) The school district shall notify the special education section of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.

(3) The OSPI shall provide the school district and the nonpublic agency with the procedures and application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.

(4) Upon review of the completed application which includes the results of the on-site visit, the OSPI may conduct an independent on-site visit, if appropriate, and shall determine whether the application should be approved or disapproved.

(5) The OSPI shall make information regarding currently approved nonpublic agencies available to all school districts and to the public.

(6) School districts shall ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed according to the provisions of WAC 392-172A-04075 through 392-172A-04095.

(7) Nonpublic agencies located in other states must first be approved by the state education agency of the state in which the educational institution is located. Documentation of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the nonpublic agency shall meet the requirements for approval in this state under the provisions of this chapter.

WAC 392-172A-04095 Application requirements for nonpublic agency approval. The application for initial approval and three-year renewal will include the following:

(1) The nonpublic agency is approved by the state board as a private school, and has at least one certificated teacher with a special education endorsement, and other certificated staff who meet state standards for providing special education and related services. If the program is located in a hospital or the educational program is within a treatment facility, the nonpublic agency will assure that the educational component of the facility has education and related services staff who meet certification requirements developed by the professional educators standards board, and has at least one certificated teacher with a special education endorsement.

(2) The facility meets applicable fire codes of the local or state fire marshal, including inspections and documentation of corrections of violation.

(3) The facility meets applicable health and safety standards.

(4) The facility can demonstrate through audits that it is financially stable, and has accounting systems that allow for separation of school district funds.

(5) The facility has procedures in place that address staff hiring and evaluation including:

(a) Checking of personal and professional

references for employees;

(b) Criminal background checks in accordance with state rules for public school employees;

(c) Regular schedule of staff evaluations of the competencies that enable the staff to work with students.

(6) The facility has a policy of nondiscrimination.

(7) The facility meets state education rules for hours and days of instruction.

(8) The facility understands and has procedures in place to protect the procedural safeguards of the students eligible for special education and their families.

WAC 392-172A-04100 Notification of nonpublic agency program changes. (1) An approved nonpublic agency must notify any school districts with whom they contract and the OSPI of any major program changes that occur during the approval period, including adding additional services or changing the type of programs available to students. OSPI will review these program changes with affected districts to determine whether the nonpublic agency remains able to provide contracted services to public school students eligible for special education.

(2) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any conditions that would affect their ability to continue to provide contracted services to public school students eligible for special education.

(3) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any complaints it receives regarding services to students.

WAC 392-172A-04105 Suspension revocation or refusal to renew approval. OSPI may suspend, revoke or refuse to renew its approval of a nonpublic agency to contract with school districts for the provision of special education if the nonpublic agency:

(1) Fails to maintain the approval standards in WAC 392-172A-04090 through 392-172A-04100;

(2) Violates the rights of students eligible for special education; or

(3) Refuses to implement any corrective actions ordered by the OSPI.

WAC 392-172A-04110 State responsibility for nonpublic agency placements. In implementing the nonpublic agency provisions of WAC 392-172A-04080 through 392-172A-04105, the state shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to

each private school and facility to which a public agency has referred or placed a special education student; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

STUDENTS ELIGIBLE FOR SPECIAL EDUCATION SERVICES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

WAC 392-172A-04115 Placement of students when FAPE is at issue. (1) If a student eligible for special education has a FAPE available and the parents choose to place the student in a private school or facility, the school district is not required by this chapter to pay for the student's education, including special education and related services, at the private school or facility. However, the school district shall include that student in the population whose needs are addressed consistent with WAC 392-172A-04000 through 392-172A-04075.

(2) Disagreements between the parents and a school district regarding the availability of a program appropriate for the student and the question of financial reimbursement are subject to the due process procedures at WAC 392-172A-05080 through 392-172A-05125.

(3) If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

(4) The cost of reimbursement may be reduced or denied if:

(a)(i) At the most recent individualized education program meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the team that they were rejecting the placement proposed by a school district to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to a school district of the information described in (a)(i) of this subsection; or

(b) Prior to the parents' removal of the student from the public school, a school district informed the parents, through the notice requirements described in this chapter, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

(c) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Notwithstanding the notice requirement in subsection (4)(a)(i) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(a) The school district prevented the parent from providing the notice; or

(b) The parent had not received the procedural safeguards containing notice of the requirement to notify a school district of the information required in subsection (4)(a)(i) of this section.

(6) An administrative law judge or court may, in its discretion, determine that the cost of reimbursement will not be reduced or denied for failure to provide the notice in subsection (4)(a)(i) of this section if:

(a) The parents are not literate or cannot write in English; or

(b) Compliance with subsection (4)(a)(i) of this section would likely result in serious emotional harm to the student.

SAFEGUARDS

WAC 392-172A-05000 Opportunity to examine records--Parent participation in meetings.

(1) The parents of a student eligible for special education must be afforded an opportunity to inspect and review all education records. Inspection and review of education records is provided consistent with WAC 392-172A-05180 through 392-172A-05245.

(2)(a) The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student.

(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection.

(c) A meeting does not include informal or unscheduled conversations involving school district

personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(3)(a) Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

(4) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.

WAC 392-172A-05005 Independent educational evaluation. (1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

WAC 392-172A-05010 Prior notice and contents. (1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

(2) The notice required under this section must include:

(a) A description of the action proposed or refused by the agency;

(b) An explanation of why the agency proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;

(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and

(g) A description of other factors that are relevant to the agency's proposal or refusal.

(3)(a) The notice required under subsections (1) and (2) of this section must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

WAC 392-172A-05015 Procedural safeguards notice. (1) School districts must provide a copy of the

procedural safeguards that are available to the parents of a student eligible for special education one time a school year, and:

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;

(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and

(d) Upon request by a parent.

(2) A school district may place a current copy of the procedural safeguards notice on its internet web site if a web site exists.

(3) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this chapter that relate to:

(a) Independent educational evaluations;

(b) Prior written notice;

(c) Parental consent;

(d) Access to education records;

(e) An opportunity to present and resolve complaints through the due process hearing request and state complaint procedures, including:

(i) The time period in which to file a state complaint and due process hearing request;

(ii) The opportunity for the school district to resolve the due process hearing request; and

(iii) The difference between the due process hearing request and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decision timelines, and relevant procedures;

(f) The availability of mediation;

(g) The student's placement during the pendency of any due process hearing;

(h) Procedures for students who are subject to placement in an interim alternative educational setting;

(i) Requirements for unilateral placement by parents of students in private schools at public expense;

(j) Hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;

(k) Civil actions, including the time period in which to file those actions; and

(l) Attorneys' fees.

(4)(a) The procedural safeguards notice must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language,

the school district must take steps to ensure:

- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- (ii) That the parent understands the content of the notice; and
- (iii) That there is written evidence that the requirements in (b) of this subsection have been met.

WAC 392-172A-05020 Electronic mail. A parent of a student eligible for special education may elect to receive prior written notices, procedure safeguards notices and notices relating to due process hearing requests by an electronic mail communication, if the school district makes that option available.

STATE CITIZEN COMPLAINT PROCEDURES

WAC 392-172A-05025 Procedures for filing a complaint. (1) An organization or individual, including an organization or individual from another state, may file with the OSPI, special education section, a written, signed complaint that the OSPI, or a subgrantee of the OSPI, including but not limited to an ESD, school district, or other subgrantee is violating or has violated Part B of the Individuals with Disabilities Education Act or regulations implementing the act.

2)(a) A written complaint filed with OSPI will include:

(i)(A) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or

(B) A statement that the school district is not implementing a mediation agreement or a resolution agreement;

(ii) The facts on which the statement is based;

(iii) The signature and contact information, including an address of the complainant; and

(iv) The name and address of the school district, or other agency subject to the complaint.

(b) If the allegations are with respect to a specific student the information must also include:

(i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student;

(ii) The name of the school the student attends and the name of the school district;

(iii) A description of the nature of the problem of the student, including the facts relating to the problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complainant must send a copy of the

complaint to the agency serving the student at the same time the complainant files the complaint with OSPI. Complaints under this chapter are filed with the director of special education, OSPI.

(d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(e) The OSPI has developed a form for use by persons or organizations filing a complaint. Use of the form is not required, but the complaint must contain the elements addressed in (a) and (b) of this subsection.

WAC 392-172A-05030 Investigation of the complaint and decision. (1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC 392-172A-05015.

(2) The school district or other agency shall respond in writing to the OSPI, and include documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint.

(3) The response to the OSPI shall clearly state whether:

(a) The allegations contained in the complaint are denied and the basis for such denial; or

(b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(4) The OSPI shall provide the complainant a copy of the response to the complaint and provide the complainant an opportunity to reply to the response.

(5) The OSPI will also provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, open a new complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the public agency has or is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for the decision. The decision will be issued within sixty days of receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other

agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a local school district or other public agency is not achieved pursuant to subsection (8) of this section, the superintendent of public instruction shall initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

WAC 392-172A-05035 Citizen complaints and due process hearings. (1) If a written complaint is received that is also the subject of a due process hearing under this chapter or contains multiple issues, of which one or more are part of that hearing, the OSPI must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding; and

(b) The OSPI must inform the complainant to that effect.

(3) A complaint alleging a school district's failure to implement a due process decision must be resolved by the OSPI.

WAC 392-172A-05040 Complaints against OSPI. (1) Upon receipt of a complaint against the OSPI alleging a violation under this section, the superintendent will designate an investigator within ten days to investigate the complaint.

(2) Investigation by the OSPI may include on-site investigations, interviews, and other documentation as appropriate.

(3) Upon completion of the investigation, the investigator shall provide the superintendent of public instruction with a written report on the results of the

investigation and shall issue a written decision including findings of facts, conclusions and the reasons for the decision. The decision will be provided to the complainant as soon as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(4) If corrective actions are required, the decision will include the corrective measures deemed necessary to correct any violation. Any such corrective measures deemed necessary shall be instituted as soon as possible, but no later than the date for the corrective action, addressed in the decision.

WAC 392-172A-05045 Informing citizens about complaint procedures. The OSPI shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Widely disseminating copies of the state's procedures to parents and other interested individuals, including protection and advocacy agencies, parent training and information centers, independent living centers, and other appropriate entities;

(2) Posting information about the complaint procedures on the web site;

(3) Conducting in-service training sessions on the complaint process through educational service districts; and

(4) Including information about the complaint procedures at statewide conferences.

MEDIATION

WAC 392-172A-05060 Mediation purpose--Availability. (1) The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator.

(2) Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter.

(4) Mediation services are provided by the OSPI at no cost to either party, including the costs of meetings described in WAC 392-172A-05075. To access the statewide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be

assigned to the case.

(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

WAC 392-172A-05065 Qualifications and selection of mediators. (1) Mediation shall be conducted by qualified and impartial mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) An individual who serves as a mediator:

(a) May not be an employee of any school district or other public or private agency that is providing education or related services to a student who is the subject of the mediation process; and

(b) Shall not have a personal or professional conflict of interest; and

(c) A person who otherwise qualifies as a mediator is not an employee of a school district or other public agency solely because he or she is paid by the agency to serve as a mediator.

(3)(a) The OSPI, through its contracted administrative agents, shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(b) Mediators will be selected on a random, rotational or other impartial basis.

WAC 392-172A-05070 Resolution of a dispute through mediation. (1) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(2) A written, signed mediation agreement is enforceable in a state court of competent jurisdiction or in a district court of the United States.

(3) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal or state court.

WAC 392-172A-05075 Meeting to encourage mediation. (1) A school district may establish

procedures to offer parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(a) Who is under contract with appropriate alternative dispute resolution entity or a parent training and information center; and

(b) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A school district or other public agency may not deny or delay a parent's right to a due process hearing under this chapter if the parent fails to participate in the meeting described in this section.

(3) A school district shall submit its procedures for implementing this section to the OSPI for review and approval, including projected costs for carrying out the process.

DUE PROCESS HEARING PROCEDURES

WAC 392-172A-05080 Right to a due process hearing. (1) A parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation or educational placement, or the provision of FAPE to a student.

(2) The due process hearing request must allege a violation that occurred not more than two years before the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

(3)(a) Information about any free or low-cost legal and other relevant services available in the area is maintained on OSPI's web site and is provided by the office of administrative hearings to parents whenever a due process hearing request is filed by either the parent or the school district; and

(b) Districts must provide this information to parents whenever a parent requests the information.

WAC 392-172A-05085 Due process hearing request filing and response. (1)(a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must file the request, which must remain confidential, directly with the other party; and

(b) The party filing the due process hearing request must also mail or provide a copy of the due process

hearing request directly to OSPI, Administrative Resources Section, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504.

(c) When a parent is filing a due process hearing request, the party to be served is the superintendent of the school district, or public agency responsible for the student.

(2) The due process hearing request required in subsection (1) of this section must include:

- (a) The name of the student;
- (b) The address of the residence of the student;
- (c) The name of the school the student is attending, and the name of the district or public agency that is responsible for the student's special education program in the school;

(d) In the case of a homeless child or youth, available contact information for the student in addition to the information in (c) of this subsection;

(e) A description of the nature of the problem of the student related to the proposed or refused initiation or change, including facts relating to the problem; and

(f) A proposed resolution of the problem to the extent known and available to the party at the time.

(3) OSPI has developed a due process hearing request form to assist parents and school districts filing a due process hearing. Parents and school districts are not required to use this form, and may use the form, or another form or other document, so long as the form or document that is used, meets the requirements in subsection (2) of this section.

(4) A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (2) of this section.

(5)(a) The due process hearing request will be deemed sufficient unless the party receiving the due process hearing request notifies the administrative law judge and the other party in writing, within fifteen days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements in subsection (2) of this section.

(b) Within five days of receipt of notification that a due process hearing request is not sufficient, the administrative law judge must make a determination on the face of the due process hearing request of whether the request meets the requirements of subsection (2) of this section, and must immediately notify the parties in writing of that determination.

(6) A party may amend its due process hearing request only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution

meeting held pursuant to the procedures in WAC 392-172A-05090; or

(b) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend not later than five days before the due process hearing begins.

If a party is allowed to amend the due process hearing request under (a) or (b) of this subsection, the timelines for the resolution meeting in WAC 392-172A-05090 (2)(a) and the time period to resolve in WAC 392-172A-05090 (2)(b) begin again with the filing of the amended due process hearing request.

(7)(a) If the school district has not sent a prior written notice under WAC 392-172A-05010 to the parent regarding the subject matter contained in a parent's due process hearing request, the school must send the parent a response, within ten days of receiving the due process hearing request, that includes:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;

(ii) A description of other options that the IEP team or evaluation group considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the district's proposed or refused action.

