



Olympia School District

1113 Legion Way SE • Olympia, WA 98501 • <http://osd.wednet.edu>

Board of Directors

Carolyn Barclift
Russ Lehman
Rich Nafziger
Michelle Parvinen
Bob Shirley
Adam Buchholz,
Student Representative

William V. Lahmann, Superintendent

Student Support

Special Education Services
360-596-7530

Interim Procedural Safeguards (January 2007)

GENERAL INFORMATION

Introduction

The Individuals with Disabilities Education Improvement Act (IDEA) of 2004 is the federal law that guarantees a free appropriate public education to students with disabilities referred for or determined eligible to receive special education services. IDEA requires schools to provide parents of a student with a disability with a notice containing a full explanation of the procedural safeguards (rights) available to them under IDEA and U.S. Department of Education regulations. The Office of Superintendent of Public Instruction (OSPI), Washington's State level education agency has provided this updated *Interim Notice of Special Education Procedural Safeguards* to inform you of your rights, given changes to the federal law that went into effect on July 1, 2005 and federal regulations that went into effect October 13, 2006. This document conforms to the U.S. Department of Education's Model Procedural Safeguards Notice (August 2006) and includes specific Washington requirements.

Chapter 392-172 of the Washington Administrative Code (WAC) contains Washington State's special education regulations. When the WACs are inconsistent with the federal regulations, this notice clarifies the application of federal law. Any provision in the WAC not impacted by these federal changes remains in effect until state regulations are revised. This Procedural Safeguards Notice is an interim document which will be available for public comment during the revision of our Washington Regulations.

Who This Notice Is For: This notice is for parents, surrogate parents, and adult students. References to "you" or "parent" and "your child" also apply to surrogate parents and adult students. References in this notice to the "school district" or "district" include other public agencies, including educational service districts, if they are providing special educational services to your child. The district in the State of Washington that provides your child with special education services is required by IDEA to provide you written notice of your procedural safeguards, and provide sources to help you understand them.

Free Appropriate Public Education (FAPE): Under the IDEA, a free appropriate public education (FAPE) means special education and related services necessary for your child to benefit from his or her education. Students are eligible for special education between the ages of three and twenty-one. If your child turns 21 after August 31, in a given year, he or she remains eligible through the remainder of the school year. Incarcerated students in a state adult correctional facility, who are eligible for special education, are entitled to a FAPE until age 18. FAPE will be provided to your child in the least restrictive environment as described in an Individualized Education Program (IEP).

For More Information: Additional information about special education and these procedural safeguards is available by contacting your local school's principal or special education director, the state's parent training center, Parents are Vital in Education (PAVE), or through OSPI. OSPI maintains a web page addressing special education at <http://www.k12.wa.us/specialed>. OSPI has program supervisors and a special education ombudsman to assist you with questions about your child's special education program. You may reach OSPI, Special Education at (360) 725-6075, TTY (360) 586-0126, or speced@k12.wa.us.

Procedural Safeguards Notice

34 CFR § 300.504

A copy of this notice must be given to you once every school year, and: (1) upon initial referral or your request for evaluation; (2) upon receipt of the first special education citizen complaint in a school year (3) upon receipt of the first due process hearing request in a school year; (4) when a decision is made to take a disciplinary action that constitutes a change of placement; and (5) upon your request. IDEA requires that this procedural safeguards notice include a full explanation of all of the procedural safeguards related to unilateral placement at a private school at public expense, special education citizen complaint procedures, consent, procedural safeguards in Subpart E of the Part B IDEA regulations, and confidentiality of information provisions in Subpart F of the Part B IDEA regulations. Districts may choose to use this notice or develop their own procedural safeguards notice to parents.

Prior Written Notice

34 CFR §300.503; WAC 392-172-302 and 304

You have the right to receive written notice from your district about important decisions that affect your child's special education. This is called prior written notice and it is a document reflecting **decisions** that were made at a meeting or by the district in response to a request made by you. The district is required to send prior written notice after a decision has been made, but before implementing the decision. These are decisions made related to any proposal or refusal to initiate or change the identification, evaluation, placement, or provision of a FAPE to your child.

Prior written notice must include:

- What the district is proposing or refusing to do;
- An explanation of why the district is proposing or refusing to take action;
- A description of any other options considered by the IEP team and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report used as a basis for the action;
- A description of any other factors relevant to the action;
- A description of any evaluation procedure the district proposes to conduct for the initial evaluation and any reevaluations;
- A statement that parents are protected by the procedural safeguards described in this booklet;
- How you can get a copy of this notice of procedural safeguards booklet; or include a copy of this notice of procedural safeguards booklet if one has not been provided to you as explained under the heading *Procedural Safeguards Notice*; **AND**
- Sources for you to contact to get help in understanding these procedural safeguards.

Examples of when you will receive prior written notice are:

- Your child is referred because of a suspected disability and potential need for special education.
- The district wants to evaluate or reevaluate your child, or the district is refusing to evaluate or reevaluate your child.
- Your child's IEP or placement is being changed.

- You have asked for a change and the district is refusing to do so.

Prior written notice must be provided in your native language or other mode of communication that you use, such as sign language, unless it is clearly not feasible to do so. The notice given to you must be written so that it is understandable to the general public.

