IDAHO
STATE DEPARTMENT OF EDUCATION

SPECIAL EDUCATION MANUAL 2015

Division of Special Education

Approved by the State Board of Education
December 18, 2014

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Idaho Special Education Manual

The policies and procedures contained in this Idaho Special Education Manual have been developed by the State Department of Education (SDE) and offered to local education agencies (LEA) for adoption. This Manual has been approved by the State Board of Education, meets the IDEA eligibility requirement of 20 U.S.C. Section 1412, and is consistent with state and federal laws, rules, regulations, and legal requirements.

In the case of any conflict between Idaho Administrative Code (IDAPA) and the Individuals with Disabilities Education Act (IDEA), the IDEA shall supersede the IDAPA, and IDAPA shall supersede this Manual.

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ACRONYMS AND ABBREVIATIONS

Section 504	Section 504 of the Rehabilitation Act of 1973
ABS	American Association on Mental Retardation Adaptive Behavior Scale
ADA	Americans with Disabilities Act
A.D.A.	Average Daily Attendance
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
ADR	Alternative Dispute Resolution
APR	Annual Performance Report
ASD	Autism Spectrum Disorder
ASHA	American Speech/Language Hearing Association
AT	Assistive Technology
ATRC	Assistive Technology Resource Center
AU	Autism
AYP	Adequate Yearly Progress
BIP	Behavioral Intervention Plan
CADRE	[National] Center on Dispute Resolution in Special Education
CALP	Cognitive Academic Language Proficiency
CAP	Corrective Action Plan
CBM	Curriculum-Based Measurement
CDC	Child Development Center
CEC	Council for Exceptional Children
CEIS	Comprehensive Early Intervening Services
C.F.R.	Code of Federal Regulations
CI	Cognitive Impairment (see Intellectual Disability)
CIP	Continuous Improvement Plan

CLD	Culturally or Linguistically Diverse
DB	Deaf-Blindness
DD	Developmental Delay
DDA	Developmental Disabilities Agency
DHW	Department of Health and Welfare
DJC	Department of Juvenile Corrections
DMA	Direct Math Assessment
DOC	Department of Correction
DP	Due Process
DR	Dispute Resolution
DRI	Disability Rights Idaho
DSM	Diagnostic Services Manual
DWA	Direct Writing Assessment
ECR	Early Complaint Resolution
ECSE	Early Childhood Special Education
ED	Emotional Disturbance
ENT	Ear, Nose and Throat
ESEA	Elementary and Secondary Education Act
ESL	English as a Second Language
ESY	Extended School Year
FAE	Fetal Alcohol Effect
FAPE	Free and Appropriate Public Education
FAS	Fetal Alcohol Syndrome
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
GED	General Education Development

GEPA	General Education Provisions Act
GPA	Grade Point Average
GRPA	Government Performance Review Act
G/T	Gifted/Talented
HH	Hard of Hearing
HOUSSE	Highly Objective Uniform State Standard of Evaluation
IAA	Idaho Alternate Assessment
IAES	Interim Alternative Educational Setting
IASA	Improving America's School Act
IATP	Idaho Assistive Technology Project
IBEDS	Idaho Board of Education Data System
IBI	Intensive Behavioral Interventions
IC	Idaho Code
IDAPA	Idaho Administrative Procedures Act
IDEA	Individuals with Disabilities Education Act
IDELR	Individuals with Disabilities Education Law Report
IDVR	Idaho Division of Vocational Rehabilitation
IEE	Independent Educational Evaluation
IELG	Idaho Early Learning Guidelines (eGuidelines)
IEP	Individual Education Program
IFSP	Individual Family Services Plan
IN	Individual (Medicaid Service Code)
IPUL	Idaho Parents Unlimited, Inc.
IQ	Intelligence Quotient
IRI	Idaho Reading Indicator
ISAT	Idaho Standards Achievement Test

ISBOE	Idaho State Board of Education
ISDB	Idaho School for the Deaf and Blind
ISEAP	Idaho Special Education Advisory Panel
ITC	Idaho Training Clearinghouse
ITP	Infant/Toddler Program
JDC	Juvenile Detention Center
LEA	Local Education Agency
LEP	Limited English Proficiency
LI	Language Impairment
LD	Learning Disability
LG	Large Group, three (3) or more (Medicaid Service Code)
LOA	Letter of Authorization (ends June 30, 2006)
LRE	Least Restrictive Environment
MD	Multiple Disabilities
MDT	Multidisciplinary Team
MTSS	Multi-Tiered System of Support
NAEP	National Assessment of Educational Progress
NCLB	No Child Left Behind Act
O&M	Orientation and Mobility
OCR	Office of Civil Rights
OHI	Other Health Impaired
OI	Orthopedic Impairment
OMB	Federal Office of Management and Budget
OSEP	Office of Special Education Programs
OSERS	Office of Special Education and Rehabilitation Services
OT	Occupational Therapy

PBIS	Positive Behavioral Interventions and Supports
PBS	Positive Behavioral Supports
PERC	Parent Education Resource Center
PGI	Performance Goals and Indicators
PIR	Plan for Improving Results
PLAAFP	Present Levels of Academic Achievement and Functional Performance (Also known as PLOP for Present Levels of Performance)
PLOP	Present Levels of Performance (Also known as PLAAFP for Present Levels of Academic Achievement and Functional Performance)
PSR	Psycho-Social Rehabilitation
PT	Physical Therapy
PTI	Parent Training and Information Center
PWN	Prior Written Notice
RTI	Response to Intervention
SBI	Serious Bodily Injury
SBE	State Board of Education
SBR	Scientifically-Based Research
SD	Standard Deviation
SDE	State Department of Education
SEA	State Education Agency
SEAP	Special Education Advisory Panel
SG	Small Group, 2 (Medicaid Service Code)
SI	Speech Impairment
SIG	State Improvement Grant
SLD	Specific Learning Disability
SLP	Speech-Language Pathologist
SOP	Summary of Performance (secondary)

SP	Services Plan
SPP	State Performance Plan
SS	Standard Score
TBI	Traumatic Brain Injury
VI	Visual Impairment

GLOSSARY

Academic achievement. A student's level of performance in basic school subjects, measured either formally or informally.

Accommodation. Changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results and do not fundamentally alter the requirements (or course expectations).

Adaptation. Changes to curriculum, instruction, or assessments that fundamentally alter the requirements, but that enable a student with an impairment that significantly impacts performance an opportunity to participate. Adaptations include strategies such as reading the reading portion of a test, using spell/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and invalidate assessment results and provide non-comparable results.

Adaptive behavior. Behavior that displays an age-appropriate level of self-sufficiency and social responsibility which includes the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, direction, functional academic skills, work, leisure, health, or safety.

Adverse Impact (adverse effect). A determination made by the evaluation team that the student's progress is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers preventing the student from benefitting from general education. The phrases "adverse impact" and "adverse effect" are used interchangeably in this Manual and have the same meaning. See also "educational performance."

Adult student. A student with a disability, age eighteen (18) or older, to whom rights have transferred under the IDEA and Idaho Code, and who has not been deemed legally incompetent by a court or deemed ineligible to give informed consent by the IEP team.

Age-appropriate activities. Activities that typically-developing children of the same age would be performing or would have achieved.

Age of majority. The age at which, by law, a child assumes the responsibilities of an adult. In Idaho, the age of majority is eighteen (18).

Aggregated data. Information that is considered as a whole. In this Manual, the term refers to collective data on all students, including students with disabilities.

Alternate assessment. A specific assessment, developed by the state in lieu of statewide assessments or by the district in lieu of districtwide assessments, designed to measure functional skills within the same domains required by the regular statewide or district wide assessments. It is designed for students who are unable to demonstrate progress in the typical manner and who meet the state-established criteria.

Alternative authorization/teacher to new certification. One of the State Board of Education's alternative routes to teacher certification as outlined in the Idaho Certification Manual distributed by the Idaho State Department of Education.

Alternative or supplementary curriculum. Curriculum not based on or drawn directly from the general education curriculum.

Alternative school. A public school placement option that may be utilized for students who are not succeeding in the traditional school environment but may benefit through the use of modified curriculum or flexible programming.

Articulation. The ability to speak distinctly and connectedly.

Articulation disorder. Incorrect productions of speech sounds, including omissions, distortions, substitutions and/or additions that may interfere with intelligibility.

American with Disabilities Act (ADA) of 1990. A federal law prohibiting discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

Assessment. The formal or informal process of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. It is an integral component of the evaluation process. A test is one method of obtaining credible new information within the assessment process. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and adaptations and interventions, and other formal or informal data.

Assistive technology device. Any item, piece of equipment, or product system whether acquired commercially, off a shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. Excludes surgically implanted medical devices.

Assistive technology service. Any service that directly assists a student with a disability with the assessment, selection, acquisition, or use of an assistive technology device. The term

includes the evaluation of the need of the student; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing devices; coordinating and using other therapies, interventions, or services with existing education and rehabilitation plans and programs; training or technical assistance for a student and/or family; and training or technical assistance for professionals, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student.

Attention deficit disorder (ADD). A biologically based mental disorder that has these typical characteristics: short attention span; distractive behavior; difficulty following directions and staying on task; and an inability to focus behavior. The disorder compromises many skills needed for academic success, including starting, following through with, and completing tasks; moving from task to task; and following directions.

Attention deficit hyperactivity disorder (ADHD). A biologically based mental disorder in which a person has inappropriate degrees of inattention, impulsiveness and hyperactivity.

