



# Olympia School District

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## Special Education Procedural Safeguards

### 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 who is eligible for or referred for special education with a notice containing a full explanation of the rights available to them under IDEA, U.S. Department of Education regulations and the OSPI rules governing the provision of special education (Chapter 392-172A Washington Administrative Code (WAC)). This document conforms to the U.S. Department of Education's Model Procedural Safeguards Notice (August 2006).

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 (ESDs), if they are providing special educational services to your child. The school district that provides your child with special education services is required by IDEA to provide you with written notice of your procedural safeguards, and provide sources to help you understand them.

**Free Appropriate Public Education (FAPE):** Under IDEA, a free appropriate public education (FAPE) means special education and related services necessary for your child to benefit from his or her education. Your child is eligible for special education between the ages of three and twenty-one. Your child does not remain eligible for special education services if he or she is evaluated and determined to no longer be eligible for special education, or he or she graduates with a regular high school diploma before he or she turns 21. 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](mailto:speced@k12.wa.us).

#### Procedural Safeguards Notice

34 CFR § 300.504; WAC 392-172A-05015

**You have the right to receive a copy of this notice once a year and certain other times.**

A copy of this notice must be given to you (1) once every school year, and: (2) upon initial referral or your request for evaluation; (3) upon receipt of the first special education citizen complaint in a school year; (4) upon receipt of the first due process hearing request in a school year; (5) when a decision is made to take a disciplinary action that constitutes a change of placement; and (6) upon your request. This procedural safeguards notice must include a full explanation of all of the procedural safeguards related to the unilateral placement of your child at a private school at public expense, special education citizen complaint procedures, informed consent, the procedural safeguards contained in Subpart E of the Part B IDEA regulations, and confidentiality of information provisions contained 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 392-172A-05010

**You have the right to be given information in writing that explains what your school district is or is not doing when it affects your child's special education needs.**

The school district must provide you information in writing about important decisions that affect your child's special education program. This is called prior written notice and it is a document that reflects **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; **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. 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 392-172A-01120**

*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; WAC 392-172A-05020**

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 392-172A-01040**

**The school district must get your written consent before evaluating your child. The district must also get your written consent before providing special education services for the first time to your child. There are some exceptions that apply to obtaining your consent for evaluations.**

*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 relevant to 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. This means that if you provided consent for your child to initially receive special education services and the school district is already providing those services, the district must continue to provide services to your child, even though you want to withdraw the consent.

#### **Parental Consent - Requirements**

**34 CFR §300.300; WAC 392-172A-03000**

##### **Consent for Initial Evaluation**

Your district cannot conduct an initial evaluation of your child to determine eligibility for special education and related services until it provides you with prior written notice describing the proposed evaluation activities 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. The district also has to obtain consent from you to provide your child with special education and related services for the first time. 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, try to obtain your consent 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 chooses not to 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 you for an initial evaluation to determine whether the student is eligible for special education if:

1. Despite reasonable efforts to do so, the district cannot find you;
2. Your rights as a parent 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 you.

*A ward of the state*, as used in IDEA, means a child who is:

1. A foster child not placed with a foster parent;
2. Considered a ward of the state under Washington State law; **OR**
3. In the custody of the Department of Social and Health Services, Children's Administration.

*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 procedures in order to obtain your agreement or use due process hearing procedures in order to obtain a ruling from an administrative law judge to provide the special education and related services to your child. If you refuse or do not respond to a request 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. In this situation, your school 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. He or she is reevaluated and found to no longer qualify for 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 if your child turns 21 after August 31, he or she is eligible for services through the end of the school year.)

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

**Parental Consent for Reevaluations**

If new testing is to be conducted as part of your child's reevaluation, your district must obtain your informed consent before it reevaluates your child, 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 to seek agreement from you or use the due process hearing procedures 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 IDEA if it declines to pursue the reevaluation using mediation or due process procedures.

**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 of 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 evaluation or 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 reevaluation, or you fail to respond to a request to provide your consent, the district may not use mediation procedures to obtain your agreement or use due process hearing procedures to 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 eligible for special education.

**Independent Educational Evaluations**

**34 CFR § 300.502; WAC 392-172A-05005**

**If you disagree with an evaluation completed by the school district, you have the right to have your child evaluated by someone who does not work for the school district.**

You have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation 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 the 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 school 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) agree to provide an IEE at public expense.
- 2. If your school district requests a due process hearing and the final decision is that the 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 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.