If your native language or other mode of communication is not a written language, the district must take steps to ensure that (1) the notice is translated orally or by other means in your native language or other mode of communication, (2) you understand the content of the notice, and (3) there is written evidence that these requirements have been met.

Native Language

34 CFR §300.29; WAC 392-172-040

Native language, when used with an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents.
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

Electronic Mail

34 CFR §300.505

If your district offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice;
2. Procedural safeguards notice; **AND**
3. Notices related to a due process hearing request.

Parental Consent – Definition

34 CFR §300.9; WAC 392-172-040

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent;
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **AND**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

Parental Consent - Requirements

34 CFR §300.300; WAC 392-172-302

Consent for Initial Evaluation

Your district cannot conduct an initial evaluation of your child to determine whether your child is eligible to receive special education and related services until it provides you with prior written notice describing the proposed evaluation and obtains your informed consent. Your consent for initial evaluation does not mean that you have also given your consent for the district to start providing special education and related services to your child. If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your district may, but is not required to, seek to conduct an initial evaluation of your child by using mediation or due process hearing procedures, as described later in this notice. Your district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in this circumstance.

Special Rule for Initial Evaluation of Wards of the State

If your child is a ward of the state and is not living with a parent —

The district does not need consent from the parent for an initial evaluation to determine if the student is a student with a disability if:

1. Despite reasonable efforts to do so, the district cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with state law; **OR**
3. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

Ward of the state, as used in the IDEA, means a child who is:

1. A foster child;
2. Considered a ward of the state under Washington State law; **OR**
3. In the custody of a public child welfare agency.

Ward of the state does not include a foster child who has a foster parent.

Parental Consent for Initial Services

Your district must obtain your informed consent or must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, your district may not use mediation or due process hearing procedures in order to obtain your agreement or a ruling to provide the special education and related services.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent, the district may not provide your child with the special education and related services for which it sought your consent. In this situation, your district:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **AND**
2. Is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

Once you provide consent for your child to receive special education and related services and the district begins to provide special education services, your child will remain eligible to receive special education services until:

1. It is determined through a reevaluation that he or she no longer has a disability that requires special education services;
2. She or he graduates with a regular high school diploma; **OR**
3. He or she reaches the age of 21 (or in the case of a student, who turns 21 after August 31, completes the school year.)

After the district has initiated special education services you may not revoke your consent for initial services. A parent cannot release a district from its obligation to provide special education services to a student after those services have been initiated.

Parental Consent for Reevaluations

Your district must obtain your informed consent before it reevaluates your child by conducting new testing, unless your district can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **AND**
2. You did not respond.

If you refuse to consent to new testing as part of your child's reevaluation, the district may, but is not required to, pursue your child's reevaluation by using the mediation or impartial due process hearing procedures to seek agreement from you or to override your refusal to consent to your child's

reevaluation. As with initial evaluations, your district does not violate its obligations under Part B of the IDEA if it declines to override your consent to pursue the reevaluation.

Documentation of Reasonable Efforts to Obtain Parental Consent

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, to conduct a reevaluation that involve new testing and to locate parents or wards of the state for initial evaluations. The documentation must include a record of the district's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **AND**
3. Detailed records of visits made to your home or work and the results of those visits.

Other Consent Requirements

Your consent is not required before your district may:

1. Review existing data as part of your child's reevaluation; **OR**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

Your district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the district may not use mediation or impartial due process hearing procedures to obtain your agreement or override your refusal. The district is not required to consider your child as eligible to receive equitable private school services, which are services made available to parentally-placed private school students with disabilities.

Parent Participation

34 CFR §§300.322 and 300.501; WAC 392-172-105

You will be given opportunities to participate in any meetings about the special education needs of your child. This includes the right to participate in meetings to discuss the need for evaluations, your child's eligibility, development or revision of your child's IEP, and placement decisions. Districts may discuss issues affecting your child's program without including you. These discussions include preparation for an upcoming IEP meeting, lesson plans, and coordination of service delivery. However, you must be invited to participate in any meetings where decisions will be made involving your child.

Agreements Between You and Your District Concerning IEP Meetings and Reevaluations

34 CFR §§300.303, 300.321, 300.328

IEP Meeting Agreements

You and your district may agree to waive some procedural requirements concerning the development of your child's IEP. You and the district can agree to: Make changes to your child's IEP without a meeting after you and the district have developed the annual IEP. Instead, the changes may be made by developing a written document to amend or modify your child's IEP rather than redrafting the entire IEP. Upon request, the district must redraft and provide you with a revised copy of your child's IEP with the amendments incorporated. If changes are made to your child's IEP the district must ensure that each member of your child's IEP team is informed of these changes. Anyone providing services to your child must know their responsibilities under the IEP.

1. Excuse a member of the IEP team from attending an IEP meeting, in whole or part if:
 - (a) You and the district agree in writing that the attendance of the IEP team member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the meeting; **OR**
 - (b) You and the district mutually **consent in writing** to the **excusal** of an IEP team member when the meeting involves a modification to or discussion of the member's area of the curriculum or related services. Under this circumstance, the excused IEP team member must submit, in writing to you and the IEP team, input into the development of the IEP prior to the meeting.
2. You and the district may agree to use alternative means for participation in IEP team and placement meetings such as video conference and conference calls.