Audiologist. A licensed health care professional who diagnoses hearing loss and selects and fits hearing aids.

Autism. A disability category in which a developmental disability, generally evident before age three (3), significantly affects verbal or nonverbal communication skills and social interactions and adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

Basic reading skills. For the purpose of specific learning disability eligibility, includes sight word recognition, phonics, and word analysis. Essential skills include identification of individual sounds and the ability to manipulate them, identification of printed letters and sounds associated with letters, and decoding of written language.

Behavioral intervention plan (BIP). A plan comprising practical and specific strategies designed to increase or reduce a definable behavior. These strategies address preventative techniques, teaching replacement behaviors, how to respond or resolve behaviors, and crisis management, if necessary.

Benchmark. A major milestone which describes the progress the student is expected to make toward annual goals within a specified period of time. Similar to an objective.

Braille. A tactile system of reading and writing, used by students who are blind or visually impaired, with an official code composed of Braille characters or cells that consist of various patterns of raised dots that correspond to alphabetic letters, punctuation marks and other symbols.

Business day. A workday (Monday through Friday) except for federal and state holidays, unless specifically included.

Case manager. A member of the evaluation and/or IEP team (usually the special education teacher) who is designated to perform administrative functions for the team, including: (1) setting up meetings; (2) ensuring appropriate forms are completed; (3) ensuring timelines are met; and (4) includes the responsibility of coordinating and overseeing the implementation of the IEP.

Change of placement. A change in educational placement relates to whether the student is moved from one type of educational program -- i.e., regular class -- to another type -- i.e., home instruction. Or it may also occur when there is a significant change in the student's educational program even if the student remains in the same setting.

Change of placement for disciplinary reasons. A removal from the current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, the total amount of time the student is removed are indicators of a pattern, and whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals.

Charter school within a district. A publicly funded, nonprofit, nonsectarian public school that is created by a formal agreement (charter) between a group of individuals and the board of trustees of the local school district and operates independently within the district. It is governed by the conditions of its approved charter and federal and state laws. It is the responsibility of the local district to ensure that students attending such charter schools receive appropriate services as required by IDEA, Section 504 and the ADA.

Charter school LEA. A publicly funded, nonprofit, nonsectarian public school that operates as its own local education agency or district. Charter LEAs do not have an agreement with the local school district within whose boundaries they operate. Charter LEAs must be authorized by the Idaho Public Charter School Commission and are required to provide services in accordance with IDEA, Section 504 and the ADA.

Child. An individual who has not attained age eighteen (18).

Child count. For purposes of the annual report required under IDEA, the State must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

Child find. A process to locate, identify, and evaluate individuals ages three (3) to twenty-one (21) who are suspected of having a disability and in need of special education.

Civil action. A judicial action that any party who is aggrieved by the final decision of a due process hearing officer may bring in either a federal district court or a state court of competent jurisdiction (as designated by Idaho law).

Cognitive academic language proficiency (CALP). A test to determine a student's appropriate language dominance/usage.

Compensatory education. Educational services or remedies which are above and beyond those normally due a student under his or her state's education law. The principle is acknowledged by most courts that have considered the issue to be an appropriate equitable remedy when a student has been denied free appropriate public education. Services that would put the student in the same position had they not been denied a FAPE.

Complaint. (State complaint) A formal, written, and signed statement submitted to the Idaho State Department of Education by an individual or organization that contains one or more allegations and the facts on which the statement is based that a district or agency has violated a requirement of IDEA within the last year (365 days).

Coordinated early intervening services (CEIS). Services for students (K-12) who need additional academic and behavioral support to succeed in a general education environment. These students have not been identified has having a disability under the IDEA.

Consensus. Following the opportunity for each member to provide input and gain clarification, the resulting outcome where each member agrees to support the decision of the group. Consensus is both the general agreement to support the decision, and the process of reaching such agreement to support the decision.

Consent. Voluntary, written approval of a proposed activity, as indicated by a parent/adult student signature. The parent/adult student must be fully informed of all relevant information in his or her native language or other mode of communication and must understand all information relevant to the activity to make a rational decision.

Conservator. A person appointed by the court to handle financial decisions for a person who is incapacitated or debilitated. In Idaho the conservator has all of the powers conferred in Idaho Statute 15-5-424 and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 15-5-209 of this code until the minor attains the age of eighteen (18) or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2 of this chapter, Idaho Statute 15-5-424.

Controlled substance. Any drug so designated by law whose availability is restricted; i.e., so designated by federal Controlled Substances Acts. Included in such classifications are narcotics, stimulants, depressants, hallucinogens, and marijuana. (See Schedule I, II, III, IV or V in section (c) of the Controlled Substances Act (21 U.S.C. 812(c))

Core academic subjects. These include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the ESEA (NCLB).

Corrective action plan (CAP). A plan that orders a district as a result of an IDEA complaint to take corrective actions to resolve legal deficiency as found by the SDE.

Critical life skill. Skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance students' integration with nondisabled individuals. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

Dangerous weapon. 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 2 ½ inches in length.

Data-based decision making. The collecting of information that can be charted or graphed to document performance over time followed by an analysis of the information to determine needed changes in policies, programs, or procedures.

Day. Refers to a calendar day unless otherwise indicated as a business or school day.

Deaf-blindness. An IDEA disability category in which a student demonstrates hearing and visual impairments, and where the combination of these two disabilities causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.

Deafness. An IDEA disability category in which hearing loss or inability is so severe that the student, with or without amplification, is limited in processing linguistic information through hearing, which adversely affects educational performance.

Detained youth. Anyone aged three (3) through twenty-one (21) who is being held for a crime regardless of whether or not that person has appeared before the court.

Developmental achievement. Gains a student makes which follow the pedagogic theory that all children learn in the same basic way and in the same sequence, although at different rates.

Developmental delay. An IDEA disability category used only for students ages three (3) through nine (9) for whom a significant delay exists in one or more of the following skill areas: receptive/expressive language; cognitive abilities; gross/fine motor functioning; social/emotional development; or self-help/adaptive functioning. The use of this category is optional for districts.

Disaggregated data. Information that is reported and/or considered separately on the basis of a particular characteristic. In this Manual, the term refers to data on special education students as a group that is reported and/or considered separately from the same data on all students in a school, district, or state.

Discipline. Actions taken in response to a student's violation of the student conduct code.

Disclosure. The access to or the release, transfer or other communication of education records, or personally identifiable information contained in these records by oral, written, electronic, or other means.

Disproportionality. A disparity or inequality. In this Manual, the term refers to a statistical range of data where students of a specific race or ethnicity are identified in either greater or fewer numbers than expected when compared to the representation of that race or ethnicity within the general school population. The areas addressed in the IDEA are: (1) identification as a student with a disability; (2) identification of a student with a specific category of disability; and (3) placement in a particular educational setting and (4) the incidence, duration of any type of disciplinary actions, including suspensions and expulsions.

District. A local educational agency (LEA), inclusive of the following terms: a local district, a state authorized charter school, a state operated program, and a traditional school. See also "LEA."

Dropout. A student who has voluntarily left an education system before completion of requirements and is not known to be enrolled in any other educational program.

Dual enrollment. A child of school-age who is enrolled in a nonpublic school (including a homeschool) or a public charter school and enrolled in a public school to participate in public school programs and activities, Idaho Statue 33-203. See also "nonpublic school" and "nonpublic student."

Due process hearing. An administrative hearing conducted by an SDE-appointed hearing officer to resolve disputes on any matter related to identification, evaluation, educational placement, or the provision of a free appropriate public education under the IDEA.

Educational performance. A student's educational performance in achievement, developmental and or functional skills.

Education record. A student's record containing personally identifiable information maintained by an educational agency or institution, or by a party acting for the agency or institution, which may include, but is not limited to print, handwriting, computer media, video or audio tape, film, microfilm, and microfiche, but is not within the exceptions set out in the Family Educational Rights and Privacy Act (FERPA). The documents in the education record used to determine current eligibility and monitor current progress are considered part of the education record and are maintained. Items in the educational record that are no longer used, or have been summarized, may be removed from the educational record after written parental notification.

Educational services agency, other public institution or agencies. (1) An educational service agency, as defined in 34 CFR §300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

Elementary school. The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law, 34 CFR §300.13. An elementary school includes a grade configuration of grades one (1) through eight (8) inclusive, or any combination thereof, Idaho Code 33-119.

Eligibility/evaluation team. A group of people, including the parent/adult student, charged with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the IEP team (although not necessarily the same individuals) and other qualified professionals as appropriate.

Emotional disturbance. An IDEA disability category in which a student has a condition exhibiting one or more of five behavioral or emotional characteristics over a long period of time, and to a marked degree, that adversely affects educational performance. The term *does not* include students who are socially maladjusted unless it is determined they have an emotional disturbance. The term emotional disturbance *does* include students who are diagnosed with schizophrenia.

Essential Components of Reading Instruction. The term means explicit and systematic instruction in (1) phonemic awareness, (2) phonics, (3) vocabulary development, (4) reading fluency, including oral reading skills, and (5) reading comprehension strategies.

Evaluation. A term that means using all required procedures to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

Expedited due process hearing. An administrative hearing conducted by an SDE-appointed hearing officer to resolve disputes concerning discipline for which shortened timelines are in effect in accordance with the IDEA.

Expulsion. Removal of a student from school for an extended period of time. For general education students, services usually cease during an expulsion.