(b) A response by a school district under subsections (7) and (8) of this section shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.

(8) Except as provided in subsection (7)(a) of this section, the party receiving a due process hearing request must send the party a response that specifically addresses the issues raised in the due process hearing request within ten days of receiving the due process hearing request.

WAC 392-172A-05090 Resolution process.

(1)(a) Within fifteen days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of

the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the receipt of the due process hearing request, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-05090, the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting specified in subsection (1) of this section within fifteen days of receiving notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of

this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant to this section, a party may void the agreement within three business days of the agreement's execution.

WAC 392-172A-05095 Administrative law judges. (1) A due process hearing is conducted for OSPI by the office of administrative hearings.

(2) Administrative law judges that conduct the hearings:

(a) Must not be:

(i) An employee of OSPI or the school district that is involved in the education or care of the student; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(b) Must possess knowledge of, and the ability to understand, the provisions of the act, federal and state regulations pertaining to the act, and legal interpretations of the act by federal and state courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(3) An administrative law judge who otherwise qualifies to conduct a hearing under subsection (2) of this section is not an employee of the OSPI solely because he or she is paid using OSPI funds.

(4) OSPI maintains a list of the persons who serve as administrative law judges which includes a statement of the qualifications of each of those persons.

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 and 392-172A-05165.

(1) Any party to a due process hearing has the right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the

hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160;

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165, each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) A parent may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section.

(6) To the extent not modified by the hearing procedures addressed in this section and the timelines and procedures for civil actions addressed in WAC 392-172A-05115 the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

WAC 392-172A-05105 Hearing decisions. (1) An administrative law judge's determination of whether a student received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, an administrative law judge may find that a student did not receive a FAPE only if the procedural inadequacies:

(a) Impeded the student's right to a FAPE;

(b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(c) Caused a deprivation of educational benefit.

(3) Nothing in subsections (1) and (2) of this section shall be construed to preclude an administrative

law judge from ordering a school district to comply with the procedural requirements contained in this chapter.

(4) The state deletes personally identifiable information contained in due process hearing decisions, transmits those decisions to the state advisory panel and makes decisions available to the public.

WAC 392-172A-05110 Timelines and convenience of hearings. (1) Not later than forty-five days after the expiration of the thirty day resolution period, or the adjusted time periods described in WAC 392-172A-05090(3):

(a) A final decision shall be reached in the hearing; and

(b) A copy of the decision shall be mailed to each of the parties.

(2) An administrative law judge may grant specific extensions of time beyond the period in subsection (1) of this section at the request of either party.

(3) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved.

WAC 392-172A-05115 Civil action. (1) Any party aggrieved by the findings and decision made under WAC 392-172A-05105 through 392-172A-05110 or 392-172A-05165 has the right to bring a civil action with respect to the due process hearing request. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(2) The party bringing the action shall have ninety days from the date of the decision of the administrative law judge to file a civil action in federal or state court.

(3) In any action brought under subsection (1) of this section, the court:

(a) Receives the records of the administrative proceedings;

(b) Hears additional evidence at the request of a party; and

(c) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(4) The district courts of the United States have jurisdiction of actions brought under section 615 of the act without regard to the amount in controversy.

(5) Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the act, the due process procedures under WAC 392-172A-05085 and 392-172A-05165

must be exhausted to the same extent as would be required had the action been brought under section 615 of the act.

WAC 392-172A-05120 Attorneys' fees. (1) In any action or proceeding brought under 20 U.S.C. Sec. 1415 of the act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

(a) The prevailing party who is the parent of a student eligible or referred for special education;

(b) To a prevailing party who is a school district, or OSPI, against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing school district or OSPI against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2)(a) Funds under Part B of the act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 20 U.S.C. Sec. 1415 and 34 CFR Secs. 300.500 through 300.599.

(b) Subsection (2)(a) of this section does not preclude a school district or OSPI from using funds under Part B of the act for conducting an action or proceeding under 20 U.S.C. Sec. 1415.

(3)(a) Fees awarded under subsection (1) of this section must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. Sec. 1415 for services performed after a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(i) A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or

(ii) An administrative hearing or judicial action for purposes of this section.

(4) Notwithstanding subsection (3)(b) of this section an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(5) Except as provided in subsection (5) of this section, the court will reduce, accordingly, the amount of the attorneys' fees awarded under this section if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with WAC 392-172A-06085(2).

(6) The provisions of subsection (4) of this section do not apply in any action or proceeding if the court finds that the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation under the provisions of 20 U.S.C. Sec. 1415.

WAC 392-172A-05125 Student's status during proceedings.

(1) Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise.

(2) If the hearing request involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the hearing request involves an application for initial Part B services for a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the student is found eligible for special education and related services and the parent consents to the initial provision of special education and related services, then the school district must provide those special education and

related services that are not in dispute between the parent and the school district.

(4) If the administrative law judge agrees with the student's parents that a change of placement is appropriate through the final decision or during the pendency of the due process hearing, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

SURROGATE PARENTS

WAC 392-172A-05130 Surrogate parents. (1) School districts must ensure that the rights of a student are protected when:

- (a) No parent as defined in WAC 392-172A-01125 can be identified;
- (b) The school district, after reasonable efforts, cannot locate a parent;
- (c) The student is a ward of the state; or
- (d) The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.

(2) School districts must develop procedures for assignment of an individual to act as a surrogate for the parents. This must include a method:

- (a) For determining whether a student needs a surrogate parent;
- (b) For assigning a surrogate parent to the student; and
- (c) Ensuring that an assignment of a surrogate parent is provided within thirty days of the district's determination that a surrogate parent is required.

(3) If a student is a ward of the state, the judge overseeing the student's case, may appoint a surrogate parent, provided that the surrogate meets the requirements in subsections (4)(a) and (5) of this section.

(4) School districts must ensure that a person selected as a surrogate parent:

- (a) Is not an employee of the OSPI, the school district, or any other agency that is involved in the education or care of the student;
- (b) Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and
- (c) Has knowledge and skills that ensure adequate representation of the student.

(5) A person otherwise qualified to be a surrogate parent under subsection (4) of this section is not an employee of the OSPI, school district or other agency solely because he or she is paid by the agency to serve as a surrogate parent.

(6) In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent

living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subsection (4)(a) of this section until a surrogate parent can be appointed that meets all of the requirements of subsection (4) of this section.

(7) The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement and the provision of FAPE to the student.

TRANSFER OF RIGHTS AT AGE OF MAJORITY

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) When a student eligible for special education reaches the age of eighteen or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020, unless the student is declared incapacitated as to person under chapter 11.88 RCW, the following shall occur:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

DISCIPLINE PROCEDURES

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through 392-172A-05155 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145. Each school district serving special education students shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is

appropriate for a student eligible for special education services, who violates a code of student conduct.

(2)(a) School personnel may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155.

(b) After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under subsection (4) of this section.

(3) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to subsection (5) of this section, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with subsection (4) of this section.

(4) A student who is removed from the student's current placement pursuant to subsection (3) or (5) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(c) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.

(d) A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

(e) After a student eligible for special education has been removed from his or her current placement for

ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(f) If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate services under (a) of this subsection.

(5)(a) Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(b) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in (a)(i) or (ii) of this subsection was met.

(c) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

(6) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the IEP team must either:

(a) Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(c) Except as provided in subsection (7) of this section, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of

the modification of the behavioral intervention plan.

(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

(9) Definitions. For purposes of this section, the following definitions apply:

(a) Controlled substance means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(b) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.

(c) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

(d) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.

WAC 392-172A-05150 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under WAC 392-172A-07105 (3), (4)(e) and (7).

WAC 392-172A-05155 Change of placement because of disciplinary removals. For purposes of removals of a student eligible for special education from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

(1) The removal is for more than ten consecutive

school days; or

(2) The student has been subjected to a series of removals that constitute a pattern:

(a) Because the series of removals total more than ten school days in a school year;

(b) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

(c) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

(3) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(4) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations. (1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05145(5), or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under

subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b)(i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process hearing request.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

WAC 392-172A-05165 Placement during an appeal through a due process hearing. When either the parent or the school district requests a due process hearing, the student must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in WAC 392-172A-05145 (3) or (7), whichever occurs first, unless the parent and the school district agree otherwise.

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the

appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4)(a) If a school district does not have knowledge that a student is eligible for special education prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the requirements of Section 612 (a)(1)(A) of the act.

WAC 392-172A-05175 Referral to and action by law enforcement and judicial authorities. (1) Nothing in this chapter prohibits a school district or other agency from reporting a crime committed by a student to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student

eligible for special education.

(2) An agency reporting a crime committed by a student eligible for special education must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

CONFIDENTIALITY OF STUDENT INFORMATION AND EDUCATIONAL RECORDS

WAC 392-172A-05180 Definitions--Destruction of records, educational records, participating agency. As used in WAC 392-172A-07150 through 392-172A-07215:

(1) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained in implementing this chapter, and includes the OSPI, school districts and other public agencies.

WAC 392-172A-05185 Notice to parents. (1) Parents of students eligible for special education have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172A-05180 through 392-172A-05240, the Family Educational Rights and Privacy Act of 1974, as amended, state laws contained in Title 28A RCW that address personally identifiable information, regulations implementing state law, and Part B of IDEA.

(2) State forms, procedural safeguards and parent handbooks regarding special education are available in Spanish, Vietnamese, Russian, Cambodian, and Korean, and alternate formats on request.

(3) Personally identifiable information about students for use by the OSPI, special education section, may be contained in state complaints, due process hearing requests, monitoring hearing requests and decisions, safety net applications, and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the

information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(4) School districts are responsible for child find activities for students who may be eligible for special education. If the state were to conduct any major identification, location, or evaluation activity, the state would publish notices in newspapers with circulation adequate to notify parents throughout the state of the activity, notify school districts and post information on its web site.

WAC 392-172A-05190 Access rights. (1) Each participating agency shall permit parents of students eligible for special education to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. The school district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) The right to inspect and review educational records under this section includes:

(a) The right to a response from the school district to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or adult student inspect and review records.

(3) A participating agency may presume that a parent has authority to inspect and review records relating to his or her student unless the school district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

WAC 392-172A-05195 Record of access. Each school district or other public agency shall keep a record of parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, and authorized employees

with a legitimate educational interest in the records.

WAC 392-172A-05200 Records on more than one student. If any educational record includes information on more than one student, the parent of those students shall have the right to inspect and review only the information relating to their child or themselves, or to be informed of that specific information.

WAC 392-172A-05205 List of records. Each school district or other public agency shall provide parents and adult students on request a list of the types and locations of educational records collected, maintained, or used by the agency.

WAC 392-172A-05210 Fees. (1) A participating agency may charge a fee for copies of records which are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(2) A participating agency may not charge a fee to search for or to retrieve information under this chapter.

WAC 392-172A-05215 Amendment of records and hearing rights. (1) A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information.

(2) The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures.

(4) The school district, on request, shall provide the parent an opportunity for a hearing to challenge information, in the educational records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall amend the information accordingly and so inform the parent in writing.

(6) If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the agency shall inform the parents of the right to place a statement commenting on

the information or setting forth any reasons for disagreeing with the decision of the school district in the records it maintains on the student.

(7) Any explanation placed in the records of the student in compliance with this section shall:

(a) Be maintained by the school district as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and

(b) Be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

WAC 392-172A-05220 Hearing on a request to amend records. A hearing initiated pursuant to WAC 392-172A-07185 to challenge information in educational records shall be conducted according to procedures developed by the school district or other public agency, and in conformance with the procedures in 34 CFR 99.22 that include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the school district has received the request;

(2) The parent shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the school district, who does not have a direct interest in the outcome of the hearing;

(4) The parent shall be afforded a full and fair opportunity to present evidence relevant to the amendment request and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The school district shall provide a written decision to the parent within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

WAC 392-172A-05225 Consent for release of records. (1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsection (2)(a) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR Part 99.

(2)(a) Except as provided in this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this

part.

(b) Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

(3) If a student is enrolled, or is going to enroll, in a private school that is not located in the school district of the student's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the school district where the private school is located and officials in the school district of the student's residence, unless the parent is part-time enrolling the student in the resident district pursuant to chapter 392-134 WAC.

WAC 392-172A-05230 Safeguards. (1) Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency shall be designated as the individual responsible for assuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding the procedures on protection of the confidentiality of personally identifiable information contained in this chapter, state education law, the regulations implementing the Family Educational Rights and Privacy Act (34 CFR Part 99), and the school district's procedures.

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

WAC 392-172A-05235 Destruction of educational records. (1) Each school district shall inform parents and adult students when personally identifiable information collected, maintained, or used in compliance with this chapter is no longer needed to provide educational services to the student, or is no longer required to be retained under state or federal law. State procedures for school district records retention are published by the secretary of state, division of archives and records management, and specify the length of time that education records must be retained.

(2) The information shall thereafter be destroyed at the request of the parent or adult student. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

WAC 392-172A-05240 Student rights to

educational records. If the rights accorded to parents under this chapter are transferred to a student who reaches the age of eighteen, or is determined to be emancipated sooner, consistent with WAC 392-172A-05135, the rights regarding educational records are also transferred to the student. However, the school district must continue to provide any notice required under section 615 of the act to the student and the parents.

WAC 392-172A-05245 District procedures for confidential information. (1) School districts must ensure that their policies and procedures for protection of confidential information comply with WAC 392-172A-05180 through 392-172A-05240.

(2) OSPI reviews compliance through targeted monitoring activities, and state complaints.

(3) If school districts do not have procedures in place that comply with subsection (1) of this section, OSPI will require the school district to correct noncompliance through corrective actions that include but are not limited to:

- (a) Review and revision of district procedures; and
- (b) Technical assistance.

(4) To the extent that any violations that exist under this section are also violations under 34 CFR Part 99, complaints regarding a participating agency's failure to comply may be addressed to the Department of Education, Family Policy Compliance Office.