Reevaluation Agreements

You and the district may enter into an agreement that:

1. Waives the requirement to conduct a reevaluation at least once every three years because you and the district agree it is unnecessary.
2. Your child should be reevaluated more than once a year.

Withdrawal from Agreements

Your withdrawal from an agreement does not negate (undo) an action that occurred when the agreement was in place. A request to withdraw from an agreement should be in writing.

Transfer of Parental Rights at Age of Majority

34 CFR §300.520; WAC 392-172-309

When your child turns 18 years old, he or she is considered to have reached the age of majority. This includes students who are in correctional facilities and juvenile detention facilities. This means that all rights under IDEA transfer from you as the parent, to your child. There are some instances under state law when your child will be treated as if he or she has reached the age of majority before age 18. Examples of this include court ordered emancipation and marriage.

Students who are determined incapacitated under state law will not have rights transferred to them. If there is a guardianship limiting the child's right to make personal decisions, the legal guardian will exercise educational rights on his or her behalf.

Beginning one year before your child reaches age 18, the IEP must include a statement that all rights under IDEA transfer to him or her at age 18. When your child reaches the age of majority, notification of the transfer of rights will be provided to both you and your child. Any other notices required under Part B will be provided to both of you. Your rights as a parent under the Family Educational Rights and Privacy Act (FERPA) regarding educational records also transfer to your child at age 18.

Independent Educational Evaluations

34 CFR §300.502; WAC 392-172-150

You have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was conducted by your district.

If you request an IEE, the district must provide you with information about where you may obtain an IEE and about the district's criteria that apply to IEEs.

Definitions

Independent educational evaluation (IEE) means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of your child.

Public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

Parent Right to Evaluation at Public Expense

You have the right to an IEE of your child at public expense if you disagree with an evaluation of your child conducted by your district, subject to the following conditions:

1. If you request an IEE of your child at public expense, your district must, within 15 calendar days of your request, either: (a) File a due process hearing request to show that its evaluation of your child is appropriate or that the evaluation of your child that you obtained did not meet the district's criteria; **OR** (b) Provide an IEE at public expense.

2. If your district requests a hearing and the final decision is that your district's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
3. If you request an IEE of your child, the district may ask why you object to the evaluation of your child conducted by your district. However, your district may not require an explanation and may not unreasonably delay either providing the IEE of your child at public expense or filing a request for a due process hearing to defend the district's evaluation of your child.
4. You are entitled to only one IEE of your child at public expense each time your district conducts an evaluation of your child with which you disagree.

Parent-Initiated Evaluations

If you obtain an IEE of your child at public expense or you share with the district an evaluation of your child that you obtained at private expense:

1. Your district must consider the results of the IEE, if it meets the district's criteria for IEEs, in any decision made with respect to the provision of a FAPE to your child; **AND**
2. You or your district may present the IEE as evidence at a due process hearing regarding your child.

Requests for Evaluations by Administrative Law Judge (ALJ)

If an ALJ requests an IEE of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

District Criteria

If an IEE 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 district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE). Except as described above, a district may not impose conditions or timelines related to obtaining an IEE at public expense.

CONFIDENTIALITY OF INFORMATION

Definitions

34 CFR §300.611; WAC 392-172-400

As used under the heading **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- *Participating Agency* means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B or IDEA.

Personally Identifiable

34 CFR §300.32; WAC 392-172-402

Personally identifiable means information that has:

- (a) Your child's name, your name as the parent, or the name of another family member;
- (b) Your child's address;
- (c) A personal identifier, such as your child's social security number or student number; **OR**
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Notice to Parents

34 CFR §300.612; WAC 392-172-404

OSPI gives notice through its regulations to fully inform you about the confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of various population groups in Washington;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods Washington intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that districts must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **AND**
4. A description of all of the rights of parents and students regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major identification, location, or evaluation activity (also known as "child find"), districts must publish or announce the notice in newspapers or other media, or both, with circulation adequate to notify parents of the activity to locate, identify, and evaluate children in need of special education and related services.

Access Rights

34 CFR §300.613 through §300.617; WAC 392-172-408

You have the right to inspect and review any education records relating to your child that are collected, maintained, or used by your district under Part B of the IDEA. The district must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the district to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the district provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **AND**
3. Your rights to have your representative inspect and review the records.

A district or other agency may presume that you have authority to inspect and review records relating to your child unless it is advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

Record of Access: Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on More Than One Child: If any education record includes information on more than one student, you have the right to inspect and review only the information relating to your child or be informed of that specific information.

List of Types and Locations of Information: On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

Fees: Each participating agency may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records. It may not charge a fee to search or to retrieve information under IDEA.

Amendment of Records at Parent's Request

34 CFR §300.618 through §300.621; WAC 392-172-418

If you believe that information in the education records regarding your child collected, maintained, or used under IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may ask the district to change the information. The district must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

Opportunity for a Hearing

If the district refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing. You have the right to request a hearing to challenge the information in your child's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

Hearing Procedures: The district's hearing must be conducted according to the hearing procedures under FERPA.