Extended school year (ESY). A program to provide special education and related services to an eligible student with a disability beyond the conventional number of instructional days in a school year and at no cost to the parents. An ESY program must be based on an IEP team decision and meet Idaho standards.

Extracurricular activities. Programs sponsored by a district that are not part of the required curriculum but are offered to further the interests and abilities of students.

FAPE. (See "Free appropriate public education.")

FERPA. (See "Family Educational Rights and Privacy Act.")

Facilitation. A voluntary process during which a neutral and impartial individual, contracted by the SDE, is appointed to conduct an IEP team or other special education related meeting.

Family Educational Rights and Privacy Act (FERPA). A federal law protecting the privacy of students and parents by mandating that personally identifiable information about a student contained in education records must be kept confidential unless otherwise provided by law. FERPA also contains provisions for access to records by parents, students, staff, and others.

Fluency disorder. Stoppages in the flow of speech that are abnormally frequent and/or abnormally long. These interludes take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

Free Appropriate Public Education (FAPE). A basic IDEA requirement which states that special education and related services are provided at public expense (free); in conformity with an appropriately developed IEP (appropriate); under public supervision and direction (public); and include preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

Functional achievement and performance. Gains made by a student which include programming in community living, reading, communication, self-care, social skills, domestic maintenance, recreation, employment or vocational skills. Also called independent living skills.

Functional behavioral assessment (FBA). A systematic process for defining problem behavior and gathering medical, environmental, social, and instructional information that can be used to hypothesize about the function of student behavior.

General education curriculum. The curriculum that is designed for all students, usually consisting of a common core of subjects and curriculum areas adopted by a district that are aligned to the Idaho Achievement Standards or district standards. The general education curriculum is defined by either the Idaho Achievement Standards or the district content standards if they are as rigorous.

General education interventions. Educational interventions designed to address the students using the core and supplemental interventions. Such interventions may include whole-school approaches, scientifically based programs, and positive behavior supports, including accommodations and instructional interventions conducted in the general education environment. These interventions may also include professional development for teachers and other staff to enable such personnel to deliver scientifically based literacy instruction and/or instruction on the use of adaptive and instructional software.

Goal. A measurable statement of desired progress. In an IEP, annual goals must include academic and functional goals designed to meet a child's needs that result from his or her disability, enable the child to be involved in and make progress in the general curriculum, and meet the child's other educational needs that result from the child's disability.

Graduation. The point in time when a student meets the district requirements for receipt of a regular high school diploma.

Guardianship. A judicial determination under which a competent adult has the legal right and duty to deal with problems, make decisions, and give consent for an adult with a disability (at least eighteen (18) years of age) who cannot act on his or her own behalf. The court will specify the nature and scope of the guardian's authority.

Health services. See "School health services."

Hearing impairment. An IDEA disability category in which a student has a permanent or fluctuating hearing loss that adversely affects the student's educational performance but is not included under the category of deafness. Also referred to as hard of hearing.

Highly objective uniform state standard of evaluation (HOUSSE). A rubric developed by the State Department of Education that can be used by a district as one way to determine if a teacher meets the federal definition of being "highly qualified" to teach in a given core academic subject and grade level designation.

Highly qualified. The standard which personnel (who teach core academic subjects) must possess with the appropriate certification, endorsement, licensure, coursework, training, skills and qualifications to provide educational services to students.

High school. Idaho Statute 33-119 defines secondary school as grades seven (7) through twelve (12) inclusive of any combination thereof. See "secondary school."

Homebound student. A student whose IEP team determines the child's home is the least restrictive environment.

Homeless children and youth. Children and youth who lack a fixed, regular, and adequate nighttime residence as defined in the McKinney-Vento Homeless Assistance Act.

Homeschool. An education program delivered by parents who have decided to provide instruction in the home and not in a public or private school. A homeschool is a nonpublic school, but is not considered a private school. A virtual public school is not a homeschool.

Homeschooled students. A homeschooled student is one whose parents have decided to provide an educational program in the home with instruction provided by the parents. A homeschool student is considered a nonpublic school student, but is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

Honig Injunction. A court order to remove a special education student from school or current educational placement due to factors of dangerousness. Districts are required to continue with the provision of FAPE.

Idaho core standards. Educational standards in math and English language arts detailing what K-12 students should know at the end of each grade and establishing consistent standards across the states, as well as ensuring that students graduating from high school are prepared to enter credit-bearing courses at two- or four-year college programs or enter the workforce.

Illegal use of drugs. The unlawful use, possession or distribution of substances identified under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional.

Independent educational evaluation (IEE). One or more assessment(s) conducted by a qualified examiner(s) who is not employed by or contracted by the public agency or district responsible for the education of the student in question.

Individualized education program (IEP). A written document (developed collaboratively by an IEP team made up of parents and school personnel) which outlines the special education program for a student with a disability. This document is developed, reviewed and revised at an IEP meeting at least annually.

Individualized education program (IEP) team. A team established by the IDEA and comprised but not limited to the student's general education teacher, a special education teacher, a district representative, parents, the student when appropriate, and other

knowledgeable persons. The team is responsible for developing an IEP, determining placement, and reviewing and revising the student's IEP and placement at least annually.

Individualized family service plan (IFSP). A written individualized plan for an infant or toddler (birth to three (3) years of age) with a disability that is developed by a multidisciplinary team, including the parents, under Part C of the IDEA.

Individuals with Disabilities Education Act (IDEA). A federal law ensuring services to children with disabilities. The IDEA governs how states and public agencies provide early intervention, special education and related services to individuals with disabilities. Infants and toddlers with disabilities (birth to two) and their families receive services under IDEA Part C. Children and youth (ages three (3) to twenty-one (21) receive special education and related services under IDEA Part B.

Initial provision of service. The first time that a child with a disability is provided special education and related services. This is also referred to as the "initial placement" and means the first time a parent is offered special education and related services for their child after an initial evaluation and eligibility determination.

In-lieu of transportation. Alternate method of transporting students to and from school.

Instructional intervention. An action or strategy based on an individual student's problem that is designed to remedy, improve, or eliminate the identified problem.

Intellectual disability. An IDEA disability category in which significant sub-average general intellectual functioning exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period and adversely affect the student's educational performance. The terms "mental retardation" and "cognitive impairment" were previously used to refer to this condition.

Interagency agreement. A written document that defines the coordination between the state and/or public/private agencies and/or districts with respect to the responsibilities of each party for providing and funding special education programs and special education and related services.

Interim alternative educational setting (IAES). The educational setting in which a district may place a student with a disability, for not more than forty-five (45) school days, if the student while at school, on school premises or at a school function carries a weapon or possesses a weapon; knowingly possesses, uses, sells or solicits the sale of illegal drugs or controlled substances; or has inflicted serious bodily injury upon another person. An IAES may also be ordered by a due process hearing officer based upon evidence that maintaining the current placement is substantially likely to result in injury to the student or others.

Interim IEP. A short-term IEP with all the components of a standard IEP developed by the IEP team. It may be used for students transferring from other districts pending the development of the standard IEP or other purposes as needed.

Interpreting services. The process of providing accessible communication between and among persons who are deaf, hard of hearing, or deaf-blind, and those who are hearing. The process includes, but is not limited to, communication between American Sign Language or other form of manual communication and English. The process may also involve various other modalities that involve visual, gestural and tactile methods including oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell.

Intervention plan (I-Plan). An individual intervention plan designed by a general education team to improve a student's academic performance or behavior through general education interventions. This plan must be documented, and include the development, implementation and monitoring of the plan.

Itinerant specialist. A teacher who normally travels and provides services to students in different schools or in the home or consults with teachers and administrators.

Joint custody. A court order awarding custody of a minor child to both parents and providing that physical and/or legal custody shall be shared by the parents.

Joint legal custody. A court order providing that the parents of a child are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of the child.

Joint physical custody. A court order awarding each parent significant periods of time in which a child resides with or is under the care and supervision of each parent. The actual amount of time is determined by the court.

Language impairment. An IDEA disability category in which a delay or disorder exists in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems and which adversely affects the student's educational performance. A language impairment may involve any one or a combination of the following: the form of language (morphological and syntactic systems); the content of language (semantic systems); and/or the function of language in communication (pragmatic systems).

Learning disability. See "specific learning disability."

Least restrictive environment (LRE). The IDEA requirement that students with disabilities, including those in public or private institutions or other care facilities, be educated with students who are nondisabled to the maximum extent appropriate.

Limited English proficient (LEP). An individual aged three (3) to twenty-one (21), who is enrolled or preparing to enroll in elementary or secondary school, he or she was not born in the United States or his or her native language is a language other than English; he or she is a Native American or Alaska Native, or a native resident of the outlying areas; he or she comes from an environment where a language other than English has had a significant impact on the individuals level of English language proficiency; or the individual is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant. The LEP individual's difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the him or her the ability to meet the State's proficient level of achievement on State assessments; the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.

Listening comprehension. For the purpose of specific learning disability eligibility, refers to the understanding of the implications and explicit meanings of words and sentences of spoken language. This includes following directions, comprehending questions, and listening and comprehending in order to learn (e.g., auditory attention, auditory memory, and auditory perception). Listening comprehension also includes the ability to make connections to previous learning.

Local district. See "district" and "local educational agency (LEA)."

Local educational agency (LEA). A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. See "district."

Manifestation determination. A determination by the parent and relevant members of the IEP team of whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the LEA's failure to implement the IEP.