SCHOOL DISTRICT AND OTHER PUBLIC AGENCY REQUIREMENTS FOR PART B FUNDS

WAC 392-172A-06000 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the superintendent of public instruction, and conduct its special education and related services program in compliance with the requirements of this chapter. The request shall be made through an application that includes, but is not limited to the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 CFR 300.201 through .213 relating to:

- (a) Development of policies and procedures consistent with this chapter and Part B of the act;
- (b) The provision of FAPE to students;
- (c) Child find requirements for students; including evaluation;
- (d) Development of an IEP;
- (e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;
- (f) The provision of procedural safeguard

protections and implementation of the procedural safeguards notices;

- (g) Confidentiality of records and information;
 - (h) Transition of children from Part C to Part B services;
 - (i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;
 - (j) Use of funds;
 - (k) Personnel preparation;
 - (l) Availability of documents relating to the eligibility of the school district;
 - (m) Provision to OSPI of all necessary information and data for the state's performance goals;
 - (n) Provision of instructional materials to blind persons or persons with print disabilities;
 - (o) Compliance with corrective actions as a result of monitoring, or dispute resolution processes; and
 - (p) A goal and detailed timetable for providing full educational opportunity to all special education students.
- (2) Identification of the local district or other public agency designee responsible for child identification activities and confidentiality of information.
- (3) Information related to participation of students enrolled in private school programs using a proportional share of Part B funds.
- (4) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.
- (5) A description of the use of funds received under Part B of the act.
- (6) Any other information requested by the OSPI which is necessary for the management of the special education program.

WAC 392-172A-06005 Consistency with state policies. The school district or other public agency, in providing for the education of students eligible for special education must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established in this chapter, that address the actions outlined in WAC 392-172A-06000 (1)(b) through (p).

WAC 392-172A-06010 School district use of funds. (1) Part B funds provided to school districts:

- (a) Must be expended in accordance with the applicable provisions of this chapter;
- (b) Must be used only to pay the excess costs of providing special education and related services to special education students, consistent with this chapter; and

(c) Must be used to supplement state, local and other federal funds and not to supplant those funds.

(2) The excess cost requirement prevents a school district from using funds provided under Part B of the act to pay for all of the costs directly attributable to the education of a student eligible for special education.

(3)(a) A school district meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students eligible for special education before funds under Part B of the act are used.

(b) The excess cost amount is determined in accordance with the definition of excess costs in WAC 392-172A-01075. That amount may not include capital outlay or debt service.

(4) If two or more school districts jointly establish eligibility in accordance with WAC 392-172A-06075 and 392-172A-06080, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those school districts for elementary or secondary school students, as the case may be.

WAC 392-172A-06015 Maintenance of effort.

(1) Except as provided under WAC 392-172A-06020 and 392-172A-06025, funds provided to school districts or other public agencies under Part B of the IDEA may not be used to reduce the level of expenditures for the education of students eligible for special education made by it from local funds below the level of those expenditures for the preceding fiscal year.

(2) Except as provided in subsection (3) of this section, the OSPI determines that a school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets, for the education of special education students, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:

- (a) Local funds only.
- (b) The combination of state and local funds.

(3) A district that relies on subsection (2)(a) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of students eligible for special education in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997, or later, if the most recent fiscal year for which information is available and the standard in subsection (2)(a) of this section was used to establish its compliance with this section.

(4) The OSPI may not consider any expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the district is required to account to the federal government directly or through the OSPI in determining a district's compliance with the requirement in subsection (1) of this section.

WAC 392-172A-06020 Exception to maintenance of effort. A school district or other public agency may reduce the level of expenditures made by it under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

- (1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;
- (2) A decrease in the enrollment of students eligible for special education;
- (3) The termination of the obligation of the district or agency, consistent with this chapter, to provide a program of special education to a particular student that is an exceptionally costly program as determined by the state, because the student:
 - (a) Has left the jurisdiction of the district or agency;
 - (b) Has reached the age at which the obligation of the district or agency to provide a free appropriate public education to the student has terminated; or
 - (c) No longer needs the program of special education.
- (4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.
- (5) The reimbursement of the cost by the safety net fund operated by the state oversight committee.

WAC 392-172A-06025 Adjustment to local fiscal efforts in certain fiscal years. (1) Notwithstanding WAC 392-172A-06015 (1)(a) and (2) and 392-172A-06020(1), and except as provided in subsection (4) of this section, for any fiscal year for which the allocation received by a school district exceeds the amount the school district received for the previous fiscal year, the school district may reduce the level of expenditures otherwise required by WAC 392-172A-06015(1) by not more than fifty percent of the amount of that excess.

(2) If a school district exercises the authority under subsection (1) of this section, the school district must use an amount of local funds equal to the reduction in expenditures under subsection (1) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the school district is using funds under the ESEA for those

activities.

(3) Notwithstanding subsection (1) of this section, if OSPI determines that a school district is unable to establish and maintain programs of FAPE that meet the requirements of this chapter and Part B of the act, the OSPI must prohibit the school district from reducing the level of expenditures under subsection (1) of this section for that fiscal year.

(4) The amount of funds expended by a school district for early intervening services under WAC 392-172A-06085 shall count toward the maximum amount of expenditures that the school district may reduce under subsection (1) of this section.

WAC 392-172A-06030 School-wide programs under Title 1 of the ESEA. (1) A school district or other agency may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any school-wide program may not exceed:

- (a) The amount received by the district or agency under Part B for that fiscal year; divided by the number of students eligible for special education in the jurisdiction; multiplied by
 - (b) The number of students eligible for special education participating in the school-wide program.
- (2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172A-05010 (1)(a).
- (3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of calculating excess cost and supplanting WAC 392-172A-05010 (1)(b) and (c).
- (4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education in school-wide program schools:
- (a) Receive services in accordance with a properly developed IEP; and
 - (b) Are afforded all of the rights and services guaranteed to students eligible for special education under the IDEA.

WAC 392-172A-06035 Permissive use of funds. (1) Funds provided to a school district under Part B of the act may be used for the following activities:

- (a) For the costs of special education and related services, and supplementary aids and services, provided in a general education class or other education-related setting to a special education student in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.

(b) To develop and implement coordinated, early intervening educational services in accordance with WAC 392-172A-06085.

(c) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

(2) A school district may use funds received under Part B of the act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students eligible for special education, that are needed for the implementation of those case management activities.

WAC 392-172A-06040 Purchase of instructional materials. OSPI has elected to coordinate with the National Instructional Materials Access Center (NIMAC). School districts have the option of coordinating with NIMAC.

(1) Not later than December 3, 2006, a school district that chooses to coordinate with NIMAC, when purchasing print instructional materials, must acquire those instructional materials in accordance with subsection (2) of this section.

(2) If a school district chooses to coordinate with the NIMAC, as of December 3, 2006, it must:

(a) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(b) Make all reasonable attempts to provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(c) In carrying out this section, the school district, to the maximum extent possible, must work with the state instructional resources center.

(3) For the purposes of this section:

(a) Blind persons or other persons with print disabilities means students served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a;

(b) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the act;

(c) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the act;

(d) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the act.

(4) The definitions in subsection (3) of this section apply to each school district, whether or not the school district chooses to coordinate with the NIMAC.

(5) Rights of a school district. Nothing in this section shall be construed to require a school district to coordinate with the NIMAC.

(6) If a school district chooses not to coordinate with the NIMAC, the school district must provide an assurance to the OSPI that the school district will provide instructional materials to blind persons or other persons with print disabilities by other means in a timely manner.

(7) Nothing in this section relieves a school district of its responsibility to ensure that students eligible for special education who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

WAC 392-172A-06045 School district information for OSPI. (1) The school district must provide OSPI with information that is necessary to enable OSPI to carry out its duties under Part B of the act and state law, including, but not limited to child count, least restrictive environment, suspension and expulsion rates, disproportionality, and other information relating to the performance of students eligible for special education participating in programs carried out under Part B of the act.

(2) The information will be provided OSPI in the form and by the timelines specified for a particular report.

WAC 392-172A-06050 Public information. The school district must make available to parents of students eligible for special education and to the general public all documents relating to the eligibility of the agency under Part B of the act.

WAC 392-172A-06055 Records regarding migratory students eligible for special education. The LEA must cooperate in the secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory students eligible for special education for the purpose of electronically

exchanging, among the states, health and educational information regarding those students.

WAC 392-172A-06060 Exception for prior policies and procedures. (1) If a school district has on file with the OSPI policies and procedures that demonstrate that the school district meets the requirements under WAC 392-172A-05000, including any policies and procedures filed under Part B of the act as in effect before December 3, 2004, the OSPI must consider the school district to have met that requirement for purposes of receiving assistance under Part B of the act.

(2) Subject to subsection (3) of this section, policies and procedures submitted by a school district in accordance with this subpart remain in effect until the school district submits to the OSPI the modifications that the school district determines are necessary.

(3) The OSPI may require a school district to modify its policies and procedures, but only to the extent necessary to ensure the school district's compliance with Part B of the act or state law, if:

(a) After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the act or federal or state regulations developed to carry out the act, are amended;

(b) There is a new interpretation of an applicable provision of the act by federal or state courts; or

(c) There is an official finding of noncompliance with federal or state law or regulations.

WAC 392-172A-06065 Notification of a school district in case of ineligibility. (1) In the event the superintendent of public instruction or designee determines that a school district is not eligible under Part B of the act, or is not complying with corrective actions as a result of monitoring, state complaints, or due process decisions and the superintendent intends to withhold or recover funds in whole or in part, the school district or other public agency shall be provided:

(a) Written notice of intent to withhold or recover funds and the reasons supporting its notice;

(b) The school district's opportunity for a hearing before the superintendent of public instruction or designee prior to a denial of the request.

(2) The superintendent of public instruction shall provide an opportunity for a hearing before the OSPI disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of receiving notice of the action of the superintendent of public instruction.

(b) Within thirty days after it receives a request, the superintendent of public instruction shall hold a hearing

to review its action. At the hearing, the district shall have the opportunity to provide the superintendent's designee with documentary evidence demonstrating that the superintendent erred in reaching its determination.

(c) The superintendent shall consider any new evidence provided and respond in writing to the school district within thirty days, by affirming the initial determination, rescinding its initial determination, or issuing a revised determination.

(d) If the district remains unsatisfied with the superintendent's determination, it may appeal the agency's decision by filing an appeal with the office of administrative hearings within thirty days of receiving OSPI's final determination. Procedures for filing an appeal of a decision under this section shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW and chapter 10.08 WAC.

WAC 392-172A-06070 School district compliance.

(1) If the OSPI, after reasonable notice and an opportunity for a hearing, finds that a school district determined to be eligible under this subpart is failing to comply with any requirement described in WAC 392-172A-06000 through 392-172A-06060, the OSPI must reduce or must not provide any further payments to the school district until the OSPI is satisfied that the school district is complying with that requirement.

(2) Any school district or other public agency in receipt of a notice of intent to withhold or recover funds of the school district shall, by means of a public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public, within its jurisdiction.

(3) In carrying out its responsibilities under this section, OSPI must consider any due process hearing decision resulting in a decision that is adverse to the school district involved in the decision.

WAC 392-172A-06075 Collaborative requests.

The superintendent of public instruction may require districts to submit a collaborative request for payments under Part B of the Individuals with Disabilities Education Act if it is determined that a single district or other public agency would be disapproved because the district or other public agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of special education students. Districts that apply for Part B funds in a collaborative request must meet the same minimum requirements as a single district or other public agency applicant. The request must be signed by the superintendent of each participating school district or other public agency. The districts are jointly responsible for implementing programs receiving payments under Part B of the Individuals with

Disabilities Education Act. The total amount of funds made available to the affected school districts or other public agencies shall be equal to the sum each would have received separately.

WAC 392-172A-06080 Requirements for establishing eligibility. School districts that establish joint eligibility under this section must:

- (1) Adopt policies and procedures that are consistent with the state's policies and procedures consistent with WAC 392-172A-06005; and
- (2) Be jointly responsible for implementing programs that receive assistance under Part B of the act.

WAC 392-172A-06085 Early intervening services. (1) A school district may not use more than fifteen percent of the amount the school district receives under Part B of the act for any fiscal year, less any amount reduced by the school district pursuant to WAC 392-172A-06015 if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures. Those services are for students in kindergarten through grade twelve, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated, early intervening services under this section, a school district may carry out activities that include:

- (a) Professional development, which may be provided by entities other than the school district, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
- (b) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the act or to delay appropriate evaluation of a student suspected of having a disability.

(4) Each school district that develops and maintains coordinated, early intervening services under this section must annually report to the OSPI on:

- (a) The number of students served under this section who received early intervening services; and
- (b) The number of students served under this section who received early intervening services and

subsequently receive special education and related services under Part B of the act during the preceding two year period.

(5) Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

WAC 392-172A-06090 Direct services by the OSPI. (1) OSPI must use the payments that would otherwise have been available to a school district to provide special education and related services directly to students eligible for special education in the area served by that school district, if the OSPI determines that the school district:

(1) OSPI must use the payments that would otherwise have been available to a school district to provide special education and related services directly to students eligible for special education in the area served by that school district, if the OSPI determines that the school district:

(a) Has not provided the information needed to establish the eligibility of the school district, or elected not to apply for its Part B allotment, under Part B of the act;

(b) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(c) Is unable or unwilling to be consolidated with one or more school districts in order to establish and maintain the programs; or

(d) Has one or more students eligible for special education who can best be served by a regional or state program or service delivery system designed to meet the needs of these students.

(2)(a) In meeting the requirements in subsection (1) of this section, the OSPI may provide special education and related services directly, by contract, or through other arrangements.

(b) The excess cost requirements of WAC 392-172A-01075 do not apply to the OSPI.

(3) The OSPI may provide special education and related services in the manner and at the location as the OSPI considers appropriate. The education and services must be provided in accordance with this chapter.

WAC 392-172A-06095 State agency eligibility. Any state agency that desires to receive a subgrant for any fiscal year for Part B funding must demonstrate to the satisfaction of the OSPI that:

(1) All children with disabilities who are participating in programs and projects funded under Part B of the act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(2) The agency meets the other conditions of this subpart that apply to school districts.

STATE PROCEDURES--MONITORING--

ENFORCEMENT AND STATE PROGRAM INFORMATION

WAC 392-172A-07000 Methods of ensuring services. (1) OSPI must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in this section and the OSPI, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under (c) of this subsection. The agreement or mechanism shall contain:

(a) An identification of, or a method of defining, the financial responsibility of each agency for providing services to ensure FAPE to students eligible for special education. The financial responsibility of each noneducational public agency, including the state medicaid agency and other public insurers of students eligible for special education, must precede the financial responsibility of the school district.

(b) The conditions, terms, and procedures under which a school district must be reimbursed by other agencies.

(c) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(d) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subsection (2)(a) of this section.

(2)(a) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subsection (1) of this section, to provide or pay for any services that are also considered special education or related services such as, but not limited to, assistive technology devices and services, related services, whether provided as specially designed instruction or related services; supplementary aids and services, and transition services that are necessary for ensuring FAPE to students eligible for special education, the noneducational public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subsection (1) of this section.