Result of Hearing: If the district decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must change the information accordingly and inform you in writing.

If the district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place a statement commenting on the information or providing any reasons you disagree with the decision of the district, in your child's educational records.

If you put a statement in your child's records it must:

1. Be maintained by the district as part of the records of your child as long as the record or contested portion is maintained; **AND**
2. If the district discloses the records of your child or the challenged portion to any party, the statement must also be disclosed to that party.

Consent for Disclosure of Personally Identifiable Information

34 CFR §300.622; WAC 392-172-422

Unless disclosure of information contained in education records is authorized without parental consent under FERPA, your written consent must be obtained before personally identifiable information is disclosed. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Your consent, or 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.

If your child attends a private school, your consent must be obtained before any personally identifiable information about your child is released between officials in the district where the private school is located and officials in the district where you reside unless you intend to enroll or are part-time enrolled in the public district.

Safeguards

34 CFR §300.623; WAC 392-172-424

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding your state's policies and procedures regarding confidentiality under Part B of the IDEA and FERPA. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Destruction, Retention and Storage of Information

34 CFR §300.624; WAC 392-172-426

Your district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child. The information must, thereafter, be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. State law regarding records retention is contained in RCW Chapter 40.14. The procedures for district records retention is published by the secretary of state, division of archives and records management.

Transmittal of Educational Records

RCW 28A.225.330

Washington law permits a district where a student enrolls to ask the parent about whether the student has (1) any history of placement in special educational programs; (2) any past, current, or pending disciplinary action; or (3) any history of violent behavior or behavior listed in RCW 13.04.155. In addition, the law allows the school enrolling the student to request the school the student previously attended to send the student's permanent record, including records of disciplinary action and academic performance which would include the student's IEP.

When information is requested by an enrolling district, the district the student previously attended must provide that information within two school days after receiving the request. Student records must be sent as soon as possible.

SPECIAL EDUCATION DISPUTE RESOLUTION PROCEDURES

Parents are important participants in all aspects of their children's special education program. This involvement begins at the initial referral of a student for special education. The Office of Superintendent of Public Instruction (OSPI), Special Education section always encourages parents and districts to work together to try to resolve disagreements that affect a student's special education program. When parents and districts are not able to resolve differences through direct communication, there are more formal dispute resolution options available. The following information is an overview of the three dispute resolution processes available for students age 3 to 21 under Part B of IDEA: mediation, citizen complaints, and due process hearings.

MEDIATION

34 CFR § 300.506; WAC 392-172-310 THROUGH 317

General

Mediation services are available at no cost to you or the district to help resolve problems involving the identification, evaluation, educational placement, and provision of a FAPE to your child and whenever a due process hearing is requested. Mediation is voluntary and cannot be used to deny or delay your right to a due process hearing or to deny any other rights afforded under Part B of the IDEA.

When an agreement is reached, it must be documented in a written mediation agreement that is signed by you and a representative of the district authorized to enter into legally binding agreements. Discussions during the mediation sessions are confidential and may not be used as evidence in any due process hearings or civil proceedings of any Federal court or Washington State court. This must be stated in the written agreement. However, the mediation agreement itself may be used as evidence. Mediation agreements are legally binding and enforceable in any state court of competent jurisdiction or in a district court of the United States.

The district may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state; **AND**
2. Who would explain the benefits and encourage the use of the mediation process to you.

Impartiality of Mediator

Mediation is conducted by an individual who is qualified, impartial, and trained in effective mediation techniques. That individual must also be knowledgeable in the laws and regulations relating to the provision of special education and related services. OSPI contracts with an outside agency to conduct mediations. That agency maintains the list of mediators. Mediators are assigned on a random, rotational, or other impartial basis.

The mediator (1) may not be an employee of OSPI, a district or other state agency that is providing direct services to a child who is the subject of the mediation process, and (2) may not have a personal or professional conflict of interest. The mediation sessions are scheduled in a timely manner at a location that is convenient to you and the district.

DIFFERENCE BETWEEN DUE PROCESS HEARINGS AND SPECIAL EDUCATION CITIZEN COMPLAINT INVESTIGATIONS

Part B of IDEA and federal regulations set forth separate procedures for special education citizen complaints and for due process hearings. Special education citizen complaints may be filed with OSPI by any individual or organization alleging a violation of any Part B requirement by a district, OSPI,

educational service district or any other public agency. Due process hearing requests may be filed only by you or a district on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. The timelines and procedures for citizen complaints and due process hearings are explained below.

CITIZEN COMPLAINT PROCEDURES

34 CFR §§300.151 - 300.153; WAC 392-172-324 - 328

If you, any individual or organization believes a district, OSPI, or any other educational entity governed by the IDEA has violated Part B of IDEA, its implementing regulations, or corresponding state regulations, you may file a written complaint with the Office of Superintendent of Public Instruction (OSPI), Special Education, PO Box 47200, Olympia, WA 98504-7200.

Filing a Complaint

The complaint must be signed and include the following information:

- A statement that a district or other agency has violated a requirement of Part B of IDEA, its implementing regulations, or corresponding state law or regulation;
- The name of the district (if the complaint is about an agency other than the district, include the name and address);
- A description of the problem with specific facts; **AND**
- Your name, address, and telephone number.