You are only entitled to one IEE of your child at public expense each time the 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 provide the district with an IEE that you obtained at public expense:

- 1. Your district must consider the results of the IEE in any decision made with respect to the provision of a FAPE to your child, if it meets the district's criteria for IEEs; **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.

**Parent Participation**

**34 CFR §§300.322 and 300.501; WAC 392-172A-05000**

**You have the right to be invited to participate in a meeting that involves the special education needs of your child.**

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 information about the referral of your child, his or her need for evaluations, your child's eligibility, development or revision of your child's IEP, and placement decisions. However, 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. But, 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; WAC 392-172A-03015, 03095 and 03105**

**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:

- 1. Make changes to your child's IEP without a meeting after you and the district have developed the annual IEP. These changes may be made by developing a written document to amend or modify your child's IEP rather than redrafting the entire IEP. Upon your 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.

2. 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.
3. 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 agree to:

1. Waive the requirement to conduct a reevaluation at least once every three years because you and the district agree it is unnecessary.
2. Reevaluate your child 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 392-172A-05135

**When your child turns 18, the rights that you hold as a parent transfer to your adult child, with some exceptions.**

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. "Age of majority" means that all rights under IDEA transfer from you to your child. There are also 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 this transfer of rights is 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.

### **CONFIDENTIALITY OF INFORMATION**

**Part B of IDEA gives you rights regarding your child's special education records. These rights are in addition to rights that you have under the Family Educational Rights and Privacy Act (FERPA), which is a law that provides educational records protections to all students.**

#### **Definitions**

34 CFR §300.611; WAC 392-172A-05180

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 of IDEA. (Because this document focuses on your involvement with your local school district, the term "school district" is used in this section.)

#### **Personally Identifiable**

34 CFR §300.32; WAC 392-172A-01140

*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 392-172A-05185

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 statewide identification, location, or evaluation activity (also known as "child find"), the notice must be published in newspapers or announced in other media, or both, with circulation adequate to notify parents throughout the state of the activity to locate, identify, and evaluate children in need of special education and related services.

#### **Access Rights**

34 CFR §300.613 - §300.617; WAC 392-172A-05190-05210

You have the right to inspect and review any education records relating to your child that are collected, maintained, or used by your school 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 will assume 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 school district must keep a record of parties who obtain access to education records collected, maintained, or used under Part B of the IDEA, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. School districts are not required to keep this record of access for parents or authorized employees of the school district.

## **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 about that information if the district can show that information to you without divulging personally identifiable information about another student.

## **List of Types and Locations of Information**

If you request it, the school district must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

## **Fees**

The school district 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 - §300.621; WAC 392-172A-05125**

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 that decision and advise you of your right to a hearing by the district. 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. The hearing to contest the information in education records must be conducted according to the district's hearing procedures under FERPA. This is not a special education due process 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 of those changes 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 that you have the right to place a statement in your child's educational records commenting on the information or providing any reasons you disagree with the decision of the district.

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 392-172A-05225**

Your written consent must be obtained before personally identifiable information is disclosed to others unless disclosure of the information contained in your child's education records is allowed without parental consent under FERPA. In general, 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. However, your consent must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. In addition, 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 your child resides if you are not planning to enroll your child in your district of residence.

## **Safeguards for Personally Identifiable Information**

**34 CFR §300.623; WAC 392-172A-05230**

Your school district must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the school district 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 confidentiality under Part B of IDEA and FERPA and Washington State's procedures. 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 392-172A-05235**

Your district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child. When it is no longer needed, the information must 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 how long a district must retain records are published by the Secretary of State, Division of Archives and Records Management.

## **SPECIAL EDUCATION DISPUTE RESOLUTION PROCEDURES**

You are an important participant in all aspects of your child's special education program. This involvement begins at the initial referral your child. The 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 disagreements, there are more formal dispute resolution options available. These are mediation, citizen complaints, and due process hearings.