(b) A noneducational public agency described in subsections (1)(a) and (2) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(c) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in (a) of this subsection, the school district developing the student's IEP must provide or pay for these services to the student in a timely manner. The school district is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in subsection (1) of this section.

(3) The requirements of subsection (1) of this section may be met through:

(a) State statute or regulation;

(b) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(c) Other appropriate written methods determined by the superintendent of the office of public instruction.

WAC 392-172A-07005 Students eligible for special education who are covered by public benefits or insurance or private insurance. (1) A school district may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student, the school district:

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the act;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parents otherwise would be required to pay;

(c) May not use a child's benefits under a public benefits or insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(d) Must obtain parental consent, each time that access to public benefits or insurance is sought for a new procedure; and must notify parents that the parents'

refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) With regard to services required to provide FAPE to an eligible student under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must:

- (a) Obtain parental consent; and
- (b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(4)(a) If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance such as deductible or co-pay amounts.

(5) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(6) If a public agency spends reimbursements from federal funds such as Medicaid, for services under this part, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions.

(7) Nothing in this part should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, 42 U.S.C. Secs. 1396 through 1396v and 42 U.S.C. Secs. 1397aa through 1397jj, or any other public benefits or insurance program.

MONITORING

WAC 392-172A-07010 Monitoring. (1) The OSPI shall monitor selected local school districts special education programs, so that all districts are monitored at least once every six years. The focus of monitoring is to:

(a) Improve educational results and functional outcomes for all students eligible for special education;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving educational results for students eligible for special education;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq. in order to validate compliance with this chapter;

(d) Validate information included in school district or other public agency requests for federal funds; and

(e) Measure district performance on relative targets and priorities from state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

(a) Collection of previsit data;

(b) Conduct of on-site visits;

(c) Comparison of a sampling of evaluation reports and individualized education programs with the services provided; and

(d) Review and analysis of such quantifiable and qualitative indicators as are needed to measure performance in the following areas:

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

(iii) Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.

(3) As part of the monitoring process, a monitoring report shall be submitted to the school district. The monitoring report shall include, but not be limited to:

(a) Findings of noncompliance, if any;

(b) Required student specific corrective actions; and

(c) Areas that will require a corrective action plan and/or improvement plan to address any systemic issues determined through the monitoring.

(4) The school district shall have thirty calendar days after the date of its receipt of the monitoring report to provide the OSPI with supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report. In the event that the school district submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the OSPI shall determine whether or not any revisions are necessary, the extent to which the proposed action is acceptable and will issue a final

monitoring report within thirty calendar days after receipt of the supplemental response.

(5) The school district will have ninety calendar days after the date of its receipt of the final monitoring report to provide the OSPI with a proposed corrective action/improvement plan, if required, which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remediate any areas of noncompliance.

(6) If the school district does not comply with a corrective action plan approved pursuant to subsections (4) and (5) of this section, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action(s);

(ii) Expedite the school district's response to the final monitoring report; and

(iii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withholding, in whole or part, a specified amount of state and/or federal special education funds, in compliance.

(c) Requesting assistance from the state auditors office to initiate an audit.

(7) When monitoring districts under this section or when enforcing other provisions of this subpart relating to the district's obligations to provide OSPI with data under WAC 392-172A-06000 through 392-172A-06060:

(a) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:

Advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, Office of Special Education Programs, other offices of the Department of Education, other federal agencies, technical assistance providers approved by the Department of Education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(i) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and

methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(b) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI will take one or more of the following actions:

(i) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(ii) Withhold, in whole or in part, any further payments to the district under Part B of the act.

(c) Notwithstanding (a) or (b) of this subsection, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under (a) or (b) of this subsection.

PERFORMANCE GOALS AND INDICATORS-- STATE PERFORMANCE PLANS AND ANNUAL PERFORMANCE REPORTS

WAC 392-172A-07015 Performance goals and indicators. (1) The OSPI has established goals for the performance of special education students that promote the purposes of the Individuals with Disabilities Education Act, are consistent, to the maximum extent appropriate, with the state's four learning goals and essential academic learning requirements for all students, and are the same as the state's objectives for progress by students in its definition of adequate yearly progress, including the state's objectives for progress by students eligible for special education, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. Sec. 6311. The performance goals are identified in the state's performance plan, which is based upon district data provided to OSPI.

(2) In addition, the OSPI has established performance indicators that are used to assess the state's

and school district's progress toward achieving those goals that at a minimum address the performance of eligible students on assessments, dropout rates, transition, and graduation rates.

(3) The state reports annually to the department of education and to the public through its annual performance report on the progress of the state, and of students eligible for special education in the state, toward meeting the goals established under subsection (1) of this section.

WAC 392-172A-07020 State performance plans and data collection. (1) The OSPI has established a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the act, and describes how the state will improve such implementation. The plan is reviewed every six years, with any amendments provided to the department of education.

(2)(a) As part of the state performance plan, the OSPI has established measurable and rigorous targets for indicators established by the department of education under the priority areas of general supervision including child find, effective monitoring, use of resolution meetings, mediation, and a system of transition services.

(b) The OSPI must collect valid and reliable information from the districts, monitoring, and state data, as needed to report annually to the department of education on their indicators.

(c) Data collected on specific indicators through state monitoring or sampling are collected on those indicators for each school district at least once during the six year period of the state performance plans.

(3) Nothing in Part B of the act shall be construed to authorize the development of a statewide or nationwide data base of personally identifiable information on individuals involved in studies or other collections of data under Part B of the act.

WAC 392-172A-07025 State use of targets and reporting. (1) The OSPI uses the targets established in the state's performance plan and the priority areas to analyze the performance of each school district.

(2)(a) The OSPI reports annually to the public on the performance of each school district located in the targets in the state's performance plan; and makes the state's performance plan available through public means, including posting on the web site of the OSPI, distribution to the media, and distribution through public agencies, subject to subsection (4) of this section.

(b) If the OSPI collects performance data through monitoring or sampling, the OSPI includes the most recently available performance data on each school district and the date the data were obtained.

(3) The OSPI must report annually to the department of education on the performance of the state under its performance plan.

(4) The OSPI does not report any information to the public or to the department of education on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

WAC 392-172A-07030 State enforcement. If the OSPI determines that a school district is not meeting the requirements of Part B of the act, including the targets in the state's performance plan, OSPI must prohibit the school district from reducing the school district's maintenance of effort under WAC 392-172A-06015 for any fiscal year, in addition to any other authority it has to monitor and enforce the requirements of Part B of the act.

CHILD COUNT, DISPROPORTIONALITY, SUSPENSION AND EXPULSION

WAC 392-172A-07035 Child count. The OSPI reports to the secretary of the department of education no later than February 1 of each year the number of special education students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' reports to OSPI which are due by December 1 of each year.

(1) Information required in the report includes:

(a) The number of special education students receiving special education and related services on December 1 of that school year;

(b) The number of special education students aged three through five who are receiving free, appropriate public education;

(c) The number of those special education students aged six through seventeen and eighteen through twenty-one within each disability category, as defined in the definition of "special education students"; and

(d) The number of those special education students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count: December 1.

(3) A student may not be reported under more than one disability category.

(4) If a special education student has more than one disability, the student is reported as follows:

(a) A student with deaf-blindness and not reported as having a developmental delay must be reported under the category "deaf-blindness."

(b) A student who has more than one disability (other than deaf-blindness or developmental delay) must be reported under the category "multiple disabilities."

(5) The office of the superintendent of public instruction shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question. School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.

(6) The OSPI will include in its report special education students who are enrolled in a school or program that is operated or supported by a public agency, and that:

(a) Provides them with both special education and related services; or

(b) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(7) The superintendent may not include special education students in its reports who:

(a) Are not enrolled in a school or program operated or supported by a public agency;

(b) Are not provided special education that meets state standards;

(c) Are not provided with a related service that they need to assist them in benefiting from special education;

(d) Are counted by the state's lead agency for Part C services; or

(e) Are receiving special education funded solely by the federal government including students served by the U.S. Departments of the Interior or Education.

SUSPENSION AND EXPULSION AND DISPROPORTIONALITY

WAC 392-172A-07040 Disproportionality.

(1) The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity is occurring in the state with respect to:

(a) The identification of students eligible for special education, including the identification of students in accordance with a particular impairment described in this chapter;

(b) The placement in particular educational settings

of these students; and

(c) The incidence duration and type of disciplinary actions including suspension and expulsions.

(2) Disproportionality is determined by a ratio of the risk that a student from a particular racial or ethnic group is identified as eligible for special education, placed in a particular eligibility category, placed in a particular setting, or is subject to discipline, compared to the risk factor for all other students in that district.

(3) Significant disproportionality means:

(a) The overall percentage of students eligible for special education in the district is greater than the statewide average plus one percent;

(b) The weighted risk ratio for a school district as calculated by the state is greater than 3.0 in one or more racial or ethnic groups by disability category or discipline when compared to all students within the school district, and placement when compared to all eligible students within the school district; and

(c) Placement of one or more racial or ethnic groups on the least restrictive environment tables published by the OSPI annually is greater than the statewide average plus one percent, to the extent the representation is the result of inappropriate identification.

(4)(a) In the case of a determination of significant disproportionality with respect to the identification of students eligible for special education, the placement in particular educational settings of these students, or discipline, the OSPI shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the act;

(b) Require any school district identified under subsection (1) of this section to reserve the maximum amount of funds under WAC 392-172A-06085 to provide comprehensive coordinated early intervening services to serve students in the school district, particularly, but not exclusively, students in those groups that were significantly over identified; and

(c) Require the school district to publicly report on the revision of policies, practices, and procedures described under (b) of this subsection.

WAC 392-172A-07045 Suspension and expulsion rates for students eligible for special education.

(1) Annually, school districts shall report to the state on the rates of long-term suspensions and expulsions of students eligible for special education and nondisabled students for the preceding school year. The state shall examine this data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring:

(a) Among school districts or other public

agencies; or

(b) Between nondisabled students and students eligible for special education within school districts or other public agencies.

(2) If discrepancies are occurring, the state shall review and if appropriate, require revisions in state, school district or other public agency policies, procedures, and practices to ensure compliance with the act.

(3) Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:

(a) The development and implementation of individualized education programs;

(b) The use of positive behavioral interventions and supports; and

(c) Procedural safeguards.

WAC 392-172A-07050 State use of funds. OSPI reserves funds for state-level activities, including state administration and other state-level activities, in accordance with the provisions of 34 CFR Sec. 300.704. OSPI makes distributions of unreserved or unused grant funds, that it receives pursuant to section 611 of the act, to school districts allocated through subgrants in accordance with the provisions of 34 CFR Sec. 300.705.

WAC 392-172A-07055 State safety net fund for high need students. (1) The state has established a special education safety net fund for students eligible for special education. The rules for applying for reimbursement for the fund are contained in WAC 392-14-600 through 392-14-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse high need, low incidence, catastrophic, or extraordinary aid for applicants with eligible high need special education students whose cost is greater than three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education under the state Medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be

used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education.

STATE ADVISORY COUNCIL

WAC 392-172A-07060 State advisory council.

(1) The special education state advisory council is established in order to help facilitate the provision of special education and related services to meet the unique needs of special education students.

(2) The membership of the council is appointed by the superintendent of the office of public instruction and shall include at least one representative of each of the following groups or entities:

(a) Parents of children, aged birth to twenty-six, with disabilities;

(b) Individuals with disabilities;

(c) Teachers;

(d) Institutions of higher education that prepare special education and related services personnel;

(e) Superintendents and principals, including officials who carry out activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act;

(f) Local administrators of special education programs;

(g) State agencies involved in the financing or delivery of related services to special education students;

(h) Private schools;

(i) Not less than one vocational, community, or business organization concerned with the provision of transition services to students eligible for special education;

(j) State agency employee responsible for services

to children in foster care;

(k) State juvenile and adult corrections agencies;

(l) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

A majority of the members of the advisory council shall be individuals with disabilities or parents of special education students.

(3) The council's purposes are to:

(a) Advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of special education students;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of special education students;

(c) Advise the state in developing evaluations and reporting such information as may assist the state in its data requirements under section 618 of the act;

(d) Advise the state in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Education Act; and

(e) Advise the state in developing and implementing policies relating to the coordination of services for special education students.

(4) The council shall follow the procedures in this subsection.

(a) The advisory council shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory council shall submit an annual report of council activities and suggestions to the superintendent of public instruction. This report must be made available to the public in a manner consistent with other public reporting requirements of this chapter.

(c) Official minutes will be kept on all council meetings and shall be made available to the public on request to the OSPI.

WAC 392-172A-07065 Records related to grant funds. (1) The superintendent of public instruction and districts shall keep records that show:

(a) The amount of funds under the grant;

(b) How the funds were used;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(2) Records shall be maintained to show program compliance, including records related to the location, evaluation and placement of special education students and the development and implementation of individualized education programs. Program and fiscal

information records shall be available to authorized representatives of the OSPI for the purpose of compliance monitoring.

(3) Records shall be retained for six years after completion of the activities for which grant funds were used.

WAC 392-172A-07070 Public participation.

The state provides opportunities for public hearings, including adequate notice of the hearings and opportunity for written and oral comment prior to the adoption of any policies and procedures needed to comply with Part B of the act, or the submission of a state plan.