OSPI has developed an optional form that you may use to file a complaint. This form is available on OSPI's webpage at:

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

The violation must not have occurred more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or you are asking for compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

Additional information about the complaint investigation process may be obtained through OSPI. Information is posted on OSPI's, Special Education webpage: <http://www.k12.wa.us/SpecialEd/>.

Complaint Investigations

If you file a signed, written complaint, OSPI must investigate and issue a written decision within 60 calendar days unless an extension of time is warranted. During the 60 days, OSPI (1) requires the district or other agency to provide a response to your complaint; (2) gives the complainant the opportunity to submit additional information about the allegations in the complaint; (3) may carry out an independent on-site investigation, if OSPI determines it is necessary; and (4) reviews all relevant information and makes an independent determination as to whether the district or other agency is violating a requirement of Part B of IDEA, its implementing regulations, or corresponding state law.

Investigation Extension, Written Decision

The 60 calendar-day time limit may be extended only if: (1) exceptional circumstances exists with respect to a particular complaint; **or**, (2) you and the district or other public agency involved voluntarily agree to extend the time to resolve the complaint through mediation.

A written decision is sent to the person filing the complaint and to the district. The written decision will address each allegation. For each allegation the written decision will state findings of fact, conclusions, and any reasonable corrective measures deemed necessary to resolve the complaint.

Complaint Remedies

In special education citizen complaints in which OSPI has found a violation or failure to provide appropriate services, the decision addresses:

1. How to remediate the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of students; **AND**
2. Appropriate future provision of special education services for all students.

Special Education Citizen Complaints and Due Process Hearings

If a written complaint is received that is also the subject of a due process hearing or the complaint contains multiple issues, of which one or more are part of a hearing, OSPI must set aside any part of the complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process action must be resolved within complaint timelines.

If an issue raised in a complaint has been previously decided in (not dismissed from) a due process hearing involving the same parties, the hearing decision is binding and OSPI must inform the complainant to that effect.

A complaint alleging a district's failure to implement a due process decision must be resolved by OSPI.

DUE PROCESS HEARING PROCEDURES

34 CFR §300.507 THROUGH §300.513

General

You or a district may file a due process hearing request on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a FAPE to your child. The district must inform you of any free or low-cost legal and other relevant services available in the area when a due process hearing request is filed or if you request information. For due process hearing procedures, "you", includes your attorney and "district" includes the district's attorney.

Filing

In order to request a hearing, you or the district must submit a due process hearing request to the other party. That request must contain all of the content listed below and must be kept confidential.

You or the district, whichever one filed the request, must also provide OSPI, Administrative Resource Services with a copy of the hearing request at the following address:

Office of Superintendent of Public Instruction
Administrative Resource Services
Old Capitol Building
PO Box 47200
Olympia, WA 98504-7200
FAX: 360-753-4201

The due process hearing request must include:

1. The name of the student;
2. The address of the student's residence;
3. The name of the student's school;
4. If the student is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem, including facts relating to the problem; **AND**
6. A proposed resolution of the problem to the extent known and available to you or the district at the time.

Notice Required Before a Hearing on a Due Process Hearing Request

You or the district may not have a due process hearing until you or the district files a due process hearing request with the other party and provides OSPI with a copy of the request that includes the information listed above.

Sufficiency of a Hearing Request

In order for a due process hearing request to go forward, it must be considered sufficient. *Sufficient* means that the request meets the content requirements noted above. The due process hearing request will be considered sufficient unless the party who received the due process hearing request notifies the ALJ and the other party in writing, within 15 calendar days, that the receiving party believes the due process hearing request is not sufficient.

Within five calendar days of receiving the notification of insufficiency, the ALJ must decide if the due process hearing request meets the requirements listed above, and notify you and the district in writing immediately.

Amendment of a Hearing Request

You or the district may make changes to the hearing request only if:

1. The other party approves of the changes in writing and is given the chance to resolve the hearing request through a resolution meeting, described below; **OR**
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the party requesting the hearing makes changes to the due process hearing request, the timelines for the resolution meeting (within 15 calendar days of receiving the request) and the time period for resolution (within 30 calendar days of receiving the request) start again on the date the amended request is filed, or the date the ALJ grants the request.

District Response to a Due Process Hearing Request

If the district has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process hearing request, the district must, within 10 calendar days of receiving the due process hearing request, send to you a response that includes:

1. An explanation of why the district proposed or refused to take the action raised in the due process hearing request;
2. A description of other options that your child's IEP team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action; **AND**
4. A description of the other factors that are relevant to the district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the district from asserting that your due process hearing request was insufficient.

Other Party Response to a Due Process Hearing Request

Except as stated under the sub-heading immediately above, **District Response to a Due Process Hearing Request**, the party receiving a due process hearing request must, within 10 calendar days of receiving the request, send the other party a response that specifically addresses the issues in the request.

Model Forms

34 CFR §300.509

OSPI has developed a model due process hearing request form to assist you in filing a request for a due process hearing. The form is available from OSPI at the following websites:

<http://www.k12.wa.us/ProfPractices/adminresources/forms.aspx> **OR**
<http://www.k12.wa.us/SpecialEd/mediation.aspx>.