Mathematics calculation. For the purpose of specific learning disability eligibility, this refers to the knowledge and retrieval of mathematical facts and the application of procedural knowledge in computation.

Mathematics problem solving. For the purpose of specific learning disability eligibility, refers to the ability to apply mathematical concepts and understandings to real-world situations, often through word problems. It is the functional combination of computation knowledge and application knowledge, and involves the use of mathematical computation skills and fluency, language, reasoning, reading, and visual-spatial skills in solving problems. Essentially, it is applying mathematical knowledge at the conceptual level.

McKinney-Vento Homeless Assistance Act. This law is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this law, state educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth.

Mediation. A voluntary, confidential, and structured process during which an SDE-contracted individual is appointed to serve as an impartial and neutral third party to help~~s~~ parents and district or agency personnel resolve an IDEA-related conflict. Mediation usually results in a written, legally-binding agreement that is mutually acceptable to both parties and enforceable in court.

Medicaid services (school-based). Those services, assessment and plan development for students receiving Medicaid which school districts may bill for reimbursement with the consent of the parent.

Medical services. Medical services mean services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

Middle school. A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12).

Migrant student. A student who has not graduated from high school or completed a high school equivalency certificate and resides within a family that is composed of migrant fisher or agricultural workers. The student has moved within the preceding thirty-six (36) months in order for the family to obtain or seek this type of temporary or seasonal employment that is a principal means of livelihood.

Modification. Changes in course content, teaching strategies, standards, test presentation, location, timing, scheduling, expectations, student responses, environmental structuring, and/or other attributes which provide access for a student with a disability to participate in a course/standard/test, which fundamentally alters or lowers the standard or expectations of the course/standard/test.

Monitoring. An activity conducted by the State Department of Education to review a school district’s compliance with federal laws, regulations, and state rules.

Multiple disabilities. An IDEA disability category in which two or more impairments co-exist (excluding deaf-blindness), whose combination causes such severe educational needs that the student cannot be accommodated in special education services designed solely for one of the impairments.

Multi-tiered system of support (MTSS). A systemic educational practice of matching educational instruction and interventions to the needs of students. MTSS is a data-driven

model involving frequent monitoring of student progress to determining if interventions are needed to improve individual student outcomes using evidenced-based practices.

Native language. The language or mode of communication normally used by an individual or, in the case of a student, the language normally used by the student's parents. In all direct contact with a student, the native language would be the language or mode of communication normally used by the student in the home or learning environment.

New teacher. A teacher who has less than one (1) year of teaching experience.

Nonpublic school. An educational institution or program providing instruction outside a public school, including but not limited to a private school or homeschool.

Nonpublic student. Any student who receives educational instruction outside of a public school, including but not limited to a private school or homeschool student.

Nonprofit. The term 'nonprofit,' as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one (1) or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Nursing services. See "School health services."

Objectives. Measurable, intermediate steps that describe the progress the student is expected to make toward an annual goal in a specified amount of time; similar to a benchmark.

Occupational therapist. A professional licensed through the Bureau of Occupational Licenses who, in a school setting, is responsible for assessing fine motor skills, including student's use of hands and fingers and developing and implementing plans for improving related motor skills. The occupational therapist focuses on daily living skills such as eating, dressing, schoolwork, play, and leisure.

Office of special education programs (OSEP). The branch of the Office of Special Education and Rehabilitative Services (OSERS) within the U.S. Department of Education which is responsible for administering programs relating to the free appropriate public education to all eligible beneficiaries under the IDEA.

Oral expression. For the purpose of specific learning disability eligibility, the ability to convey wants, needs, thoughts, and ideas in a meaningful way using appropriate syntactic, pragmatic, semantic, and phonological language structures. It relates to a student's ability to express ideas, explain thinking, retell stories, categorize, and compare and contrast concepts or ideas, make references, and problem solve verbally.

Orientation and mobility (O&M) services. Services provided by qualified personnel to blind and visually impaired students by qualified personnel to enable these students to attain

systematic orientation to and safe movement within the home, school, and community, including teaching (1) spatial and environmental concepts and use of information received by the senses to establish, maintain, or regain orientation and line of travel; (2) use of the long white cane, or a service animal, as appropriate to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; (3) understanding and use of remaining vision and distance low vision aids; and (4) other concepts, techniques, and tools.

Orthopedic impairment. An IDEA disability category that includes severe orthopedic impairments that adversely affects a student's educational performance and are caused by congenital anomaly (e.g., clubfoot, absence of an appendage, etc.); disease (e.g., poliomyelitis, bone tuberculosis, etc.); or from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contracture).

Other health impairment (OHI). An IDEA disability category in which a student exhibits limited strength, vitality or alertness, including heightened alertness to environmental stimuli that results in limited alertness with the respect to the educational environment that is due to chronic or acute health problems (such as asthma, ADD or ADHD, cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke) to such a degree that it adversely affects the student's educational performance.

Paraprofessional. A noncertified, non-licensed individual who is employed by a district and who is appropriately qualified, trained and supervised in accordance with state standards to assist in the provision of special education and related services.

Parent. As defined by IDEA, a parent is: (1)a biological or adoptive parent of a child; (2) a foster parent who has lived with the child for six (6) or more months; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed by the school district. If the child is a ward of the state, the judge overseeing the child's case may appoint the surrogate. The surrogate may not be an employee of the state or local education agency or any other agency that is involved in the education or care of the child, has no personal or professional interest which conflicts with the interest of the child, has knowledge and skills that ensure adequate representation of the child.

Part B. Part of the IDEA that relates to the assistance to states for the education of students with disabilities who are ages three (3) through the semester in which a student turns twenty-one (21). Part B is administered by the State Department of Education and carried out by school districts and other public agencies.

Part C. Part of the IDEA that relates to the assistance to states for the education of children with disabilities and the early intervention programs for infants and toddlers, ages birth through two (2), with disabilities. In Idaho, Part C is administered by the Department of Health and Welfare.

Peer-reviewed research. A higher level of non-biased research, which has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective and scientific review.

Personally identifiable information. Includes but not limited to, student's name, name of parent or other family member, address of student or family, social security number, student number, list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Phonology. The process used in our language that has common elements (sound patterns) which affect different sounds.

Phonology disorders. Phonology disorders are errors involving phonemes, sound patterns and the rules governing their combinations.

Physical therapist. A professional licensed through the Bureau of Occupational Licenses who, in the school setting, assesses students' needs and provides interventions related to gross motor skills. In working with students with disabilities, the physical therapist provides treatment to increase muscle strength, mobility, endurance, physical movement and range of motion; improve posture, gait and body awareness; and monitor function, fit and proper use of mobility aids and devices.

Plan for improving results (PIR). A plan developed collaboratively between the SDE and a district to address needs identified as a result of the district's self-evaluation and/or an SDE monitoring visit.

Positive behavioral intervention and supports (PBIS). Positive reinforcement, rewards or consequences provided to a child for specific instances of behavior that impedes learning or the learning of others (or refraining from behavior) as appropriate for the purpose of allowing the student to meet his or her behavioral goals/benchmarks.

Power of attorney. The designation, in writing, by a competent person of another to act in place of or on behalf of another person.

Present level of performance (PLOP) or Present levels of academic achievement and functional performance (PLAAFP). Used interchangeably, this is a statement of the student's current level of achievement or development in an area of need and how the student's disability affects his or her involvement and progress in the general education curriculum offered to students without disabilities. For preschool students, as appropriate, how the disability affects the child's participation in appropriate activities.

Private school. A nonpublic school that is not funded by or under federal or state control or supervision. A homeschool is not a private school.

Private school student. Any student who receives educational instruction in a school not funded by or under federal or state control or supervision is considered a nonpublic private school student. A homeschool student is not a private school student.

Problem-solving team. A general education team established at the local level, whose name may vary, with the purpose to problem solve regarding the educational needs of any student. Procedures, meeting schedules, and team membership are established locally. The team is likely to include general educators and administrators and could include counselors, specialists, and special education personnel. Parent participation is valuable, but not required.

Procedural safeguards. The requirements of Part B of the IDEA that are designed to allow a parent/adult student to participate meaningfully in decisions concerning an appropriate educational program for a student with a disability and, if necessary, dispute such decisions. Also referred to as special education rights.

Professional development. High-quality comprehensive programs that are essential to ensure that persons responsible for the education or transition of students with disabilities possess the skills necessary to address the educational and related needs of these students. These should be scientifically-based and reflect successful practices including strategies for recruiting, hiring, preparing and retaining personnel.

Psychosocial rehabilitation (PSR). These services assist the student in gaining and utilizing skills necessary to participate in school, such as training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, study skills, and coping skills. This service is to prevent placement of the student into a more restrictive educational situation.

Public expense. When a district or public agency either pays for the full cost of an evaluation or special education services or ensures that it is otherwise provided at no cost to the parent; for example, through joint agreements with other state agencies.

Reading components. The term “reading” means a complex system of deriving meaning from print that requires all of the following skills, which are the essential components of reading instruction: (1) Phonemic awareness: The skills and knowledge to understand how phonemes, or speech sounds, are connected to print; (2) Phonics: The ability to decode unfamiliar words; (3) Reading fluency: The ability to read fluently; (4) Vocabulary development: Sufficient background information and vocabulary to foster reading comprehension; and (5) Reading comprehension: The development of appropriate active strategies to construct meaning from print.