## **MEDIATION**

**34 CFR § 300.506; WAC 392-172A-05060-05075**

**You (and the district) may request mediation to resolve a disagreement about your child's special education program. You (and the district) may also refuse to participate in mediation.**

## **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**

**In addition to mediation, you have the right to use the state complaint process or request a due process hearing to resolve disagreements with the school district. These options have different rules and procedures.**

Part B of IDEA and federal regulations different 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 that a district, OSPI, educational service district or any other public agency has violated a Part B requirement, federal rules contained in 34 CFR Part 300, or state regulations contained at Chapter 392-172A WAC. Citizen complaints are investigated by OSPI, based on information about the violations provided by the person filing the complaint, and the school district or other agency responding to the complaint. Citizen complaints must be filed within one year of the alleged violation. 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 your child or the provision of a free appropriate public education (FAPE) to your child. The due process hearings are conducted by an administrative law judge (ALJ) employed by the Office of Administrative Hearings, which is an independent agency. Due process hearings generally involve testimony of witnesses and introduction of evidence. Due process hearing requests must be filed within two years of the alleged violation (with some exceptions for misrepresentation or withholding information). The timelines and procedures for citizen complaints and due process hearings are explained below.

#### **CITIZEN COMPLAINT PROCEDURES**

**34 CFR §§300.151 - 300.153; WAC 392-172A-05025-05045**

**You have the right to file a special education complaint with OSPI. Your complaint must be signed and must include specific information. Your complaint must be filed within one year of the alleged violation.**

If you, any individual, or organization believes a district, OSPI, or any other educational entity governed by 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. You must provide a copy of the complaint to the district or other agency against whom you are complaining.

#### **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 or a statement that the district or other agency is not implementing a mediation or resolution agreement;
- The name and address of the district or other agency;
- The name of the student, if the complaint is specific to a student, and contact information if the student is homeless;
- A description of the problem with specific facts;
- A proposed resolution of the problem to the extent this information is known and available to you at the time you file the complaint; **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 special education webpage at:

[http://www.k12.wa.us/SpecialEd/pubdocs/Citizen\\_Complaint\\_Request\\_Form.pdf](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.

#### **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 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 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, the reasons for the decision, and any reasonable corrective measures deemed necessary to resolve the complaint if a violation has occurred.

#### **Complaint Remedies**

When OSPI finds a violation or failure to provide appropriate services through its complaint process, 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, and one or more are part of a hearing, OSPI must set aside (not investigate) 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 a due process hearing involving the same parties, the hearing decision is binding and OSPI must inform the complainant that it may not investigate that issue.

OSPI must resolve a complaint alleging that a district has failed to implement a due process decision.

#### **DUE PROCESS HEARING PROCEDURES**

**34 CFR §300.507 - §300.513; WAC 392-172A-05080-05125**

**You have the right to request a due process hearing if you and the school district cannot agree about your child's special education program. Your hearing request must include specific information. The timeline for filing a due process request is two years (with some exceptions).**

#### **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 other times, if you request information. For due process hearing procedures, "you", includes your attorney and "district" includes the district's attorney if they are represented by an 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 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;
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 under *Filing*. 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.

A district may still assert that your due process hearing request is insufficient even though it provides you with the information in items 1-4 above.

#### **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. Either party may still assert that the due process hearing request is insufficient.

#### **Model Forms**

**34 CFR §300.509; WAC 329-172A-05085**

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 are not required to use this form. However, 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. You may also obtain a copy of the hearing form from your district's special education department.

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

**34 CFR §300.518; WAC 392-172A-05125**

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 involving an appeal of an ALJ's decision, your child must remain in his or her current educational placement unless you and the district agree otherwise. 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 IDEA for a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because your child has turned three, the district is not required to provide the Part C services that your child has been receiving. If your child is found eligible under Part B of IDEA and you consent for your 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 between you and the district. If the ALJ reaches a decision that a change of placement is appropriate, that decision regarding placement must be treated as an agreement between you and the school district for purposes of placement during any court appeal of the due process decision.

#### **Resolution Process**

**34 CFR §300.510; WAC 392-172A-05090**

**When you file a due process hearing request, IDEA requires that you participate in a resolution meeting before the due process hearing timelines begin.**

#### **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.

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

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. Unless 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 the district is not able to obtain your participation in the resolution meeting after making reasonable efforts and documenting those efforts, the district may, at the end of the 30-calendar-day resolution period, request that the ALJ dismiss your due process hearing request. The school district must document its attempts to arrange a mutually agreed upon time and place. The record of such documentation includes attempts, 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 you and the district resolve your dispute 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 392-172A-05080-05095**

##### **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 persons who serve as ALJs. The list includes a statement of the qualifications of each ALJ.