Washington Administrative Code (WAC) Authority Table
Chapter 392-172A WAC

This chart is an excerpt from a publication of Special Education, Office of Superintendent of Public Instruction (OSPI). The regulations and chart are available in alternate format upon request from OSPI. Contact Special Education at (360) 725-6075, TTY (360) 586-0126, or speced@k12.wa.us

WAC 172A	WAC 172	IDEA
392-172A-01000 Authority	392-172-010	None
392-172A-01005 Purposes	392-172-030	300.2 (b)
392-172A-01010 Applicability	392-172-020	300.2
392-172A-01020 Act	None	300.4
392-172-01025 Assistive Technology device	392-172-070	300.5
392-172A-01030 Assistive Technology service	392-172-073	300.6
392-172A-01035 Child with a disability or student eligible for special education	392-172-035(2) and (3), and 392-172-114 ad 148	300.8
392-172A-01040 Consent	392-172-040	300.9
392-172A-01045 Core Academic subjects	None	300.10
392-172A-01050 Day, Business day, school day	392-172-040(4)	300.11
392-172A-01055 Education service district	None	300.12
392-172A-01060 Elementary or secondary school	None	300.13
392-172A-01065 Equipment	None	300.14
392-172A-01070 evaluation	392-172-040(1)	300.15
392-172A-01075 Excess costs	None	300.16
392-172A-01080 FAPE	392-172-035 (1)	300.17
392-172A-01085 Highly Qualified special education teachers	None	300.18
392-172A-01090 Homeless children	None	300.19
392-172A-01095 Include	None	300.20
392-172A-01100 IEP	None	300.22
392-172A-01105 IEP team	None	300.23
392-172A-01110 Limited English Proficient	None	300.27
392-172A-01115 Local Education Agency or school district	None	300.28
392-172A-01120 Native Language	392-172-040 (5)	300.29
392-172A-01125 Parent	392-172-035(5)	300.30
392-172A-01130 Parent training and information center	None	300.31
392-172A-01135 Part-time enrollment	None	None
392-172A-01140 Personally Identifiable	392-172-402 (3)	300.32
392-172A-01145 Private School	None	None
392-172A-01150 Public Agency	392-172-035 (6)	300.33
392-172A-01155 Related Services	392-172-055	300.34
392-172A-01160 Residency or resident student	None	None
392-172A-01165 Scientifically based research	None	300.35
392-172A-01170 Services plan	None	300.37
392-172A-01175 Special Education	392-172-045(1)	300.39
392-172A-01180 State educational agency	None	300.41
392-172A-01185 Supplementary Aids and services	392-172-065	300.42
392-172A-01190 Transition Services	392-172-045 (j)	300.43
392-172A-01195 Universal design	None	300.44
392-172A-01200 Ward of the State	None	300.45
392-172A-02000 Student's rights to a FAPE	392-172-030 and 176	300.101
392-172A-02005 Exceptions to a student's right to FAPE	392-172-030 (2)	300.102
392-172A-02010 Methods of payment for a FAPE	392-172-226	300.103

Washington Administrative Code (WAC) Authority Table
Chapter 392-172A WAC

WAC 172A	WAC 172	IDEA
392-172A-02015 Availability of Assistive Technology	392-172-075	300.105
392-172A-02020 Extended school year services	392-172-163	300.106
392-172A-02025 Nonacademic services	392-172-172 (3)	300.107
392-172A-02030 Physical Education	392-172-162	300.108
392-172A-02035 Program options	392-172-172 (3) last half of section	300.110
392-172A-02040 Child Find	392-172-100	300.111
392-172A-02045 Routine checking of hearing aids and external components of surgically implanted medical devices	392-172-080	300.113
392-172A-02050 LRE	392-172-172 (1) and (2)	300.114
392-172A-02055 Continuum of alternative placements	392-172-174	300.115
392-172A-02060 Placements	392-172-180	300.116
392-172A-02065 Nonacademic settings	392-172-172 (3)	300.117
392-172A-02070 Students in public or private institutions	392-172-522	300.118
392-172A-02075 Prohibition on mandatory medication	None	300.174
392-172A-02080 Transition of children from the Part C program to preschool programs	392-172-176	300.124
392-172A-02085 Homeless children	None	300.149 (a) (3)
392-172A-02090 Personnel qualifications	392-172-200 and 202	300.156
392-172A-02095 Transportation	392-172-204	None
392-172A-02100 Home/Hospital Instruction	392-172-218	None
392-172A-03000 Parental Consent for initial evaluation, initial services and reevaluation	392-172-304	300.300
392-172A-03005 Referral and timelines for evaluations	392-172-102, 104, and 106	300.301
392-172A-03010 Screening for instructional purposes is not an evaluation	None	300.302
392-172A-03015 Reevaluation timelines	392-172-182	300.303
392-172A-03020 Evaluation Procedures	392-172-108	300.304
392-172A-03025 Review of existing data for evaluation and reevaluation	393-172-10900	300.305
392-172A-03030 Evaluation before change in eligibility	392-172-10900 and 186 (5) and (6)	300.305
392-172-03035 Evaluation Report	392-172-10905 (3) (a) – (5) (c)	300.305
392-172A-03040 Determination of eligibility	392-172-10905 (1) and (2), and 111	300.306
392-172A-03045 District procedures for specific learning disabilities	392-172-128 (2) introduction	300.307
392-172A-03050 Evaluation Group	392-172-108 (2)(b)	300.308
392-172A-03055 Specific Learning Disability determination	392-172-128	300.309
392-172A-03060 Process based on a student's response to scientific research-based instruction	None	300.309 (a)(2)(i) and 311 (a)(7)
392-172A-03065 Use of discrepancy tables for determining severe discrepancy	392-172-130	300.307(b) – State criteria

**Washington Administrative Code (WAC) Authority Table
Chapter 392-172A WAC**

WAC 172A	WAC 172	IDEA
392-172A-03070 Method for documenting severe discrepancy	392-172-132 (2)(a)	300.307
392-172A-03075 Observation of students suspected of having a specific learning disability	None	300.310
392-172A-03080 Specific documentation for the eligibility determination of students suspected of having specific learning disabilities	392-172-10905 (4)	300.311
392-172A-03090 Definition of individualized education program	392-172-160	300.320
392-172A-03095 IEP Team membership	392-172-153, and 166 (1) – (3)	300.321
392-172A-03100 Parent participation	392-172-15700 (1) – (5)	300.322 and 328
392-172A-03105 When IEP's must be in effect	392-172-156 and 158	300.323
392-172A-03110 Development, review, and revision of IEP	392-172-156 (second half), 15700, 1599, and 160	300.324
392-172A-03115 Educational placements	392-172-15705 (5)	300.327
392-172A-03120 Aversive interventions definition/purpose	392-172-390	None
392-172A-03125 Aversive Interventions prohibitions	392-172-392	None
392-172A-03130 Aversive interventions-Conditions	392-172-394	None
392-172A-03135 Aversive interventions-Individualized education program requirements	392-172-396	None
392-172A-04000 Definition of parentally placed private school students	392-172-232	300.130
392-172A-04005 Child find for parentally placed private school students eligible for special education	None	300.131
392-172A-04010 Provision of services for parentally placed private school students eligible for special education	392-172-23300 and 23605 (4)	300.132
392-172A-04015 Expenditures	392-172-23305	300.133
392-172A-04020 Consultation	392-172-23600	300.134
392-172A-04025 Written Affirmation	None	300.135
392-172A-04030 Compliance with procedures for consultation	392-172-239	300.136
392-172A-04035 Determination of equitable services	392-172-23600	300.137
392-172A-04040 Equitable services provided	392-172-23605	300.138
392-172A-04045 Location of services and transportation	392-172-23610	300.139
392-172A-04050 Due process and state complaints regarding parentally placed students in private school	392-172-239	300.140
392-172A-04055 Requirement that funds not benefit a private school	392-172-246	300.141
392-172A-04060 Use of personnel	392-172-240	300.142
392-172A-04065 Prohibition on the use of separate classes	392-172-244	300.143
392-172A-04070 Property, equipment and supplies	392-172-242	300.144
392-172A-04075 Other service arrangements for students, including students placed in sectarian schools	392-172-241	300.139
392-172A-04080 Applicability and authorization	392-172-219 and 220	300.145

**Washington Administrative Code (WAC) Authority Table
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392-172A-04085 Responsibility of the school district	392-172-220	300.146
392-172A-04090 Approval of nonpublic agencies	392-172-222 and 224	300.146
392-172A-04095. Application requirements process for nonpublic agencies	None	300.146
392-172A-04100 Notification on nonpublic agency program changes	None	300.146
392-172A-04105 Suspension revocation or refusal to renew approval	None	300.146
392-172A-04110 State responsibility for nonpublic agency placements	392-172-520	300.147
392-172A-04115 Placement of students when FAPE is at issue	WAC 392-172-230 and 231	300.148
392-172A-05000 Opportunity to examine records – Parent participation in meetings	392-172-105, 15705, and 406	300.501
392-172A-05005 Independent educational evaluation	392-172-150	300.502
392-172A-05010 Prior notice and contents	392-172-302 and 306	300.503
392-172A-05015 Procedural safeguards notice	392-172-306 (2) and (3) and 307	300.504
392-172A-05020 Electronic mail	None	300.505
392-172A-05025 Procedures for filing a complaint	WAC 392-172-324 and 329	300.151
392-172A-05030 Investigation of the complaint and decision	392-172-332 and 338	300.152
392-172A-05035 Citizen complaints and due process hearings	392-172-348	300.153
392-172A-05040 Complaints against OSPI	392-172-344	300.153
392-172A-05045 Informing citizens about complaint procedures	392-172-328	300.153
392-172A-05060 Mediation purpose-availability	392-172-310 and 312	300.506
392-172A-05065 Qualifications and selection of mediators	392-172-313	300.506
392-172A-05070 Resolution of a dispute through mediation	392-172-316	300.506
392-172A-05075 Meeting to encourage mediation	392-172-317	300.506
392-172A-05080 Right to a due process hearing	392-172-350 (1) and 352 (1)	300.507
392-172A-05085 Due Process hearing request filing and response	392-172-350 and 351	300.508
392-172A-05090 Resolution process	None	300.506
392-172A-05095 Administrative law judges	392-172-352	300.511
392-172A-05100 Hearing rights	392-172-354	300.512
392-172A-05105 Hearing decisions	392-172-360 (3)	300.513
392-172A-05110 Timelines and convenience of hearings	392-172-356	300.515
392-172A-05115 Civil Action	392-172-360	300.516
392-172A-05120 Attorney's fees	392-172-362	300.517
392-172A-05125 Student's status during proceedings	392-172-364	300.518
392-172A-05130 Surrogate parents	392-172-308	300.519
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Washington Administrative Code (WAC) Authority Table
Chapter 392-172A WAC

WAC 172A	WAC 172	IDEA
392-172A-05140 Purpose (Discipline)	392-172-370	300.530
392-172A-05145 Authority of school personnel	None	300.530
392-172A-05150 Determination of settings	392-172-381	300.531
392-172A-05155 Change of placement because of disciplinary removals	392-172-373	300.536
392-172A-05160 Appeal of placement decision and manifestation determination	392-172-38415	300.532
392-172A-05165 Placement during an appeal through a hearing process		300.533
392-172A-05170 Protections for students not yet determined eligible for special education and related services	392-172-38410	300.534
392-172A-05175 Referral and action by law enforcement and judicial authorities	392-172-385	300.535
392-172A-05180 Definitions-Destruction of records, educational records, participating agency	392-172-402	300.611
392-172A-05185 Notice to parents	392-172-404	300.612
392-172A-05190 Access Rights	392-172-408	300.613
392-172A-05195 Record of access	392-172-410	300.614
392-172A-05200 Records on more than one student	392-172-412	300.615
392-172A-05205 List of records	392-172-414	300.616
392-172A-05210 Fees	392-172-416	300.617
392-172A-05215 Amendment of records and hearing rights	392-172-418	300.618
392-172A-05220 Hearing on a request to amend records	392-172-420	300.621
392-172A-05225 Consent for release of records	392-172-422	300.622
392-172A-05230 Safeguards	392-172-424	300.623
392-172A-05235 Destruction of educational records	392-172-426	300.624
392-172A-05240 Student rights to educational records	392-172-424(1)	300.625
392-172A-05245 District procedures for confidential information	None	300.626
392-172A-06000 Condition of assistance	392-172-580	300.200
392-172A-06005 Consistency with state policies	392-172-583	300.201
392-172A-06010 School district use of funds	392-172-600	300.202
392-172A-06015 Maintenance of effort	392-172-610	300.202
392-172A-06020 Exception to maintenance of effort	392-172-615	300.204
392-172A-06025 Adjustment to local fiscal efforts in certain fiscal years	392-172-620	300.205
392-172A-06030 School-wide programs for Title 1 and ESEA	392-172-625	300.206
392-172A-06035 Permissive use of funds	392-172-630	300.208
392-172A-06040 Purchase of instructional materials	None	300.210
392-172A-06045 School district information for OSPI	392-172-580 subsection introduction	300.211
392-172A-06050 Public Information	392-172-588	300.212
392-172A-06055 Records regarding migratory students eligible for special education	None	300.213
392-172A-06060 Exception to prior policies and procedures	392-172-583	300.220
392-172A-06065 Notification of LEA in case of ineligibility	392-172-590 (1) and (2)	300.221
392-172A-06070 School district compliance	392-172-590	300.222
392-172A-06075 Collaborative requests	None	300.223

Washington Administrative Code (WAC) Authority Table
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WAC 172A	WAC 172	IDEA
392-172A-06080 Requirements for establishing eligibility	None	300.224
392-172A-06085 Early Intervening services	None	300.226
392-172A-06090 Direct Services by OSPI	None	300.227
392-172A-06095 State agency eligibility	None	300.228
392-172A-07000 Methods of ensuring services	392-172-502	300.154
392-172A-07005 Students eligible for special education who are covered by public benefits or private insurance	392-172-50300 and 50305	200.154
392-172A-07010 Monitoring and Enforcement	392-172-504	300.600
392-172A-07015 Performance goals and indicators	392-172-57700	300.157 and 601
392-172A-07020 State performance plans and data collection	None	300.601
392-172A-07025 State use of targets and reporting	None	300.602
392-172A-07030 State enforcement	None	300.537
392-172A-07035 Child count	392-172-510	300.645
392-172A-07040 Disproportionality	392-172-511	300.646
392-172A-07045 Suspension and expulsion rates for students eligible for special education	392-172-57900	300.170 and 646
392-172A-07050 State use of funds	392-172-506	300.704
392-172A-07055 State safety net funds for high need students	None	300.704
392-172A-07060 State advisory council	392-172-500	300.167
392-172-07065 Records related to grant funds	392-172-595	None (GEPA requirement)
392-172A-07070 Public participation	392-172-588	300.165

Washington Administrative Code Chapter 392-400

Last Update July 17, 2014

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APPEALS

- 392-400-310 Appeals—Long-term suspension and expulsion.
- 392-400-315 Appeals—Hearing before school board or disciplinary appeal council—Procedures.
- 392-400-317 Appeals—Discipline and short-term suspension grievances.
- 392-400-320 School board or disciplinary appeal council decisions.
- 392-400-325 Statewide definition of excused and unexcused daily absences.
- 392-400-410 Appeal for extension of a one-year expulsion.
- 392-400-420 Reengagement meetings and plans.

392-400-200

Purpose and application.