Reading comprehension. For the purpose of specific learning disability eligibility, refers to the ability to understand and make meaning of written text and includes a multifaceted set of skills. Reading comprehension is influenced by oral language development including new vocabulary acquisition, listening comprehension, working memory, application of comprehension-monitoring strategies, and understanding of text structure including titles, paragraphing, illustrations, and other details. Reading comprehension is significantly affected by basic reading skills.

Reading fluency. For the purpose of specific learning disability eligibility, refer to the ability to read words and text accurately, using age-appropriate chunking strategies and a repertoire of sight words, and with appropriate rate, phrasing, and expression (prosody). Reading fluency facilitates reading comprehension.

Reasonable measures. A combination of recorded written and/or oral documentation to meet notification requirements of the district to parents/adult students.

Reasonable time. A period of ten (10) calendar days unless there are exceptional circumstances that warrant a shortened period of time such as an emergency or disciplinary meeting.

Reevaluation. A periodic evaluation conducted at least every three years, or more frequently if conditions warrant, or if the student's parent or teacher requests an evaluation of a student already identified as eligible for services under the IDEA. Reevaluations may occur not more than once a year, unless the parent and the district agree otherwise or may be waived by the parent and LEA.

Related services. Refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education and includes the following: speech therapy, language therapy, audiology services, psychological services, physical therapy, occupational therapy, recreation, therapeutic recreation, early identification and assessment of disabilities in children, counseling services, rehabilitation counseling, orientation and mobility services, interpreting services, medical services for diagnostic or evaluation purposes, school health/nursing services (excluding surgically implanted medical devices), social work services in schools, and parent counseling and training.

Response to intervention (RTI). A formal process for evaluating student response to scientifically research-based interventions, consisting of the core components of: (1) problem identification, (2) problem analysis, (3) applying research-based interventions, and (4) progress monitoring/decisions rules. As used in the IDEA, RTI is only mentioned as an alternative to the severe discrepancy criteria in determining whether a student has a Specific Learning Disability.

Resolution session. A meeting involving the parents, relevant members of the IEP team, and a representative of the district who has decision-making authority, required prior to a due process hearing if the parent has requested the due process hearing.

School-age. Includes all persons between the ages of five (5) (i.e., turns five (5) on or before September 1) and twenty-one (21) years who reside in Idaho. For students with disabilities who qualify for special education and related services under the IDEA, school-age begins at age three (3) and continues through the semester of school in which the student attains the age of twenty-one (21).

School day. Any day, including a partial day, when students are in attendance at school for instructional purposes.

School health services. School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

School psychologist. A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Psychology and is charged with the responsibility to conduct assessments and determine a student's cognitive, academic, social, emotional, and/or behavioral functioning. This professional also provides direct services to students, consults with district staff, and may be a member of the evaluation and/or IEP team.

Scientifically-based research (SBR). Scientifically based research (as defined in the ESEA) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that (1) employs systematic, empirical methods that draw on observation or experiment; (2) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (5) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Screening. An informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards or Idaho Core Standards.

Secondary school. The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary

education, as determined under state law, except that it does not include any education beyond grade. The term secondary school is not defined in Idaho Code. See “high school.”

Section 504 of the Rehabilitation Act of 1973. A federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."

Secular. An adjective used to describe a private, non-religious educational entity.

Serious bodily injury (SBI). Bodily injury which involves (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of bodily member, organ, or mental faculty.

Services plan (SP). Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary.

Setting. The location where special education services occur.

Social worker. A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Social Work and helps students and teachers address social and emotional issues. This professional may be a member of the evaluation and/or IEP team.

Socially maladjusted. A child who has a persistent pattern of violating societal norms with truancy, substance abuse, a perpetual struggle with authority, is easily frustrated, impulsive, and manipulative.

Special education. Specially designed instruction or speech/language therapy at no cost to the parent to meet the unique needs of a student with a disability including instruction in the classroom, the home, hospitals, institutions, and other settings; instruction in physical education; speech therapy and language therapy; transition services; travel training; assistive technology services; and vocational education.

Special educational placement. Refers to the provision of special education services along the continuum of placements under the least restrictive environment requirements, rather than a specific place or location, such as a specific classroom or school. The balance of setting and services to meet an individual student’s needs.

Specially designed instruction. Adapting the content, methodology, or delivery of instruction to address the unique needs of an eligible student that result from the student's disability and to ensure access to the general education curriculum so that the student can meet the education standards of that district that apply to all students.

Specific learning disability (SLD). A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Speech impairment. A speech-language disorder, such as speech fluency, impaired articulation/phonology, a language impairment, or a voice impairment that adversely affects a student's educational performance.

Speech-language pathologist. A professional holding an Idaho Pupil Personnel Services Certificate who can assess and treat persons with speech, language, voice, and fluency disorders. This professional coordinates with and may be a member of the evaluation and IEP teams.

Student (school-age). For resident children with disabilities who qualify for special education and related services under the IDEA and subsequent amendments thereto, and applicable state and federal regulations, "school-age" shall begin at the attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.

Stay put. A requirement that a district or agency maintain a student with a disability in his or her present educational placement while a due process hearing or subsequent judicial proceeding is pending unless the parties agree otherwise.

Substantial evidence. A legal term that means "beyond a preponderance of the evidence" or "beyond more likely than not."

Summary of performance (SOP). A document given to secondary students when a student exits special education as a result of earning a diploma or aging out. This document describes the academic achievement and functional performance along with recommendations to assist the student in meeting post-secondary goals.

Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

Surrogate parent. An individual assigned and trained by a district or an agency to assume the rights and responsibilities of a parent under the IDEA when no parent can be identified or located for a particular student or when the child is a ward of the state.

Suspension. A temporary stop, delay, interruption, or cessation of educational service due to a violation of the student conduct code. This may include in-school suspension.

Traditional public school. "Traditional public school" means any school existing or to be built that is operated and controlled by a school district in this state as per Idaho Statute, Chapter 33-5202A(7).

Transition age student. A student whose upcoming IEP will be in effect when the student is sixteen (16) to twenty-one (21) years of age.

Transition services. A coordinated set of activities for a student with a disability designed within a results oriented process focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post-school activities. Services are based on individual student needs addressing instruction, related services, community experiences, employment, post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

Traumatic brain injury (TBI). An IDEA disability category that refers to an injury to the brain caused by an external physical force and resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perception and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

Travel training. Instruction to students with significant cognitive disabilities and any other students with disabilities who require instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within the home, school, and community.

Twice exceptional. Twice exceptional students are identified as gifted and talented in one or more areas of exceptionality (specific academics, general intellectual ability, creativity, leadership, visual or performing arts) and also identified with a disability defined by State eligibility criteria (LD, ED, Autism, Orthopedic Impairments, or ADHD) that qualifies the student for an IEP or a 504 plan.

Unilateral placement. A decision by a parent, at his or her own discretion, to remove his or her child with a disability from a public school and enroll the student in a private facility because the parent believes that the district did not provide FAPE in a timely manner.

Universal design. A concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and service that are made usable with assistive technologies.

Visual impairment including blindness. An IDEA disability category characterized by an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes partial sight, which refers to the ability to use vision as one channel of learning if educational materials are adapted, and blindness.

Voice disorder. (See "speech impairment") Refers to the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

Voluntary enrollment in a private placement. Enrollment by a parent of a student with a disability in a private facility or homeschool for religious, philosophical, curricular, or other personal reasons.

Ward of the state. A child who, as determined by the State where the child resides, is a foster child (unless the foster parent meets the definition of a "parent" in Section 34 CFR §300.30), a ward of the State, or in the custody of a public child welfare agency.

Weapon. (See "dangerous weapon"**)**

Written expression. For the purpose of specific learning disability eligibility, the processes related to the transcription of ideas and thoughts into a written product, such as handwriting and spelling. It also involves generative processes such as the communication of ideas, thoughts, and feelings. Required skills include using oral language, thought, grammar, text fluency, sentence construction, and planning to produce a written product.

Written notice. A written statement provided by the district to a parent/adult student within a reasonable amount of time before proposing or refusing to initiate or change to the identification, evaluation, educational placement, or the provision of FAPE.

LEGAL CITATIONS

INTRODUCTION

The legal citations and topical reference for this Manual follow the chapter outlines and present references to federal and state statutes, regulations and rules for the enforcement of IDEA. The citations listed are the primary references for each chapter and section, not an all-inclusive reference list.

The entire IDEA and regulations are posted on the U.S. Department of Education website under the title of "Building the Legacy: IDEA 2004" at http://idea.ed.gov/explore/home. This site provides a topical search.

Idaho statutes and rules can be found at http://legislature.idaho.gov/statutesrules.htm.

Some of the policies/procedures stated in this Manual are based upon case law and letters of clarification from the U.S. Office of Special Education Programs (OSEP).