##### **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 IDEA.

#### **Hearing Rights**

**34 CFR §300.512; WAC 392-172A-05100**

##### **General**

You and the school district, as parties 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.

## **Timelines and Convenience of Hearings**

### **34 CFR §300.515; WAC 392-172A-05110**

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.

## **Hearing Decisions**

### **34 CFR §300.513; WAC 392-172A-05105**

#### **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 hearings where you allege that the district has made 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**

Even if an ALJ does not find a FAPE violation, the ALJ may still order the district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536).

#### **Separate Request for a Due Process Hearing**

You may file 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 deletes any personally identifiable information and:

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.

## **APPEALS**

### **Finality of Decision; Appeal**

#### **34 CFR §300.514; WAC 392-172A-05115**

**A decision in a due process hearing is final unless you or the district appeals that decision to a court. There are specific timelines for filing an appeal. Courts may award attorneys' fees.**

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

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

#### **34 CFR §300.516; WAC 392-172A-05115**

##### **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. The district courts of the United States have authority to rule on actions brought under Part B of IDEA 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.

##### **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. However, if you are filing a civil action under these laws and you are seeking relief that is also available under Part B of IDEA, the due process hearing procedures described above must be exhausted to the same extent as would be required if you 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 impartial due process hearing procedures to obtain remedies under IDEA before going directly into court.

## **Attorneys' Fees**

### **34 CFR §300.517; WAC 392-172A-05120**

#### **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 IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing school district or OSPI, 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 IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing school district or OSPI, 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 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 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 IDEA.

## PROCEDURES WHEN DISCIPLINING STUDENTS WITH DISABILITIES

**There are protections available for your child when he or she is disciplined. These protections are in addition to discipline procedures that apply to all students. These protections also apply to students who have not yet been found eligible for special education if the district should have known that the student would be eligible.**

### Suspension and Expulsion Rules for All Students

#### **WAC 392-400**

When a district suspends or expels your child, it must follow 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 and they must follow these procedures. The district's procedures must also describe how you may challenge its determination to discipline your child. 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. 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; WAC 392-172A-05145**

#### **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 your child who violates a school code of student conduct.

#### **General**

School personnel may, for not more than **10 school days** in a row, remove your child 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, when he or she violates a code of student conduct, if they would also remove a student in the same circumstance who does not have a disability. School personnel may also impose additional removals of your child 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 your child 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 your child'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 your child 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 your child as described below under **Services**. Your child's IEP team determines the interim alternative educational setting for such services.

#### **Services**

The services that must be provided to your child, when he or she has been removed from his or her current placement may be provided in an interim alternative educational setting. A district is not required to provide services to your child if he or she has been removed from his or her current placement for **10 school days or less** in that school year, unless it provides services to students without disabilities who have been similarly removed.

If your child has been removed from his or her current placement for **more than 10 school days** your child must:

1. Continue to receive educational services, so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his or her IEP; **AND**
2. If your child's behavior was not a manifestation of his or her disability, he or she may 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 your child 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 your child's teachers, will determine the extent to which services are needed to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP. If the removal is a change of placement (see definition below), your child's IEP team determines the appropriate services to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his or her IEP.

### Change of Placement Because of Disciplinary Removals

#### **34 CFR §300.536; WAC 392-172A-05155**

Your child's removal from his or her current educational placement is a **Change of Placement** if:

1. The removal is for more than 10 school days in a row; **OR**
2. Your child 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. Your child's behavior is substantially similar to his or her behavior in previous incidents that resulted in the series of removals;
  - c. There are additional factors considered such as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

The school district determines whether a pattern of removals constitutes a change of placement on a case-by-case basis and, if challenged by you, 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 for your child because of a violation of a code of student conduct, it must notify you of that decision, and provide you with a procedural safeguards notice.

#### **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 your child because of a violation of a code of student conduct, the district and relevant members of the IEP team

determined by you and the district must review all relevant information in the your child's file, including his or her IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, your child's disability; **OR**
2. If the conduct in question was the direct result of the district's failure to implement the your child'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, relevant members of your child's IEP team and you determine that either of those conditions was met, the conduct must be determined to be a manifestation of your child's disability. If the group described above determines 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**

When this group, that includes you, determines that the conduct was a manifestation of your child'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 your child's behavior.