The purpose of this chapter is to implement RCW 28A.600.015 by prescribing the substantive and procedural due process rights of students served by any program or activity conducted by, or on behalf of, a common school district: Provided that the enforcement of rules adopted by the Washington interscholastic activity association and like organizations that govern the participation of students in interschool activities, and appeals in connection therewith, shall be governed by rules of the organization that have been adopted pursuant to RCW 28A.600.200. The procedures and standards set forth in this chapter, and those adopted by a school district in conformance with this chapter, shall govern the imposition of corrective action (i.e., discipline, suspension, and expulsion) upon any student by a school district and its agents.

The provisions of this chapter are intended to establish the minimum procedural and substantive due process rights of students. School districts are free to establish additional due process requirements and limitations and shall do so as necessary to accommodate the constitutional rights of students as now or hereafter established.

For rules regarding student conduct which supplement this chapter see chapter 392-145 WAC governing the operation of school buses, particularly WAC 392-145-015(4) regarding the responsibility of bus drivers and certificated staff members who accompany students for the behavior of students, and WAC 392-145-035 regarding the duty to adopt and post rules, including rules of conduct, governing school bus passengers.

[Statutory Authority: RCW 28A.600.015, WSR 14-15-153, § 392-400-200, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160, WSR 07-04-048, § 392-400-200, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263, WSR 06-14-009, recodified as § 392-400-200, filed 6/22/06, effective 6/22/06. Statutory Authority: 1990 c 33, WSR 90-17-009, § 180-40-200, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.04.132, WSR 82-20-052 (Order 4-82), § 180-40-200, filed 10/1/82; Order 6-77, § 180-40-200, filed 6/2/77, effective 8/1/77.]

392-400-205 Definitions.

As used in this chapter the term:

(1) "Discipline" shall mean all forms of corrective action other than emergency removal from a class, subject, or activity, suspension, or expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided that the student is in the custody of a school district employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or on behalf of a school district.

(2) "Suspension" shall mean a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) for any single subject or class, or for any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district.

(3) "Short-term suspension" shall mean a suspension for any portion of a calendar day up to and not exceeding ten consecutive school days.

(4) "Long-term suspension" shall mean a suspension that:

- (a) Exceeds ten school days;
- (b) Cannot be imposed in such a manner that causes the student to lose academic grades or credit in excess of one semester or trimester during the same school year; and
- (c) Cannot be imposed beyond the school year in which the alleged misbehavior occurs.

(5) "Emergency expulsion" shall mean an emergency removal from school for up to, and not exceeding, ten consecutive school days from the student's current school placement by a school district superintendent or a designee of the superintendent. The superintendent or designee must have good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to other students or school staff or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion must end or be converted to another form of corrective action within ten school days from the date of the emergency removal from school.

(6) "Expulsion" shall mean a denial of attendance for a period of time up to, but not longer than, one calendar year from the time a student is removed from his or her current school placement by a school district superintendent or a designee of the superintendent. An expulsion also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district.

(7) "School business day" shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays, upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or

terminated upon the closure of said office for the calendar day.

(8) "School day" shall mean a calendar day except school holidays on which students enrolled in the school district are afforded the opportunity to be engaged in educational activity which is planned, supervised, and conducted by or under the supervision of the school district certificated staff, and on which day all or any portion of the students enrolled in the program actually participate in such educational activity.

(9) "Reengagement meeting" shall mean a meeting held between the school district and the student and parent and/or guardian to discuss how to return a long-term suspended or expelled student to an education setting as soon as possible.

(10) "Reengagement plan" shall mean a written plan developed between a school district and a student and his/her parent or guardian designed to aid the student in taking the necessary steps to remedy the situation that led to the student's suspension or expulsion and return the student to the educational setting as soon as possible.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-205, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-205, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-205, filed 7/22/96, effective 8/22/96. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-205, filed 10/16/79; Order 6-77, § 180-40-205, filed 6/2/77, effective 8/1/77.]

392-400-210 Student responsibilities and duties.

The mission of the common school system is to provide learning experience which will assist all students to develop skills, competencies, and attitudes that are fundamental to an individual's achievement as a responsible, contributing citizen. In order to maintain and advance this mission, it shall be the responsibility and duty of each student to pursue his/her course of studies, comply with written rules of a common school district which are adopted pursuant to and in compliance with WAC 392-400-225 and RCW 28A.600.010, and submit to reasonable corrective action imposed by a school district and its agents for violation(s) of such rules. The provisions of this chapter do not lessen the foregoing responsibilities and duties of each student. This chapter is intended to assure that corrective action is imposed for just cause and in a fair and just manner.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-210, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-210, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-210, filed 6/22/06, effective 6/22/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-210, filed 8/6/90, effective 9/6/90; Order 6-77, § 180-40-210, filed 6/2/77, effective 8/1/77.]

392-400-215 **Student rights.**

In addition to other rights established by law, each student served by or on behalf of a common school district shall possess the following substantive rights, and no school district shall limit these rights except for good and sufficient cause:

(1) No student shall be unlawfully denied an equal educational opportunity or be unlawfully discriminated against because of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal.

(2) All students possess the constitutional right to freedom of speech and press, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion and to have their schools free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(3) All students possess the constitutional right to be secure in their persons, papers, and effects against unreasonable searches and seizures.

(4) All students shall have the right to be free from unlawful interference in their pursuit of an education while in the custody of a common school district.

(5) No student shall be deprived of the right to an equal educational opportunity, in whole or in part, by a school district without due process of law.

The foregoing enumeration of rights shall not be construed to deny or disparage other rights set forth in the constitution and the laws of the state of Washington or the rights retained by the people.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-215, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-215, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.04.132. WSR 85-04-009 (Order 3-85), § 180-40-215, filed 1/25/85; Order 6-77, § 180-40-215, filed 6/2/77, effective 8/1/77.]

392-400-220 **Student disciplinary boards—Establishment at option of school district—Functions.**

The board of directors of any school district may authorize the establishment of one or more student disciplinary boards composed of students, teachers, administrators, or parents, or any combination thereof. Disciplinary boards may be authorized to prescribe reasonable discipline and may recommend, but not prescribe, suspension or expulsion to the appropriate school authority. Such school authority shall be granted the power to set aside or modify any such prescription or recommendation. In addition, disciplinary boards may be authorized to periodically review rules of the school district defining the types of misconduct for which

corrective action may be imposed and to recommend amendments to the board of directors.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-220, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-220, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-220, filed 6/2/77, effective 8/1/77.]

392-400-225 **School district rules defining misconduct—Distribution of rules.**

(1) It shall be the responsibility and duty of each school district to adopt, publish, and make available to all students and parents written rules which state with reasonable clarity the types of misconduct for which discipline, suspension, and expulsion may be imposed. In addition, written procedures for administering corrective action shall be developed and reviewed periodically as follows:

(a) Each school district shall provide for the development with parent and community participation of written procedures for administering corrective action at each school as required by RCW 28A.600.020(3).

(b) In a manner consistent with the district procedures developed pursuant to (a) above, the principal and certificated employees in each school building shall confer at least annually for the purpose of developing, or reviewing, or both, building discipline standards and the uniform enforcement of those standards, as required by RCW 28A.400.110.

(2) Rules that establish types of misconduct pursuant to this section must have a real and substantial relationship to the lawful maintenance and operation of the school district including, but not limited to, the preservation of the health and safety of students and employees and the preservation of an educational process which is conducive to learning.

(3) The rules set forth in this chapter, the rules of a school district that establish types of misconduct pursuant to subsection (1) above, and the written procedures of a district for administering corrective action adopted pursuant to subsection (1)(a) above, shall be published and made available to all students and parents on an annual basis. If a school district chooses not to distribute such rules to all students and parents, then notice which describes the contents of such rules and specifies the person(s) to contact for a copy thereof shall be provided to students and parents on an annual basis in a manner reasonably calculated to come to their attention.

[Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-225, filed 6/22/06, effective 6/22/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-225, filed 8/6/90, effective 9/6/90. Statutory Authority: 1980 c 171. WSR 80-10-030 (Order 11-80), § 180-40-225, filed 8/4/80; Order 6-77, § 180-40-225, filed 6/2/77, effective 8/1/77.]

392-400-226 **School district rules defining harassment, intimidation**

**and bullying prevention policies and procedures—
Distribution of rules.**

A district's harassment, intimidation and bullying policy and procedure shall be published and made available to all parents or guardians, students, employees, and volunteers on an annual basis. The district will publish, at a minimum, the following materials: Policy and procedure, an incident reporting form and current contact information for the district's harassment, intimidation and bullying compliance officer. If a school district chooses not to distribute such rules to all parents or guardians, students, employees, and volunteers, then notice which describes the contents of such rules and specifies the person(s) to contact for a copy shall be provided to students and parents on an annual basis in a manner reasonably calculated to come to their attention. [Statutory Authority: RCW 28A.300.285. WSR 11-04-076, § 392-400-226, filed 1/31/11, effective 3/3/11.]

392-400-227

School district rules defining students religious rights.

It shall be the responsibility and duty of each school district to adopt policies of the district for implementation of students' rights to freedom of religion and to have their schools free from sectarian control or influence while they are participating in any school district conducted or sponsored activity or while they are otherwise subject to school district supervision and control. Such rules shall be adopted and transmitted to the superintendent of public instruction. [Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-227, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-227, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.04.132. WSR 85-09-049 (Order 6-85), § 180-40-227, filed 4/16/85; WSR 85-04-009 (Order 3-85), § 180-40-227, filed 1/25/85.]

392-400-230

Persons authorized to impose discipline, suspension, expulsion, or emergency removal upon students.

(1) Each certificated teacher, each school administrator, each school bus driver, and any other school employee designated by the board of directors of a school district shall possess the authority to impose discipline upon a student for misconduct which violates rules of the school district established pursuant to WAC 392-400-225 and to impose an emergency removal from a class, subject, or activity upon a student pursuant to WAC 392-400-290.

(2) The board of directors of any school district may delegate to the superintendent and/or his or her designee(s) the authority to impose suspensions and expulsions upon students for misconduct which violates rules of the school district established pursuant to WAC 392-400-225. Each

certificated teacher and each administrator shall possess the authority to recommend suspensions and expulsions for such misconduct.

(3) Any board of directors which chooses not to delegate the authority to impose suspensions and/or expulsions, nevertheless, shall be subject to the requirements set forth in this chapter when it imposes a suspension or expulsion.

(4) Notwithstanding any provision of this section to the contrary, each teacher is empowered to exclude any student who creates a disruption of the educational process in violation of the building disciplinary standards while under the teacher's immediate supervision from his or her individual classroom and instructional or activity area for all or any portion of the balance of the school day or until the principal or designee and teacher have conferred, whichever occurs first: Provided, That except in emergency circumstances as provided for in WAC 392-400-290, the teacher shall have first attempted one or more alternative forms of corrective action: Provided further, That in no event without the consent of the teacher shall an excluded student be returned during the balance of the particular class or activity period from which the student was initially excluded.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-230, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-230, filed 6/22/06, effective 6/22/06. Statutory Authority: 1980 c 171. WSR 80-10-030 (Order 11-80), § 180-40-230, filed 8/4/80; Order 6-77, § 180-40-230, filed 6/2/77, effective 8/1/77.]

392-400-233

Unexcused absences and tardiness.

(1) Students with one or more unexcused absences and subject to compulsory attendance pursuant to chapter 28A.225 RCW may be subject to corrective action reasonably calculated to modify the student's conduct. If a school district imposes corrective action on a student for one or more unexcused absences, the school district must:

(a) Provide notice to the student's parent(s) or guardian(s) in writing in English or, if different, the primary language of the parent(s) or guardian(s), that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Schedule a conference or conferences with the parent(s) or guardian(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, and to determine, by appropriate means, whether the student should be made a focus of concern for placement in special programs designed for his or her educational success; and

(c) Take steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and where possible, discussed with the student, parent(s) or guardian(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(2) A student's academic grade or credit in a particular subject or course may be adversely affected by reason of tardiness or absences only to the extent and upon the basis that:

(a) The student's attendance or participation is related to the instructional objectives or goals of the particular subject or course;

(b) The student's attendance or participation has been identified by the teacher pursuant to policy of the school district as a basis for grading, in whole or in part, in the particular subject or course; and

(c) The circumstances pertaining to the student's inability to attend school have been taken into consideration, including whether the tardiness or absences are directly related to the student's disability under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, or the Individuals with Disabilities Education Act. [Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-233, filed 7/23/14, effective 8/23/14.]

392-400-235

Discipline—Conditions and limitations.

Discipline may be imposed upon any student for violation of the rules of the school district that have been established pursuant to this section, subject to the following limitations and conditions and the grievance procedure set forth in WAC 392-400-240:

(1) No form of discipline shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirements.

(2) Corporal punishment which is defined as any act which willfully inflicts or willfully causes the infliction of physical pain on a student is prohibited.

Corporal punishment does not include:

(a) The use of reasonable physical force by a school administrator, teacher, school employee or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students and school staff or property;

(b) Physical pain or discomfort resulting from or caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student; or

(c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips or vocational education projects.

(3) Nothing herein shall be construed as limiting or otherwise modifying provisions governing aversive interventions set forth in WAC 392-172A-03120 through 392-172A-03135.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-235, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-235, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-235, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.410.010. WSR 94-03-102 (Order 3-94), § 180-40-235, filed 1/19/94, effective 2/19/94. Statutory Authority: RCW

28A.305.160. WSR 93-01-077, § 180-40-235, filed 12/14/92, effective 1/14/93. Statutory Authority: RCW 28A.04.132. WSR 90-17-004, § 180-40-235, filed 8/2/90, effective 9/2/90; WSR 87-09-040 (Order 6-87), § 180-40-235, filed 4/14/87; Order 6-77, § 180-40-235, filed 6/2/77, effective 8/1/77.]

392-400-240

Discipline—Grievance procedure.

Any student, parent, or guardian who is aggrieved by the imposition of discipline shall have the right to an informal conference with the building principal or his or her designee for the purpose of resolving the grievance. The employee whose action is being grieved shall be notified of the initiation of a grievance as soon as reasonably possible. During such conference the student, parent, or guardian shall be subject to questioning by the building principal or his or her designee and shall be entitled to question school personnel involved in the matter being grieved. Subsequent to the building level grievance meeting, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the superintendent of the district or his/her designee. If the grievance is not resolved, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the board of directors during the board's next regular meeting or to the school district disciplinary appeal council if the board has delegated its responsibility to hear and decide such grievances to the council pursuant to WAC 392-400-317. The board or council shall notify the student, parent, or guardian of its response to the grievance within ten school business days after the date of the meeting. The discipline action shall continue notwithstanding the implementation of the grievance procedure set forth in this section unless the principal or his or her designee elects to postpone such action.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-240, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-240, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-240, filed 7/22/96, effective 8/22/96; Order 6-77, § 180-40-240, filed 6/2/77, effective 8/1/77.]