CHAPTER 1: LEGAL CITATIONS

LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Child Find	300.111	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.d
2.	Procedural Safeguards	300.121 300.504	IDAPA 08.02.03.109.05
3.	Student Eligibility under the IDEA	300.8 300.122	Idaho Code 33-2001(3) Idaho Code 33-2001(5) IDAPA 08.02.03.109.03
4.	Free Appropriate Public Education (FAPE)	300.17 300.101-300.102 300.148	Idaho Code 33-201 Idaho Code 33-2002 Idaho Code 33-2010 Idaho Code 20-504a(3) IDAPA 08.02.03.109.02.a
5.	District Programs and Services	300.107-300.110 300.117	Idaho Code 33-2002
6.	Individualized Education Program (IEP)	300.22 300.320-300.328	IDAPA 08.02.03.109.04
7.	Least Restrictive Environment (LRE)	300.114-300.120	IDAPA 08.02.03.109.04.c
8.	Summary of Activities that May Lead to Special Education Services	300.102(a) 300.112 300.116 300.300-300.307 300.309-300.311 300.320-300.324 300.503-300.504 300.622	IDAPA 08.02.03.109.02.h Idaho Code 33-2002 IDAPA 08.02.03.109.03 IDAPA 08.02.03.109.04

CHAPTER 2 FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definition of Free Appropriate Public Education (FAPE)	300.17	
2.	Provision of FAPE	300.101-300.111 300.132 300.209	Idaho Code 33-201 Idaho Code 33-2002 Idaho Code 33-2009 Idaho Code 33-2010 Idaho Code 20-504a IDAPA 08.02.03.109.02.c
3.	FAPE Considerations	300.101-300.111	IDAPA 08.02.03.109.02 a IDAPA 08.02.03.109.02 c

CHAPTER 3 CHILD FIND
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	District Responsibility	300.111 300.131	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c IDAPA 08.02.03.109.02.d IDAPA 08.02.03.109.02.h
2.	Locating Students	300.111 300.124 300.154	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c IDAPA 08.02.03.109.02.d IDAPA 08.02.03.109.02.h
3.	Identification	300.302 300.226	IDAPA 08.02.03.109.02.h
4.	Referral to Consider a Special Education Evaluation	300.174 300.301 300.302 300.305 300.306 300.308 300.309 300.504	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.h

CHAPTER 4 ELIGIBILITY
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Evaluation Team	300.306(a)(1) 300.304(c)(1)(iv)	IDAPA 08.02.03.109.03
2.	Purpose of an Evaluation	300.15	IDAPA 08.02.03.109.03
3.	Written Notice and Consent for Assessment	300.9 300.300 300.503	IDAPA 08.02.03.109.02.a
4.	Information from Other Agencies or Districts	300.622	IDAPA 08.02.03.109.02.a
5.	Evaluation and Eligibility Determination Procedures	300.8 300.39 300.300-300.301 300.304-300.311	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.03
6.	Reevaluation and Continuing Eligibility	300.300 300.303 300.305-300.306 300.308	IDAPA 08.02.03.109.02.a
7.	State Eligibility Criteria	300.8 300.307	IDAPA 08.02.03.109.03

CHAPTER 5 INDIVIDUALIZED EDUCATION PROGRAMS
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	IEP Initiation	300.320-300.328 300.22 300.39 300.501 300.306(c)(2)	IDAPA 08.02.03.109.04
2.	IEP Development	300.320-300.325 300.34 300.154(d)(e) 300.42 300.5-300.6 300.105(b) 300.44 300.113 300.106 300.114-300.116 300.327 300.536 300.43 300.300(b) 300.300(e)(2) 300.305(e) 300.323(d)	IDAPA 08.02.03.109.04 Idaho Code 33-1304 IDAPA 08.02.03.109.05 Idaho Code 33-2002(4)
3.	IEP Reviews	300.324	
4.	IEPs for Transfer Students	300.323(e)-(g)	IDAPA 08.02.03.109.04 (e) IDAPA 08.02.03.109.04 (f)
5.	IEPs for Children from the Infant/Toddler Program	300.323(b)	
6.	Students with Disabilities in Adult Prisons	300.102(a)(2)(i)(A)(B) 300.324(d)	20 U.S. Code § 1412

CHAPTER 6 LEAST RESTRICTIVE ENVIRONMENT
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Least Restrictive Environment Considerations	300.114-300.120	IDAPA 08.02.03.109.04.a IDAPA 08.02.03.109.04.c
2.	District Responsibility for Continuum of Settings and Services	300.115-300.116	IDAPA 08.02.03.109.04.a IDAPA 08.02.03.109.04.c
3.	Federal Reporting of LRE	300.600-604	IDAPA 08.02.03.109.04.g

CHAPTER 7 DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Discontinuation of Services	300.305 300.306 300.102 (a)(3) 300.503	Idaho Code 33-201 Idaho Code 33-209 IDAPA08.02.03.109.07
2.	Graduation	300.102. (a)(3) (i-iii) 300.320 (b)(2)	IDAPA 08.02.03.109.07
3.	Transcripts and Diplomas		*Letter to Runkel*, 25 IDELR 387 (OCR 1996) 20 U.S. Code § 1412
4.	Grades, Class Ranking, and Honor Roll		*Letter to Runkel*, 25 IDELR 387 (OCR 1996)

CHAPTER 8 CHARTER SCHOOLS
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definition and Parent/Student Rights	300.7 300.209(a)	Idaho Code 33-5205 Idaho Code 33-5206
2.	Responsibility for Services	300.2 300.209(b-c)	Idaho Code 33-5205 IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c
3.	Essential Components of a Special Education Program	300.209	Idaho Code 33-5205 IDAPA 08.02.03.109.02.c
4.	Charter Schools and Dual Enrollment		Idaho Code 33-203 Idaho Code 33-2002
5.	Funding	300.704(b)(4)(ix) 300.705 300.209	Idaho Code 33-5208 Idaho Code 33-1002B Idaho Code 33-2004 Idaho Code 33-2005 Idaho Code 33-5208 (9)

CHAPTER 9 PRIVATE SCHOOL STUDENTS
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definitions Private School Placements	300.13 300.36 300.130 300.145-300.148	IDAPA 08.02.03.109.02.d
2.	Students Voluntarily Enrolled by Parents	300.133 300.134 300.135 (a-b) 300.137 (b)(2) 300.136 (a)(1-2) 300.136 (b)(1-3) 300.111 (1)(i-ii) 300.131 (a-f) 300.137 (a) 300.138 (a)(1-2) 300.138 (c)(2) 300.132 (a-b) 300.138 (2) (b) 300.132 (b) 300.138 (b) (2) 300.320 300.323 (b) 300.139 (b) (1-2) 300.140 (a-c) 300.133 300.144	IDAPA 08.02.03.109.02.d
3.	Students Placed by the District	300.145-300.146 300.320-300.325	IDAPA 08.02.03.109.02.d
4.	Dual Enrollment by Parents	300.137(a)	Idaho Code 33.203 IDAPA 08.02.03.109.02.d
5.	Students Unilaterally Placed by their Parents when FAPE is Issued	300.148 300.101	IDAPA 08.02.03.109.02.d
6.	Out of State Students Residing in Residential Facilities	300.131	IDAPA 08.02.03.109.02.d

CHAPTER 10 IMPROVING RESULTS
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Monitoring Priorities and Indicators	300.600-604	IDAPA 08.02.03.109.02
2.	Early Intervening Services	300.226 300.205 (d) 300.208 (a) (2) 300.711	IDAPA 08.02.03.109.02
3.	Personnel	300.156 300.704 (b) (4) (vii)	IDAPA 08.02.03.109.02 IDAPA 16.03.09

CHAPTER 11 PROCEDURAL SAFEGUARDS
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Procedural Safeguards Notice	300.504	IDAPA 08.02.03.109.05
2.	Domestic Considerations	300.30 300.519 300.320 300.520 300.030	Idaho Code 32-717A Idaho Code 32-717B *Letter to Cox* 54 IDLER 60 (110 LRP 10357)
3.	Informed Consent	300.9 300.300	
4.	Written Notice	300.508(e) 300.503 300.300	IDAPA 08.02.03.109.05a
5.	Confidentiality and Access to Records	300.611 300.622 300.614 300.613 300.616 300.623-300.625 300.618-300.621	IDAPA 08.02.03.109.05k Idaho Code 32-717A
6.	Independent Educational Evaluations	300.502	IDAPA 08.02.03.109.05j

CHAPTER 12 DISCIPLINE
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	General Discipline Provisions	300.530(b) 300.534	Idaho Code 33-205
2.	Actions Involving a Change of Placement	300.530-300.532 300.536	
3.	FAPE Considerations	300.530-531	Idaho Code 33-1501
4.	Procedures for a Manifestation Determination	300.503(c-f)	Idaho Code 33-205
5.	Other Considerations	300.532(a) 300.532(c) 300.533 300.534	IDAPA 08.02.03.109.5.c IDAPA 08.02.03.109.5.f Idaho Code 33-209

CHAPTER 13 DISPUTE RESOLUTION
LEGAL CITATIONS

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Facilitation		
2.	Informal Conflict Resolution	300.506	IDAPA 08.02.03.109.05.b
3.	Mediation	300.506 300.151-300.152	IDAPA 08.02.03.109.05.b
4.	State Complaints	300.151-300.153 300.507-300.508 300.510-515 300.518	IDAPA 08.02.03.109.05
5.	Due Process Hearings	300.507-300.518	IDAPA 08.02.03.109.01.d IDAPA 08.02.03.109.05.c,e,f
6.	Expedited Due Process Hearings	300.516 300.532	IDAPA 08.02.03.109.05.g
7.	Appeals and Civil Action	300.517	
8.	Attorney Fees	300.517	

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Chapter 1
Overview

Three (3) federal laws have been passed to ensure educational opportunities for individuals with disabilities:

- the Individuals with Disabilities Education Act (IDEA)
- Section 504 of the Rehabilitation Act of 1973 (Section 504)
- the Americans with Disabilities Act of 1990 (ADA)

The last reauthorization of the IDEA was in 2004 and aligned the law with the Elementary and Secondary Education Act of 2001—also known as the No Child Left Behind (NCLB) Act. Revisions to the IDEA regulations were issued in 2007, 2008, 2013, and 2014 with additional regulatory changes to the IDEA currently pending. The IDEA preserves the basic structure and civil rights of previous reauthorizations and emphasizes both *access* to education and *improved results* for students with disabilities based on data and public accountability.