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

#### **Special Circumstances**

School personnel may remove your child to an interim alternative educational setting (determined by the student's IEP team), regardless of whether or not your child's behavior was a manifestation of his or her disability, for up to 45 school days, if he or she:

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 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 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 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.

#### **Determination of Setting**

**34 CFR § 300.531; WAC 392-172A-05150**

The IEP team must determine the interim alternative educational setting for removals that are **Changes of Placement**, and removals under the headings **Additional Authority** that are not a manifestation of your child's disability and **Special Circumstances**, above.

#### **Due Process Hearing Procedures for Discipline**

**34 CFR § 300.532; WAC 392-172A-05160**

You may file a due process hearing request to request a due process hearing if you disagree 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 your child is substantially likely to result in injury to your child 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 your child with a disability to the placement from which he or she 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 your child's behavior was a manifestation of his or her disability; **OR**
2. Order a change of placement of your child to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

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

Whenever you or a district files a due process hearing request to request such a hearing, the request must meet the requirements described under the headings **Due Process Hearing Request Procedures** and **Due Process Hearings**, except as follows:

1. The due process hearing is expedited, and must occur within **20** school days of the date the hearing is requested. The ALJ must issue a decision within **10** school days after the hearing.
2. Unless you 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.

You or the school district may initiate a civil action, contesting the decision in an expedited due process hearing in the same way as in other due process hearings (see **Appeals**, above).

#### **Placement During Due Process Expedited Hearings**

**34 CFR §300.533; WAC 392-172A-05165**

When, you or the district has filed a due process hearing request related to disciplinary matters, your child must (unless you 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 392-172A-05170**

### **General**

If a student has not been determined eligible for special education and related services and violates a code of student conduct, you may assert your child's procedural protections if it is determined that the district had knowledge that your child should have been evaluated and determined eligible for special education services before the behavior that brought about the disciplinary action occurred.

### **Basis of Knowledge for Disciplinary Matters**

A district must be deemed to have knowledge that your child is eligible for special education if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing that your child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of your child;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; **OR**
3. Your child's teacher, or other district personnel, expressed specific concerns about a pattern of behavior demonstrated by your child 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. You did not allow an evaluation of the student or you refused special education services; **OR**
2. Your child has been evaluated and determined to not be eligible for special education services.

### **Conditions That Apply if There is No Basis of Knowledge**

If a district does not have knowledge that your child is eligible for special education prior to taking disciplinary measures against your child, as described above under the sub-headings **Basis of Knowledge for Disciplinary Matters** and **Exception**, your child may be subjected to the disciplinary measures that are applied to students without disabilities who engaged in comparable behaviors. However, if you or the district request an evaluation of a student during the time period in which he or she is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If your child is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the district, and information provided by you, the district must provide special education and related to your child and follow disciplinary requirements described above.

## **Referral to and Action by Law Enforcement and Judicial Authorities**

**34 CFR §300.535; WAC 392-172A-05175**

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by your child who is eligible for special education services 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 your child.

### **Transmittal of Records**

If a district reports a crime committed by your child, the district:

1. Must ensure that copies of your child'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 your child'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 392-172A-04115**

**If you believe your school district cannot provide a FAPE for your child and you choose to enroll your child in a private school without the district's agreement, there are specific steps that you must follow in order to request reimbursement from the district for the private school.**

### **Reimbursement for Private School Placement**

If your child previously received special education and related services from a school 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 district to reimburse you for the cost of that enrollment if the court or ALJ finds that the school district 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 your 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 your failure to provide the required notice if: (a) you are not literate or cannot write in English; or (b) compliance with the above requirement would likely result in serious emotional harm to your 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, Joni Wolpert (596-7530) 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](http://www.k12.wa.us/SpecialEd/pubdocs/PS_Booklet.pdf) Publication Number: 07-0001

### **Resources**

For additional information you can contact: Washington PAVE 1-800-5-PARENT, or Washington Protection and Advocacy System (206) 324-1521, or Kristin Hennessey, Ombudsman, (360) 725-6075.

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