392-400-245

Short-term suspension—Conditions and limitations.

A short-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions, the prior informal conference procedures set forth in WAC 392-400-250, and the grievance procedures set forth in WAC 392-400-255:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a short-term

suspension and the length of the suspension imposed. This requirement does not preclude the boards of directors of school districts from establishing the nature and extent of the corrective actions which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating or exceptional circumstances, and (b) short-term suspension is not established as the corrective action for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) As a general rule, no student shall be suspended for a short term unless another form of corrective action reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to short-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers may grant exceptions in cases involving extenuating or exceptional circumstances, notwithstanding the fact prior alternative corrective action has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged, following consultation with an ad hoc citizens committee, to (a) be of such frequent occurrence, notwithstanding past attempts of district staff to control such misconduct through the use of other forms of corrective action, as to warrant an immediate resort to short-term suspension, or (b) be so serious in nature or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to short-term suspension. The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socioeconomic, minority and majority populations of the school district to the extent deemed practical.

(3) No student in grades kindergarten through grade four shall be subject to short-term suspensions for more than a total of ten school days during any single semester or trimester as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(4) No student in the grade five and above program shall be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester, as the case may be.

(5) Any student subject to a short-term suspension shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the short-term suspension if:

(a) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades; or

(b) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules

which provide for such an application for readmission and set forth the procedures to be followed.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-245, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-245, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-245, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 97-01-047, § 180-40-245, filed 12/12/96, effective 1/12/97. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-245, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.04.132. WSR 85-12-042 (Order 14-85), § 180-40-245, filed 6/5/85. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-245, filed 10/16/79; Order 13-77, § 180-40-245, filed 10/18/77; Order 6-77, § 180-40-245, filed 6/2/77, effective 8/1/77.]

392-400-250

Short-term suspension—Prior conference required—Notice to parent.

(1) Prior to the short-term suspension of any student a conference shall be conducted with the student as follows:

(a) An oral or written notice of the alleged misconduct and violation(s) of school district rules shall be provided to the student;

(b) An oral or written explanation of the evidence in support of the allegation(s) shall be provided to the student;

(c) An oral or written explanation of the corrective action which may be imposed shall be provided to the student; and

(d) The student shall be provided the opportunity to present his/her explanation.

(2) In the event a short-term suspension is to exceed one calendar day, the parent(s) or guardian(s) of the student shall be notified of the reason for the student's suspension and the duration of the suspension orally and/or by letter deposited in the United States mail as soon as reasonably possible. The notice shall also inform the parent or guardian of the right to an informal conference pursuant to WAC 392-400-255 and that the suspension may possibly be reduced as a result of such conference.

(3) All short-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-250, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-250, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-250, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-250, filed 6/2/77, effective 8/1/77.]

392-400-255

Short-term suspension—Grievance procedure.

Any student, parent, or guardian who is aggrieved by the imposition of a short-term suspension shall have the right to an informal conference with the building principal or his or her designee for the purpose of resolving the grievance. The employee whose action is being grieved shall be notified of the initiation of a grievance as soon as reasonably possible. During such conference the student, parent, or guardian shall be subject to questioning by the building principal or his or her designee and shall be entitled to question school personnel involved in the matter being grieved. Subsequent to the building level grievance meeting, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the superintendent of the district or his/her designee. If the grievance is not resolved, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the board of directors during the board's next regular meeting or to the school district disciplinary appeal council if the board has delegated its responsibility to hear and decide such grievances to the council pursuant to WAC 392-400-317. The board or council shall notify the student, parent, or guardian of its response to the grievance within ten school business days after the date of the meeting. The short-term suspension shall continue notwithstanding the implementation of the grievance procedure set forth in this section unless the principal or his or her designee elects to postpone such action.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-255, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-255, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-255, filed 7/22/96, effective 8/22/96; Order 6-77, § 180-40-255, filed 6/2/77, effective 8/1/77.]

392-400-260

Long-term suspension—Conditions and limitations.

A long-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions and the notice requirements set forth in WAC 392-400-265 and the hearing requirements set forth in WAC 392-400-270:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a long-term suspension and the length of the suspension imposed. This requirement does not preclude the boards of directors of school districts from establishing the nature and extent of the corrective actions which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating or exceptional circumstances, and (b) long-term suspension is not established as the corrective action for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) As a general rule, no student shall be suspended for a long term unless another form of corrective action reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating or exceptional circumstances, notwithstanding the fact prior alternative corrective action has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district staff to control such misconduct through the use of other forms of corrective action, as to warrant an immediate resort to long-term suspension, or (b) be so serious in nature or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension. The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socioeconomic, minority and majority populations of the school district to the extent deemed practical.

(3) No student in grades kindergarten through four shall be subject to long-term suspension during any single semester or trimester, as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(4) No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one semester or trimester, as the case may be, during the same school year.

(5) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(6) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-260, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-260, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-260, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 97-08-019, § 180-40-260, filed 3/25/97, effective 4/25/97. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 97-01-047, § 180-40-260, filed 12/12/96, effective 1/12/97. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-260, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.04.132. WSR 85-12-042 (Order 14-85), § 180-40-260, filed 6/5/85. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-260, filed 10/16/79; Order 6-77, § 180-40-260, filed 6/2/77, effective 8/1/77.]

392-400-265

Long-term suspension—Notice of hearing—Waiver of hearing.

(1) Prior to the long-term suspension of a student, written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and to his or her parent(s) or guardian(s). The notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, in accordance with Title VI of the Civil Rights Act of 1964;

(b) Specify the alleged misconduct and the school district rule(s) alleged to have been violated;

(c) Set forth the corrective action proposed;

(d) Set forth the right of the student and his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s); and

(e) Set forth the facts that:

(i) A written or oral request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing; and

(ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the proposed long-term suspension may be imposed by the school district without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted in writing and may also be accepted orally.

(3) If a request for a hearing is not received within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the proposed long-term suspension may be imposed.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-265, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-265, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-265, filed 6/2/77, effective 8/1/77.]

392-400-270

Long-term suspension—Prehearing and hearing process.

(1) If a request for a hearing is received pursuant to WAC 180-40-265 within the required three school business days, the school district shall schedule a hearing to commence within three school business days after the date upon which the request for a hearing was received.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing;

(b) Be represented by legal counsel;

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness.

(d) Present his or her explanation of the alleged misconduct; and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect, in advance of the hearing, any documentary and other physical evidence which the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the final decision regarding the imposition of corrective action shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) A written decision setting forth the findings of fact, conclusions, and the nature and duration of the long-term suspension or lesser form or corrective action to be imposed, if any, shall be provided to the student's legal counsel or, if none, to the student and his or her parent(s) or guardian(s). [Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-270, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-270, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 00-07-018, § 180-40-270, filed 3/3/00, effective 4/3/00; Order 6-77, § 180-40-270, filed 6/2/77, effective 8/1/77.]

392-400-275

Expulsion—Conditions and limitations.

A student may be expelled for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions, the notice requirements

set forth in WAC 392-400-280, and the hearing requirements set forth in WAC 392-400-285:

- (1) The nature and circumstances of the violation must reasonably warrant the harshness of expulsion.
- (2) No student shall be expelled unless other forms of corrective action reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action would fail if employed.
- (3) An expulsion may not be for an indefinite period of time. An expulsion may not exceed one calendar year from the date of the corrective action unless:
 - (a) The school petitions the district superintendent for an extension; and
 - (b) The district superintendent authorizes the extension in compliance with the superintendent of public instruction's rules adopted for this purpose.
- (4) The district shall make reasonable efforts to assist students in returning to an educational setting prior to, and no later than, the end date of the corrective action.
- (5) Once a student has been expelled in compliance with this chapter, the expulsion shall be brought to the attention of appropriate local and state authorities including, but not limited to, juvenile authorities acting pursuant to chapter 13.04 RCW in order that such authorities may address the student's educational needs.
- (6) Any student who has been expelled shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.
- (7) All expulsions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the expulsion.
 [Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-275, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-275, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-275, filed 6/22/06, effective 6/22/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-275, filed 8/6/90, effective 9/6/90. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-275, filed 10/16/79; Order 6-77, § 180-40-275, filed 6/2/77, effective 8/1/77.]

392-400-280
Expulsion—Notice of hearing—Waiver of hearing.

- (1) Prior to the expulsion of a student, an oral or written notice of an opportunity for a hearing shall be delivered in person, or by certified mail to the student and to his or her parent(s) or guardian(s). The notice shall:
 - (a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, in accordance with Title VI of the Civil Rights Act of 1964;
 - (b) Specify the alleged misconduct and the school district rule(s) or policy alleged to have been violated;
 - (c) Set forth the corrective action proposed;

- (d) Set forth the right of the student and his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s); and
- (e) Set forth the facts that:
 - (i) A written or oral request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing; and
 - (ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the proposed expulsion may be imposed by the school district without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice; and
- (2) The student or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing and may be accepted orally.

- (3) If a request for a hearing is not received within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the proposed expulsion may be imposed.
 [Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-280, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-280, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-280, filed 6/2/77, effective 8/1/77.]

392-400-285
Expulsion—Prehearing and hearing process.

- (1) If a request for a hearing is received pursuant to WAC 392-400-280 within the required three school business days, the school district shall schedule a hearing to commence within three school business days after the date upon which the request for a hearing was received.
- (2) The student and his or her parent(s) or guardian(s) shall have the right to:
 - (a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing;
 - (b) Be represented by legal counsel;
 - (c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:
 - (i) That the district made a reasonable effort to produce the witness and is unable to do so; or

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness.

(d) Present his or her explanation of the alleged misconduct; and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect, in advance of the hearing, any documentary and other physical evidence which the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the final decision regarding the imposition of corrective action shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) A written decision setting forth the findings of fact, conclusions, and the expulsion or lesser form of corrective action to be imposed, if any, shall be provided to the student's legal counsel or, if none, to the student and his or her parent(s) or guardian(s).

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-285, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-285, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-285, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 00-07-018, § 180-40-285, filed 3/3/00, effective 4/3/00; Order 6-77, § 180-40-285, filed 6/2/77, effective 8/1/77.]

392-400-290

Emergency removal from a class, subject, or activity.

(1) Notwithstanding any other provision of this chapter, a student may be removed immediately from a class, subject, or activity by a certificated teacher or an administrator and sent to the building principal or a designated school authority: Provided that the teacher or administrator has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school staff or an immediate and continuing threat of substantial disruption of the class, subject, activity, or educational process of the student's school. The removal from classes, subjects, or activities shall continue only until:

(a) The danger or threat ceases; or

(b) The principal or designated school authority acts to impose corrective action.

(2) The principal or school authority shall meet with the student as soon as reasonably possible following the student's removal and take or initiate appropriate corrective action. In no case shall the student's opportunity for such meeting be delayed beyond the commencement of the school day following the student's emergency removal from a class, subject, or activity. Prior to or at the time any such student is

returned to the class(es), subject(s), or activity(ies), the principal or school authority shall notify the teacher or administrator who removed the student therefrom of the action which has been taken or initiated.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-290, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-290, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-290, filed 6/2/77, effective 8/1/77.]

392-400-295

Emergency expulsion—Limitations.

Notwithstanding any other provision of this chapter, a student may be expelled immediately by a school district superintendent or a designee of the superintendent in emergency situations: Provided that the superintendent or designee has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to students, school staff, or poses an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion must end or be converted to another form of corrective action within ten school days from the date of the expulsion. A school district must provide notice and due process rights if it converts the emergency expulsion to another form of corrective action.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-295, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-295, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-295, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-295, filed 6/2/77, effective 8/1/77.]

392-400-300

Emergency expulsion—Notice of hearing—Waiver of hearing right.

(1) The student and his or her parent(s) or guardian(s) shall be notified of the emergency expulsion of the student and of their opportunity for a hearing either (a) by hand delivering written notice to the student's parent(s) or guardian(s) within twenty-four hours of the expulsion. School districts must document delivery of the notice by obtaining the signature of the parent(s) or guardian(s) acknowledging receipt or the written certification of the person making the delivery; or (b) by certified letter(s) deposited in the United States mail, within twenty-four hours of the expulsion. In addition, if the notice is by certified letter, reasonable attempts shall be made to notify the student and his or her parent(s) or guardian(s) by telephone or in person as soon as reasonably possible. Such written and oral notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a

language other than English, in accordance with Title VI of the Civil Rights Act of 1964;

(b) Specify the alleged reasons that the student's presence poses an immediate and continuing danger to students, school staff, or poses an immediate and continuing threat of substantial disruption of the educational process;

(c) Set forth the date on which the emergency expulsion began and will end;

(d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s) as soon as reasonably possible; and

(e) Set forth the facts that:

(i) A written or oral request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing; and

(ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived, and the emergency expulsion may be continued, as deemed necessary, for up to ten school days from the date of the student's emergency removal from school without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing or orally.

(3) If a request for a hearing is not received within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the emergency expulsion may be imposed, as deemed necessary, for a period of up to ten school days from the date of the emergency removal from school.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-300, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-300, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-300, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.04.132. WSR 86-20-055 (Order 13-86), § 180-40-300, filed 9/29/86; Order 6-77, § 180-40-300, filed 6/2/77, effective 8/1/77.]

392-400-305

Emergency expulsion—Prehearing and hearing process.

(1) If a request for a hearing within the required three school business days is received pursuant to WAC 392-400-300, the school district shall immediately schedule and give notice of a hearing to commence as soon as reasonably

possible and in no case later than the second school business day after receipt of the request for hearing.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing;

(b) Be represented by legal counsel;

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness;

(d) Present his or her explanation of the alleged misconduct; and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and final decision regarding the imposition of corrective action shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) Within one school business day after the date upon which the hearing concludes, the person(s) hearing the case shall issue a decision regarding whether the emergency expulsion shall continue. The school district shall provide notice of the decision to the student and the student's parent(s), guardian(s), and legal counsel, if any, by depositing a certified letter in the United States mail. The decision shall set forth the findings of fact, the conclusions (including a conclusion as to whether the immediate and continuing danger to students, school staff, or poses an immediate and continuing threat of substantial disruption of the educational process, giving rise to the emergency expulsion has terminated), and whether the emergency expulsion shall be converted to another form of corrective action.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-305, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-305, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-305, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 00-07-018, § 180-40-305, filed 3/3/00, effective 4/3/00; Order 6-77, § 180-40-305, filed 6/2/77, effective 8/1/77.]