This Manual provides information regarding district responsibilities under the IDEA and relevant Idaho legal requirements.

Section 1. Child Find

The district is responsible for establishing and implementing an ongoing Child Find system. Child Find activities are conducted to create public awareness of special education programs; to advise the public of the rights of students; and, to alert community residents of the need for identifying and serving students with disabilities from the age of three (3) through the semester in which they turn twenty-one (21).

The district is also responsible for coordinating with the Department of Health and Welfare regarding the Child Find system for children ages birth through two (2) years. The Child Find system includes children with disabilities who are homeless, as defined by the McKinney-Vento Homeless Act (see Glossary), wards of the state, or attending private schools, regardless of the severity of the disability.

See Chapter 3 for more information on Child Find.

Section 2. Procedural Safeguards

A parent/adult student has specific procedural safeguards assured by the IDEA and state law. The district provides a document titled *Procedural Safeguards Notice* to parents/adult students that contain a full explanation of special education rights.

See Chapter 11 for more information on procedural safeguards.

Section 3. Student Eligibility under the IDEA

To be eligible for services under the IDEA, a student must have a disability that:

1. meets the Idaho state disability criteria as established in this manual;
2. adversely affects educational performance; and
3. results in the need for specially designed instruction and related services.

The process used to make this determination is called "eligibility evaluation." During an eligibility evaluation, an evaluation team (which includes educators and the parent/adult student) reviews information from the evaluation completed (multiple sources including, but not limited to, general education interventions, formal and informal assessments, and progress in the general curriculum) in making the eligibility determination.

See Chapter 4 for more information on eligibility and evaluation.

Section 4. Free Appropriate Public Education (FAPE)

The district (LEA) is required to ensure that a free appropriate public education (FAPE) is available to students who reside in the district and are eligible for special education. FAPE is individually determined for each student that qualifies for special education. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

See Chapter 2 for more information on FAPE.

Section 5. District Programs and Services

The district shall ensure that the same array of academic, nonacademic, and extracurricular activities and services is available to students with disabilities as is available to students without disabilities.

A. Educational Programs and Services

The district shall take steps to ensure that students with disabilities have the variety of educational programs and services that are available to all other students served by the district. These may include art, music, industrial arts, consumer and homemaking education, vocational education, and other programs in which students without disabilities participate.

B. Physical Education

Physical education services, specially designed if necessary, shall be made available to every student with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

C. Nonacademic and Extracurricular Services and Activities

The district shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's Individualized Education Program (IEP) team, to provide nonacademic and extracurricular services and activities in a manner that affords students with disabilities an equal opportunity to participate in those services and activities. This includes counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to persons with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.

Section 6. Individualized Education Program (IEP)

The IEP is a document that outlines how a particular student with a disability will receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). It is a working document that can be amended as the student's needs change. The IEP is created collaboratively by IEP team members, including parents, the student, if appropriate, the student's teachers and other district personnel.

See Chapter 5 for more information on IEP development.

Section 7. Least Restrictive Environment (LRE)

The IDEA states that, to the maximum extent appropriate, students with disabilities are to be educated with students who are not disabled. The IEP team determines what constitutes LRE for the individual student. This includes considering that a continuum of alternative placements is available to meet the needs of children with disabilities and for special education and related services.

See Chapter 6 for more information on LRE.

Section 8. Summary of Activities That May Lead to Special Education Services

This section describes the steps that may lead to special education services. The activities that are within each step are often sequential, but could occur simultaneously. The process might occur in a different sequence for emergency or interim placements. A flowchart of these steps is provided at the end of this chapter.

A. General Education Interventions (carried out by the problem-solving team)

A general education problem-solving team addresses student learning needs and ensures that referrals to consider special education are appropriate. The general education problem-solving process may include comprehensive early intervening services based on whole-school approaches such as: a three-tiered model using scientifically based reading (and other content area) programs, positive behavior supports, and a response-to-intervention system.

Accommodations and instructional and/or behavioral interventions shall be attempted during the problem-solving process. These accommodations and interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and shall be clearly documented.

If the student shows adequate progress with general education interventions and accommodations, a referral to consider a special education evaluation may be unnecessary. However, if general education interventions and accommodations need to be provided on an ongoing basis or if the student shows limited or no progress *and* the student's performance is significantly discrepant from peers, a referral to consider a special education evaluation may be warranted. Also, a parent of a student may initiate a referral for special education at any time and a district may not deny that referral simply because the student had not gone through the general education intervention process.

See Chapter 4 and Appendixes 3 and 4 for more information on problem-solving activities and the three tiered model.

B. Referral to Consider a Special Education Evaluation

Following the problem-solving team's review of the student's response to general education interventions, if the team suspects that the student has a disability and may be in need of special education, the problem-solving team shall initiate a referral to consider a special education evaluation. The purpose of this referral is to bring a student to the attention of an evaluation team so that it can determine whether to conduct a special education evaluation.

A referral for a special education evaluation marks the point at which procedural safeguards are provided to the parent. The parent/adult student shall be involved in decisions once a written referral has been made to the evaluation team to consider a special education evaluation.

The evaluation team shall review existing data, which may include progress monitoring data from the student's IEP, assessments and information provided by the parent/adult student, and document the review process, to determine the need for further assessment. The evaluation team will procure the necessary written consents for additional assessments.

See Chapter 3 for more information on the referral process to consider a special education evaluation and who can make a referral.

C. Written Notice and Written Consent (completed by an evaluation team)

Before administering assessments as part of the special education evaluation, written notice shall be provided to the parent/adult student along with the procedural safeguards and written consent shall be requested from the parent/adult student. The district may use a single form that meets the requirements of written notice and consent for assessment. In addition, if the evaluation team needs information for an evaluation from a non-educational agency or an individual, such as a doctor, written consent for the release of information shall be obtained from the parent/adult student.

See Chapter 4 and Chapter 11 for more information.

D. Evaluation and Eligibility Determination (completed by evaluation team)

After receiving consent, the evaluation team shall schedule assessments and ensure they are conducted. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs. Next, the evaluation team reviews the assessment data, the response to general education targeted interventions, and parent/adult student input and recommendations to determine whether the student is eligible for special education services. Then the evaluation team compiles an *Eligibility Report* using data collected from individual assessments and provides the parent/adult student with a copy of the report. The eligibility report shall address, to the extent required, the general education classroom, targeted interventions previously employed and the student's response to those interventions.

For children transferring from the Infant Toddler Program (ITP), eligibility shall be determined and an IEP developed or IFSP adopted by the child's third (3rd) birthday. See Chapter 5 for guidance on expectations. If a child turns three (3) during the summer, and the child does not require Extended School Year (ESY) services, special education and related services may begin in the new school year.

For children ages three (3) through twenty-one (21), the time between receiving consent for initial assessment and determining eligibility cannot exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days (with the exception of ITP referrals which must be completed by the child's third (3rd) birthday). The parent and district may agree, in writing, to extend the sixty (60) day period. See Chapter 4 for guidance on timeline exceptions.

If the student is not eligible, the district shall provide written notice to the parent/adult student that the evaluation data does not indicate eligibility under the IDEA even though the parent is a member of the team that determines eligibility. The district shall maintain documentation in permanent records.

If the parent/adult student disagrees with the district's evaluation and/or the eligibility determination, he or she has the right to request SDE mediation, file a due process hearing challenging the decision, or seek an independent educational evaluation (IEE). See Chapter 11 for more information.

E. IEP Development and Implementation (completed by IEP team)

The following activities are included in the development and implementation of the IEP:

1. Conduct an IEP team meeting to develop and implement an IEP within thirty (30) calendar days of a determination that the student is eligible for special education and related services. For eligible students, the IEP can be developed at the same meeting at which eligibility is determined if all required IEP team members are present and agree to proceed.

2. After determining goals and services, determine the placement in the LRE in which the IEP can be implemented. For those goals that are aligned to the alternate achievement standards, benchmarks/objectives shall be written.

3. Obtain documentation indicating participation in the IEP team meeting.

4. Obtain consent from the parent/adult student for initial provision of special education services.

5. Provide copies of the IEP to the parent/adult student and other participants, as appropriate.

6. Provide written notice to the parent/adult student before implementing the IEP if the provision of FAPE or the educational placement is proposed to change or if the team refused to make a change based on the parent's request.

7. Make arrangements for IEP services by informing staff of their specific responsibilities under the IEP.

8. Implement the IEP as soon as possible, but no later than within thirty (30) days of eligibility. (See Chapter 4 for guidance on timeline exceptions.)

9. Provide the parent/adult student with periodic reports of the student's progress towards IEP goals (such as quarterly or other periodic reports, concurrent with the issuance of report cards).

See Chapter 5 for more information on IEP development.

F. Review and Revision of IEP and Placement Decision (completed by IEP team)

1. Send the parent/adult student a *Procedural Safeguards Notice* with an invitation to attend an IEP meeting (required at least once annually).