You may also obtain a copy of the hearing form from your district's special education department. Your right to a due process hearing can be denied or delayed if the due process hearing request does not include all of the required information. However, you are not required to use a form for requesting a due process hearing. You may write your due process hearing request as you choose so long as it contains the required information for requesting a due process hearing.

Student Placement While the Due Process Hearing Request and Hearing are Pending

34 CFR §300.518

Except as provided below under the heading Procedures When Disciplining Students With Disabilities, once a due process hearing request is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the district agree otherwise, your child must remain in his or her current educational placement.

If the due process hearing request involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process hearing request involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the district must provide those special education and related services that are not in dispute (those which you and the district both agree).

Resolution Process

34 CFR §300.510

Resolution Meeting

Within 15 calendar days of receiving notice of your due process hearing request, and before the due process hearing timeline begins, the district must convene a meeting with you and the relevant member or members of the IEP team who have specific knowledge of the facts identified in your due process hearing request. The meeting:

1. Must include a representative of the district who has decision-making authority on behalf of the district; **AND**
2. May not include an attorney of the district unless you are accompanied by an attorney.

You and the district determine the relevant members of the IEP team to attend the meeting.

The purpose of the meeting is for you to discuss your due process hearing request, and the facts that form the basis of the request, so that the district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the district agree in writing to waive the meeting; **OR**
2. You and the district agree to use the mediation process, as described under the heading Mediation.

Resolution Period

If the district has not resolved the due process hearing request to your satisfaction within 30 calendar days of the receipt of the due process hearing request, the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the district is not able to obtain your participation in the resolution meeting, the district may, at the end of the 30-calendar-day resolution period, request that the ALJ dismiss your due process hearing request. Documentation of such efforts must include a record of the district's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **AND**
3. Detailed records of visits made to your home or work and the results of those visits.

If the district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process hearing request **or** fails to participate in the resolution meeting, you may ask an ALJ to order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-Calendar-Day Resolution Period

If you and the district agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the district agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the district withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written Settlement Agreement

If a resolution to the dispute is reached at the resolution meeting, you and the district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the district who has the authority to bind the district; **AND**
2. Enforceable in any Washington State Superior court of competent jurisdiction or in a district court of the United States.

Agreement Review Period

If you and the district enter into an agreement as a result of a resolution meeting, either you or the district may void the agreement within 3 business days of the time that both you and the district signed the agreement.

DUE PROCESS HEARINGS

Impartial Due Process Hearing

34 CFR §300.511; WAC 392-172-352

General

Whenever a due process hearing request is filed, you or the district involved in the dispute must have an opportunity for an impartial due process hearing.

Administrative Law Judge (ALJ)

The hearing itself will be conducted by a qualified independent ALJ, who is employed by the Office of Administrative Hearing (OAH).

At a minimum, an ALJ:

1. Must not be an employee of OSPI or the district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ;
2. Must not have a personal or professional interest that conflicts with the ALJ's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts; **AND**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each district must keep a list of those persons who serve as ALJs that includes a statement of the qualifications of each hearing officer.

Subject Matter of Due Process Hearing

The party that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process hearing request, unless the other party agrees.

Timeline for Requesting a Hearing

You or the district must file your due process hearing request within two years of the date you or the district knew or should have known about the issues addressed in the hearing request.

Exceptions to the Timeline

The above timeline does not apply if you could not file a due process hearing request because:

1. The district specifically misrepresented that it had resolved the problem or issue that you are raising in your hearing request; **OR**
2. The district withheld information from you that it was required to provide to you under Part B of the IDEA.

Hearing Rights

34 CFR §300.512; WAC 392-172-354

General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of students with disabilities;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. 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;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **AND**
5. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional Disclosure of Information

At least five business days prior to a due process hearing, you and the district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the district intend to use at the hearing.

An ALJ may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental Rights at Hearings

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; **AND**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Hearing Decisions

34 CFR §300.513

Decision of ALJ

An ALJ's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, an ALJ may find that your child did not receive FAPE only if the procedural inadequacies:

1. Interfered with your child's right to a FAPE;
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a FAPE to your child; **OR**
3. Caused a deprivation of an educational benefit.

Construction Clause

None of the provisions described above prevents an ALJ from ordering a district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

Separate Request for a Due Process Hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA can be interpreted to prevent you from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

Findings and Decision to Advisory Panel and General Public

OSPI after deleting any personally identifiable information:

1. Provides the findings and decisions in due process hearings to Washington's Special Education Advisory Committee (SEAC); **AND**
2. Makes those findings and decisions available to the public including posting findings and decisions on the OSPI webpage.

APPEALS

Finality of Decision; Appeal

34 CFR §300.514; WAC 392-172-360

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that either party (you or the district) involved in the hearing may appeal the decision by bringing a civil action, as described below.