392-400-310**Appeals—Long-term suspension and expulsion.**

Appeals from decisions rendered pursuant to WAC 392-400-270, 392-400-285 and 392-400-305 which impose either a long-term suspension or an expulsion upon a student shall be governed as follows:

(1) Any school district board of directors may delegate its authority to hear and decide long-term suspension and expulsion appeals to a school district disciplinary appeal council established by the board. School district disciplinary appeal councils shall be appointed by the school district board of directors for fixed terms and shall consist of not less than three persons.

(2) If the case was not heard and decided by the school district board of directors or school district disciplinary appeal council, the student and his or her parent(s) or guardian(s) shall have the right to appeal the decision to the board of directors or the disciplinary appeal council. Notice indicating that the student or his or her parent(s) or guardian(s) desire to appeal the decision shall be provided to either the office of the school district superintendent or to the office of the person who rendered the decision within three school business days after the date of receipt of the decision. The notice of appeal shall be accepted in writing or orally.

(3) If an appeal is not taken to the board of directors or disciplinary appeal council within the required three school business day period, the suspension or expulsion decided upon may be imposed as of the calendar day following expiration of the three school business day period.

(4) If a timely appeal is taken to the board of directors or disciplinary appeal council, the suspension or expulsion may be imposed during the appeal period subject to the following conditions and limitations:

(a) A long-term suspension or nonemergency expulsion may be imposed during the appeal period for no more than ten consecutive school days or until the appeal is decided, whichever is the shortest period;

(b) Any days that a student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student's suspension or expulsion and shall not limit or extend the term of the student's suspension or expulsion; and

(c) Any student subjected to a temporary suspension who returns to school before the appeal is decided shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the suspension if:

- (i) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades; or
- (ii) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(5) An appeal from any decision of a school board or disciplinary appeal council to impose or to affirm the imposition of a long-term suspension or an expulsion shall be to the courts. Whether or not the decision of a school board or disciplinary appeal council shall be postponed pending an appeal to superior court shall be discretionary with the school board or disciplinary appeal council except as ordered otherwise by a court.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-310, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-

310, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-310, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 97-08-019, § 180-40-310, filed 3/25/97, effective 4/25/97. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-310, filed 7/22/96, effective 8/22/96; Order 13-77, § 180-40-310, filed 10/18/77; Order 6-77, § 180-40-310, filed 6/2/77, effective 8/1/77.]

392-400-315**Appeals—Hearing before school board or disciplinary appeal council—Procedures.**

(1) If a notice of appeal to the school board of directors or school district disciplinary appeal council is received pursuant to WAC 392-400-310(2) within the required three school business days, the board or council shall schedule and hold an informal conference to review the matter within ten school business days after the date of receipt of such appeal notice. The purpose of the meeting shall be to meet and confer with the parties in order to decide upon the most appropriate means of disposing of the appeal as provided for in this section. At that time the student or the student's parent(s) or guardian(s) or legal counsel shall be given the right to be heard and shall be granted the opportunity to present such witnesses and testimony as the board or council deems reasonable. The board or council shall agree to one of the following procedures prior to adjournment or recess:

(a) Study the hearing record or other material submitted and render its decision within ten school business days after the date of the informal conference, or

(b) Schedule and hold a meeting to hear further arguments based on the record before the board or council and render its decision within fifteen school business days after the date of the informal conference, or

(c) Schedule and hold a meeting within ten school business days after the date of the informal conference for the purpose of hearing the case de novo.

(2) In the event the school board of directors or school district disciplinary appeal council elects to hear the appeal de novo, the following rights and procedures shall govern the proceedings:

(a) The student and his or her parent(s) or guardian(s) shall have the right to:

(i) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing,

(ii) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(A) That the district made a reasonable effort to produce the witness and is unable to do so; or,

(B) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness,

(iii) Present his or her explanation of the alleged misconduct, and

(iv) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires,

(b) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his or her parent(s) or guardian(s) intend to introduce at the hearing, and

(c) Either a tape-recorded or verbatim record of the hearing shall be made.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-315, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-315, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 00-07-018, § 180-40-315, filed 3/3/00, effective 4/3/00. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-315, filed 7/22/96, effective 8/22/96. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-315, filed 10/16/79; Order 6-77, § 180-40-315, filed 6/2/77, effective 8/1/77.]

392-400-317

Appeals—Discipline and short-term suspension grievances.

Any school district board of directors may delegate its authority to hear and decide discipline and short-term suspension grievance appeals filed pursuant to WAC 392-400-240 and 392-400-253 to a school district disciplinary appeal council established pursuant to WAC 392-400-310(1). [Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-317, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-317, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-317, filed 7/22/96, effective 8/22/96.]

392-400-320

School board or disciplinary appeal council decisions.

Any decision by a school board of directors or school district disciplinary appeal council pursuant to this chapter to impose or to affirm, reverse, or modify the imposition of discipline, suspension, or expulsion upon a student shall be made:

(1) Only by those board or council members who have heard or read the evidence.

(2) Only by those board or council members who have not acted as a witness in the matter.

(3) Only at a meeting at which a quorum of the board or council is present and by majority vote.

[Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-320, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-320, filed 7/22/96, effective 8/22/96; Order 6-77, § 180-40-320, filed 6/2/77, effective 8/1/77.]

392-400-325

Statewide definition of excused and unexcused daily absences.

Excused daily absences

The following are valid excuses for absences from school:

(1) Participation in a district or school approved activity or instructional program;

(2) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental or optometry) for the student or person for who the student is legally responsible;

(3) Family emergency including, but not limited to, a death or illness in the family;

(4) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;

(5) Court, judicial proceeding, or serving on a jury;

(6) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;

(7) State-recognized search and rescue activities consistent with RCW 28A.225.055;

(8) Absence directly related to the student's homeless status;

(9) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

(10) Absence resulting from a disciplinary/corrective action (e.g., short-term or long-term suspension, emergency expulsion); and

(11) Principal (or designee) and parent, guardian, or emancipated youth mutually agreed upon approved activity.

The school principal (or designee) has the authority to determine if an absence meets the above criteria for an excused absence.

Unexcused daily absences

Any absence from school is unexcused unless it meets one of the criteria above for an excused absence.

[Statutory Authority: RCW 28A.300.046. WSR 12-17-051, § 392-400-325, filed 8/9/12, effective 9/9/12.]

392-400-410

Appeal for extension of a one-year expulsion.

When warranted because of risk to the public health and safety, the principal or the principal's designee may petition the district's superintendent for authorization to exceed the one calendar year limitation on an expulsion. The

superintendent may exercise his/her discretion to grant the petition in limited circumstances, on a case-by-case basis, so long as there is evidence that, if the student were to return at or before one calendar year, he/she would pose a risk to public health or safety.

(1) The petition to exceed the one-year limit shall include, at least, the following:

(a) A detailed description of the student's misconduct, the school rules which were violated, and the public health and/or safety concerns of the district;

(b) A detailed description of the student's academic, attendance, and discipline history, if any;

(c) A description of the lesser forms of corrective actions which were considered and reasons why those were rejected;

(d) A description of all alternative learning experiences, vocational programs, and/or other educational services which may be available to the student;

(e) The proposed extended length of the expulsion;

(f) Identification of special education services or accommodations pursuant to Section 504 of the Rehabilitation Act of 1973, if appropriate; and

(g) A proposed date for the reengagement meeting.

(2) Designated staff shall submit the petition at any time after final imposition of a one-year expulsion and prior to the end of that expulsion.

(3) A copy of the petition shall be delivered in person or by certified mail to the student and his/her parent(s)/guardian(s).

(4) The petition shall be provided in the predominant language of the student and/or parent(s)/guardian(s) who speak a language, other than English, in accordance with Title VI of the Civil Rights Act of 1964.

(5) The student and/or parent(s)/guardian(s) may submit a written or verbal response to the petition within ten school business days of the recorded receipt of the petition.

(6) Within eleven school business days, but no later than twenty school business days of the date of the petition's recorded delivery to the student/parent(s)/guardian(s), the district superintendent shall issue a written decision indicating whether the petition is granted or denied. The written decision shall also include a description of all rights and procedures for appeal.

(7) If the petition is granted, within ten school business days of the receipt of the decision, the student and/or parent(s)/guardian(s) may appeal the decision to the district's school board in accordance with WAC 392-400-310 and 392-400-315.

Annually, all school districts shall report the number of petitions submitted, approved and denied to the office of the superintendent of public instruction.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-410, filed 7/23/14, effective 8/23/14.]

with the student and the student's parents or guardians within twenty days of the student's long-term suspension or expulsion, but no later than five days before the student's reentry or enrollment, to discuss a plan to reengage the student in a school program.

(2) In developing a reengagement plan, school districts should consider shortening the length of time that the student is suspended or expelled, other forms of corrective action, and supportive interventions that aid in the student's academic success and keep the student engaged and on track to graduate. School districts must create a reengagement plan tailored to the student's individual circumstances, including consideration of the incident that led to the student's long-term suspension or expulsion. The plan should aid the student in taking the necessary steps to remedy the situation that led to the student's suspension or expulsion.

(3) Any reengagement meetings conducted by the school district involving the suspended or expelled student and his or her parents or guardians are not intended to replace a petition for readmission.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-420, filed 7/23/14, effective 8/23/14.]

392-400-420

Reengagement meetings and plans.

(1) School districts should make efforts to have suspended or expelled students return to an educational setting as soon as possible. School districts should convene a meeting

DATE

SCHOOL DISTRICT
SCHOOL DISTRICT'S ADDRESS

Via First Class Mail

**Re: Joe Student, (DOB: xx/xx/xxxx)
Joe's Petition for Readmission to the XXXXX School District**

To Whom It May Concern:

I am writing on behalf of Joe Student, his father Jim Student, and his mother, Jane Student, to petition for Joe's readmission to the XXXXX School District (hereafter the "District").

Joe is a seventeen year old high school student. He began the 20xx-20xx school year as an 11th grade student at XXXXX High School in the XXXXX School District. Joe was expelled on XXXXX, for (alleged rule violation). Joe has not received any school services from the District since his removal.

Joe is requesting readmission to the District so that he can resume receiving school services immediately.¹ Joe would like to be readmitted to (name of school). Alternatively, he is also interested in the (alternative program). Joe's parents, his Juvenile Probation Counselor (if applicable), and (any other relevant parties) support Joe's request to return to school. Please review the attached application and supporting documents.

Supporting Exhibits

The following is a list of exhibits in support of Joe's petition for readmission:

Attachments

1. Petition for Readmission, dated xxx.
2. Joe Student's Statement.
3. Letter from xxxx, dated xxxx.
4. Rights & Responsibilities, xxxx School District.
5. *Getting to High School Graduation: Identifying Early Warning Indicators to Prevent Dropouts*, Kent School District 2009. Available at <http://www1.kent.k12.wa.us/district/diversity/KentStudyReport11-11-09.pdf>.

¹ Joe is petitioning pursuant to the policies explained in the District's Rights & Responsibilities publication. Exh. 4, p.7.

The District Should Readmit Joe

Joe has not received any education services from the District for three months and counting. This lengthy removal has more than adequately punished Joe for his behavior. Joe has felt the impact of this punishment and has been making changes to his thinking and his behavior in response. The District should readmit Joe for the following reasons:

- **Joe realizes the impact of his actions and has been working hard to make better choices since his removal from school**

Joe knows that he messed up in October and that his choices were unacceptable. See Joe's statement, Exh. 2. He also knows that the choices he was making are not compatible with being in school. Since he was removed Joe has been making different choices in many aspects of his life: he is not involved with drugs; he is spending his free time with his family members; he is engaging at home, attending boxing classes, and volunteering at church. Exh. 3.

As a result of what happened in October, Joe is on probation. He is required to do community service. Joe has found a location, his church, to do his community service work and he has already completed over half of his required service. Joe set this work up by himself.

Joe's choices since his removal reflect that he has learned from this punishment. He is ready to prove that he will make the right choices in school as well.

- **Joe has accepted responsibility for his actions in juvenile court**

The actions that led to Joe's expulsion also led to Joe being charged in xxxx County Juvenile Court. Joe has accepted responsibility for his actions in court. He has been on probation and he is complying with probation's requirements. Exh. 3. Juvenile Probation provides another layer of support and accountability for Joe. His probation counselor, xxxxxx, supports Joe's return to school. Moreover, it is clear from her letter that xxxxx believes that Joe has made important changes and is ready to return to school.

- **Joe is motivated to be successful in school**

Joe wants to return to school and be a better student. This is what his parents want for him and are encouraging him to do. Joe is also motivated to be the first of his siblings to graduate. Joe likes xxx and would like to xxx after he graduates high school. Joe knows that focusing on his education and graduating from high school are key steps in achieving his long-term goals.

Joe is a student in the xxxx School District. He has a right to an education and should be served by the District in the District. Joe is supported in the community by his family and his Probation Counselor. Nonetheless, Joe cannot re-engage in his education without the help of the District and

without access to the District's schools and programs. Joe needs to be readmitted. We hope that the District will take advantage of Joe's desire to re-engage and the support he is receiving in the community.

Conclusion

Joe has already missed three months of school. He is at risk of dropping out.² This is not a result that anyone, including Joe, his parents, and xxx County Juvenile Probation, wants for him. Joe is a young student who has made mistakes at school. Fortunately, he is learning from his mistakes, particularly from what happened in October and the resulting long removal from school. His behavior since October supports his return to a school program.

Joe and his family are asking the District to readmit him immediately to an educational program in the District. Joe would like to attend xxx.

If the District is not willing to readmit Joe, we ask that the District immediately begin providing Joe with educational services while he is excluded from school. If Joe is not readmitted and/or if the District decides to not provide education services during Joe's exclusion from school, please provide a written explanation for the reasoning behind this decision as soon as possible.

Thank you for reviewing the enclosed materials. Please contact me if you have any questions. I may be reached at xxxxx. Joe, his parents, and I look forward to meeting with the District to discuss Joe's petition for readmission.

Sincerely,

XXXXXXXXXXXX
(Relation to student)

Cc: Joe Student, Student, and Jane and Jim Student, Student's Parents

² A 2009 King County study sponsored by the Reinvesting in Youth Dropout Prevention Initiative found that a single out-of-school suspension is "strongly related to dropout, no matter what year the suspension was earned." Exh. 5. The study also found that unexcused absences strongly predict dropout, in particular "[m]ultiple years with 2 or more days of unexcused absence are related to graduation rates below 20%." *Id.*