Timelines and Convenience of Hearings

34 CFR §300.515

Not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings **or**, not later than 45 calendar days after the expiration of the adjusted resolution time period:

1. A final decision is reached in the hearing; **AND**
2. A copy of the decision is mailed to each of the parties.

An ALJ may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

Civil Actions, Including the Time Period in Which to File Those Actions

34 CFR §300.516; WAC 392-172-360

General

If either party does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures), that party has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a state court of competent jurisdiction (a state court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

Time Limitation

The party bringing the action will have 90 calendar days from the date of the decision of the ALJ to file a civil action.

Additional Procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the district's request; **AND**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Jurisdiction of District Courts

The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

Rule of Construction

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws; you must first use the available administrative remedies under the IDEA (the impartial due process hearing procedures) before going directly into court.

Attorneys' Fees

34 CFR §300.517

General

If you prevail in the civil action and are represented by an attorney, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you. In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **OR** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **OR** In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

Award of Fees

Attorneys' fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:

- a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or state-level review, at any time more than 10 calendar days before the proceeding begins;
- b. The offer is not accepted within 10 calendar days; **AND**
- c. The court or ALJ finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting required under due process hearing procedures is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **OR**
4. The attorney representing you did not provide to the district the appropriate information in the due process request notice as described under the heading ***Due Process Hearing Request***.

However, the court may not reduce fees if the court finds that the state or district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

PROCEDURES WHEN DISCIPLINING STUDENTS WITH DISABILITIES

Suspension and Expulsion Rules for All Students

WAC 392-400

When a district suspends or expels your child, it must make sure that the removal is consistent with Washington State laws and regulations governing discipline for all students. Washington State discipline regulations are located at chapter 392-400 WAC. Districts must have policies and procedures that describe various types of misconduct and address penalties imposed for the misconduct. The district's procedures must also describe how you may

challenge its determination to discipline your child under these provisions. Discipline must be consistent with the district policies and procedures. Except for emergencies, districts generally may not suspend or expel any student unless they have tried other forms of corrective action that would modify the student's behavior.

Under chapter 392-400 WAC, a *suspension* is a removal from a single subject, class period, or full schedule of classes for a **definite** period of time. An *expulsion* is a removal from any single subject, class period, or full schedule of classes for an **indefinite** period of time.

If the district initiates disciplinary procedures applicable to all students, the district shall ensure that the special education and disciplinary records of your child are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

Be sure you are aware of any timelines for contesting a district's determination regarding discipline under general education procedures, and through the district's hearing procedures. These timelines are different than timelines you may have to request a special education due process hearing that alleges that the district has not followed special education discipline procedures.

Authority of School Personnel

34 CFR §300.530

Case-By-Case Determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a student with a disability who violates a school code of student conduct.

General

To the extent that they also take such action for students without disabilities, school personnel may, for not more than **10 school days** in a row, remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (which must be determined by the student's IEP Team), another setting, or suspension. School personnel may also impose additional removals of the student of not more than **10 school days** in a row in that same school year for separate incidents of misconduct; as long as those removals do not constitute a change of placement (see **Change of Placement Because of Disciplinary Removals** for the definition, below).

Once a student with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the district must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of the student's disability (see **Manifestation Determination**, below) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that student with a disability in the same manner and for the same duration as it would to students without disabilities, except that the school must provide services to that student as described below under **Services**. The student's IEP team determines the interim alternative educational setting for such services.

Services

The services that must be provided to a student with a disability who has been removed from the student's current placement may be provided in an interim alternative educational setting.

A district is only required to provide services to students with disabilities who have been removed from their current placement for **10 school days or less** in that school year, if it provides services to students without disabilities who have been similarly removed.

A student with a disability who is removed from the student's current placement for **more than 10 school days** must:

1. Continue to receive educational services, 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**
2. For students whose behavior was not a manifestation of his or her disability, receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a student with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

If the removal is a change of placement (see definition below), the student's IEP team determines the appropriate services 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.

Manifestation Determination

Within **10 school days** of any decision to change the placement (see section under the heading **Change of Placement Because of Disciplinary Removals**) of a student with a disability because of a violation of a code of student conduct, the district, the parent, and relevant members of the IEP Team (as determined by the parent and the 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:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; **OR**
2. If the conduct in question was the direct result of the district's failure to implement the student's IEP.

If the district, the parent, and relevant members of the student's IEP team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the student's disability.

If the district, the parent, and relevant members of the student's IEP team determine that the conduct in question was the direct result of the district's failure to implement the IEP, the district must take immediate action to remedy those deficiencies.

Determination That Behavior Was a Manifestation of the Student's Disability

If the district, the parent, and relevant members of the IEP team determine that the conduct was a manifestation of the student's disability, the IEP team must either:

1. Conduct a functional behavioral assessment, unless the 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**
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading **Special Circumstances**, the district must return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

Special Circumstances

Whether or not the behavior was a manifestation of the student's disability,

school personnel may remove a student to an interim alternative educational setting (determined by the student's IEP team) for up to 45 school days, if the student:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of OSPI or a district;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of OSPI or a district; **OR**
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of OSPI or a district.

Definitions

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

Serious bodily injury means a bodily injury that involves: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or faculty.

Weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than two and one-half inches in length.

Change of Placement Because of Disciplinary Removals

34 CFR §300.536; WAC 392-172-373

A removal of a student with a disability from the student's current educational placement is a **Change of Placement** if:

1. The removal is for more than 10 school days in a row; **OR**
2. The student has been subjected to a series of removals that constitute a pattern because:
 - a. The series of removals total more than 10 school days in a school year;
 - b. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals;
 - c. 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; **AND**
 - d. Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the district and, if challenged, is subject to review through due process and judicial proceedings.

Notification

On the date the district makes the decision to make a removal that is a change of placement of the student because of a violation of a code of student conduct, it must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

Determination of Setting

34 CFR § 300.531

The IEP team must determine the interim alternative educational setting for removals that are Changes of Placement, and removals under the headings Additional Authority and Special Circumstances, above.

Due Process Hearing Procedures for Discipline

34 CFR § 300.532; WAC 392-172-38400

The parent of a student with a disability may file a due process hearing request to request a due process hearing if he or she disagrees with:

1. Any decision regarding placement made under these discipline provisions; **OR**
2. The manifestation determination described above.

The district may file a due process hearing request to request a due process hearing if it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

See the section entitled Due Process Hearing Procedures for more information on filing a due process hearing requests.

Authority of Administrative Law Judge (ALJ)

An ALJ must conduct the due process hearing and make a decision.

The ALJ may:

1. Return the student with a disability to the placement from which the student was removed if the ALJ determines that the removal was a violation of the requirements described under the heading **Authority of School Personnel**, or that the student's behavior was a manifestation of the student's disability; **OR**
2. Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

These hearing procedures may be repeated, if the district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

Whenever a parent or a district files a due process hearing request to request such a hearing, a hearing must be held that meets the requirements described under the headings **Due Process Hearing Request Procedures**, **Due Process Hearings**, except as follows:

1. OSPI must arrange for an expedited impartial due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless the parents and the district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process hearing request. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process hearing request.
3. The OSPI has established a 2 business day timeline for production of evidence when an expedited due process hearing request is filed.

A party may initiate a civil action, contesting the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see **Appeals**, above).

Placement During Due Process Expedited Hearings

34 CFR §300.533

When, as described above, the parent or district has filed a due process hearing request related to disciplinary matters, the student must (unless the parent and the district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading **Authority of School Personnel**, whichever occurs first.

Protections for Students Not Yet Eligible for Special Education and Related Services

34 CFR §300.534; WAC 392-172-38410

General

If a student has not been determined eligible for special education and related services and violates a code of student conduct, but the district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the student was a student with a disability, then the student may assert any of the protections described in this notice.

Basis of Knowledge for Disciplinary Matters

A district must be deemed to have knowledge that a student is a student with a disability if, before the behavior that brought about the disciplinary action occurred:

1. The parent of the student expressed concern in writing that the student is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student;
2. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; **OR**
3. The student's teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the district's director of special education or to other supervisory personnel of the district.

Exception

A district would not be deemed to have such knowledge if:

1. The student's parent has not allowed an evaluation of the student or refused special education services; **OR**
2. The student has been evaluated and determined to not be a student with a disability.

Conditions That Apply if There is No Basis of Knowledge

If prior to taking disciplinary measures against the student, a district does not have knowledge that a student is a student with a disability, as described above under the sub-headings **Basis of Knowledge for Disciplinary Matters** and **Exception**, the student may be subjected to the disciplinary measures that are applied to students without disabilities who engaged in comparable behaviors. However, if a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. 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. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the district, and information provided by the parents, the district must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities

34 CFR §300.535; WAC 392-172-385

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a student with a disability to appropriate authorities; **OR**
2. Prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and state law to crimes committed by a student with a disability.

Transmittal of Records

If a district reports a crime committed by a student with a disability, the district:

1. Must ensure that copies of the student's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **AND**
2. May transmit copies of the student's special education and disciplinary records only to the extent permitted by FERPA.

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF STUDENTS IN PRIVATE SCHOOLS AT PUBLIC EXPENSE CFR § 300.148; WAC 392-172-231

Reimbursement for Private School Placement

If your child previously received special education and related services under the authority of a district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the district, a court or an ALJ may require the agency to reimburse you for the cost of that enrollment if the court or ALJ finds that the agency had not made a FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. An ALJ or court may find your placement to be appropriate, even if the placement does not meet the state standards that apply to education provided by districts.

Limitation on Reimbursement

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the district of that information;
2. If, prior to your removal of your child from the public school, the district provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **OR**
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) the school prevented you from providing the notice; (b) you had not received notice of your responsibility to provide the notice described above; or (c) compliance with the requirements above would likely result in physical harm to your child; **AND**
2. May, in the discretion of the court or an ALJ, not be reduced or denied for the parents' failure to provide the required notice if: (a) the parent is not literate or cannot write in English; or (b) compliance with the above requirement would likely result in serious emotional harm to the child.

For further explanations and clarification of special education programs and regulations, please feel free to contact the Olympia School District Student Support Office (596-7530), Cissy McCormick (596-7542) for early childhood programs, Barbara Carlson (596-7547) for elementary programs, or Ed Pong (596-7538) for middle school/high school programs.

For more copies of this document please visit our website: http://www.k12.wa.us/SpecialEd/pubdocs/PS_Booklet.pdf Publication Number: 07-0001