2. Convene an IEP team meeting under these circumstances:

    a. when changes in the IEP are requested or if the student is not making progress. In addition, the IDEA allows changes to the IEP without an IEP team meeting between the annual review dates if the district and parent agree; and

    b. at least annually to develop a new IEP.

3. Provide a copy of the revised IEP to the parent and the adult student when an IEP is amended or rewritten. In addition, written notice is required if the district is proposing to change or refusing to change the educational placement or the provision of FAPE.

4. Under Idaho regulations, the parent/adult student has the right to file a written objection to an IEP program change or placement change. If, within ten (10) calendar days of receiving written notice from the district, the parent/adult student files a written objection, the district shall not implement the change(s) to which the parent/adult student objects. See Chapter 11 for more information.

See Chapter 5 for more information on IEP reviews.

G. Reevaluation (completed by evaluation team)

Reevaluations are conducted by the evaluation team. A reevaluation shall be completed as follows: (a) at least every three years, (b) when requested by the student's teacher or the parent/adult student, and (c) whenever conditions warrant. Approximately one month before conducting the reevaluation, the district shall inform the parent/adult student that a reevaluation is due. The parent/adult student and district may agree in writing that a three-year reevaluation is not necessary. In addition, a reevaluation need not be conducted more than once per year unless the district and the parents agree.

The evaluation team shall include the following activities in the reevaluation process:

1. Invite the parent/adult student to participate in the review of existing data and to determine what additional data, if any, is needed as part of the reevaluation. Unless the parent/adult student requests that the evaluation team members meet as a group in a formal meeting, data can be gathered from individual team members at various times using a variety of methods.
2. Obtain written consent from the parent/adult student if additional assessments shall be conducted. After gaining consent, ensure the completion of assessments and eligibility reports. The IDEA does not require consent for a reevaluation if the district has made documented attempts to get consent and the parent has not responded.
3. If the evaluation team determines that additional assessments are not needed, provide written notice to the parent/adult student of this decision and of the parent's/adult student's right to request assessments.
4. Prepare an *Eligibility Report* that details the eligibility requirements for the student, even when no new assessments are conducted. The report shall address each required eligibility component.
5. Provide the parent/adult student with a copy of the *Eligibility Report*.
6. Determine whether revisions to the IEP are necessary and implement an IEP, if the student continues to be eligible. If the student is not eligible, follow procedures to discontinue services.

See Chapter 4 for more information on reevaluation.

H. Discontinuation of Services

Provide prior written notice to the parent/adult student informing them of the discontinuation of services when:

1. The evaluation team determines the student no longer meets eligibility requirements for special education services; or

2. The student meets the district and State requirements that apply to all students for receipt of a regular high school diploma; or

3. The student completes the semester in which he or she reaches the age of twenty-one (21) years.

4. Parent/adult student revokes consent for special education services.

When a student exits from special education as a result of graduating or aging out, the district shall provide the student with a summary of his or her academic achievement and functional performance, along with recommendations on how to assist the student in meeting postsecondary goals.

See Chapter 7 for more information on the discontinuation of services.

Chart

General Education Interventions (completed by problem-solving team)

- Team considers components of the three tiered model of Response to Intervention.
- Problem solve, plan and implement interventions and accommodations; document results.

Special Education Activities

A. Child Find Activities

B. Referral to Consider a Special Education Evaluation (completed by problem-solving team and evaluation team) or the parent/adult student

- Problem-solving team submits a formal referral to consider special education evaluation.
- Provide the parent/adult student with a *Procedural Safeguards Notice.* (required)
- Seek parent/adult student input and afford opportunity for a meeting.
- Evaluation team decides whether to conduct further assessments.

C. Written Notice and Consent (completed by the evaluation team)

- Provide written notice to the parent/adult student.
- Seek consent from the parent/adult student for assessments.
- Receive written consent for assessment from the parent/adult student.

D. Evaluation and Eligibility Determination (completed by evaluation team)

- Schedule and conduct assessments.
- Review assessment information with parent/adult student. Determine eligibility and complete the *Eligibility Report*. (Meeting with the entire team is a parent/adult student option.)
- Provide the parent/adult student with a copy of the *Eligibility Report*.

E. IEP Development and Implementation (completed by IEP team)

- Invite the parent/adult student to the IEP team meeting.
- Provide a *Procedural Safeguards Notice* to the parent/adult student. (at least once annually)
- Develop IEP and determine placement in LRE.
- Provide a copy of the IEP with written notice to the parent/adult student.
- Receive consent for initial provision of special education services from the parent/adult student.
- Implement IEP.

F. Review/Revision of IEP and Placement Decision (completed by IEP team)

- Provide a *Procedural Safeguards Notice* to the parent/adult student if applicable.
- Invite the parent/adult student to the IEP team meeting.
- Review the IEP, and determine placement annually.
- Provide a copy of IEP with written notice to the parent/adult student.

G. Reevaluation (completed by evaluation team)

- Inform the parent/adult student that reevaluation is due.
- Provide a *Procedural Safeguards Notice* to the parent/adult student if applicable.
- Seek parent/adult student input on reevaluation and afford opportunity to request a meeting.

■ Receive consent from the parent/adult student for assessments if planning to assess **OR** Provide the parent/adult student with written notice that no further assessments shall be conducted if the evaluation team determines that existing information is adequate. Inform parent/adult student of his or her right to request additional assessments. ■ Schedule and conduct assessments. ■ Review assessment information with parent/adult student. Determine eligibility and complete the *Eligibility Report*. (Meeting with the entire team is a parent/adult student option.) ■ Provide the parent/adult student with a copy of the *Eligibility Report*. **Go to steps in Box F or Box H.**
H. Discontinuation of Services ■ Provide written notice to the parent/adult student before discontinuing special education services. **Upon graduation provide a summary of performance to the parent/adult student.**

Chapter 2
FREE APPROPRIATE PUBLIC EDUCATION

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Chapter 2
Free Appropriate Public Education

The district (local education agency is required to ensure that a free appropriate public education (FAPE) is available to residents, homeless individuals and individuals from migrant families ages three (3) to twenty-one (21) in the district and who are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the IDEA means special education and related services that:

1. are provided at public expense (free);
2. are provided in conformity with an appropriately developed individualized education program, or IEP (appropriate);
3. are provided under public supervision and direction (public); and
4. include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

Section 2. Provision of FAPE

A. District Obligation

The district is required to ensure that FAPE is available to students in the district who are eligible for special education. This includes students who reside in group, personal care, or foster homes, as well as institutions, if their legal guardian is a resident of Idaho, even though the guardian may reside in another Idaho school district. It also includes students who are migratory or homeless as defined by the McKinney-Vento Homeless Act (see Glossary). If a student from another state is placed in Idaho by an out-of-state agency, parent, or district, the placing district, parent, or agency is responsible for the educational costs. If a student is placed in a district by an Idaho agency, the student is entitled to FAPE and the responsible agency is determined upon Idaho Code regarding the specific situation.

The district is obligated to make FAPE available to each eligible student in the district as follows:

1. The district shall provide FAPE to an individual who is at least three (3) years old and who qualifies for special education services unless the parent/adult student has refused special education services. Students aged three (3) to five (5) must have their special education services identified on an IEP since Idaho does not have state-funded preschool programs.

2. The district shall offer FAPE to parentally placed private school students in accordance to statutory and regulatory language, which states that parentally placed private school students with disabilities do not have an individual right to some or all of the special education and related services that the student would receive if enrolled in a public school.

3. A free appropriate public education shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade.

Note: Participation in Comprehensive Early Intervening Services neither limits nor creates a right to FAPE.

B. Limit to District Obligation

1. A student with a disability who has been placed in a private school or facility by the parent does not have an individual right to receive all or part of the special education and related services that the child would receive if enrolled in a public school. However the district would have Child Find responsibilities. See Chapter 9 for more information.

2. Students who are homeschooled are considered nonpublic students for the purpose of dual enrollment, however a student being homeschooled is not considered a private school student. Students who are dually enrolled in a school district's general education program may be considered for a Section 504 plan if needed to provide supports and/or accommodations for those general education courses for which they are enrolled. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

Homeschool students who are dually enrolled are considered to be nonpublic school students. The district shall allow homeschool students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and

2. receive accommodations in the general education courses for which they are enrolled on a Section 504 plan, if needed.

Homeschool students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

C. When District Obligation to Provide FAPE Ends

The District's obligation to provide FAPE to a student ends:

1. at the completion of the semester in which the student turns twenty-one (21) years old;

2. when the student meets the district requirements that apply to all students for receipt of a regular high school diploma; a regular high school diploma does not include an alternative degree that is not fully aligned with the Idaho Content Standards or Idaho Core Standards, such as a certificate or a general educational development credential (GED);

3. when the student no longer meets the eligibility criteria for special education services, as determined by the team after a reevaluation; or

4. when a parent/adult student has revoked consent for the continued provision of special education services.

D. Temporary Suspension of FAPE

The district is not required to provide FAPE to an eligible student during the suspension of ten (10) cumulative school days or less during a school year (unless the district provides services to students who are not disabled who are also suspended); however, FAPE must be provided following this ten (10) day exception.

Section 3. FAPE Considerations

A. Case Law Interpretations of FAPE

The courts have further defined the term FAPE as a result of lawsuits between parents and districts. In 1982, the United States Supreme Court ruled in the case of Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al. This landmark case set a standard for FAPE that is commonly referred to as the *Rowley Standard.* The *Rowley* decision defines FAPE as including these two components:

1. an IEP developed in adequate compliance with the IDEA procedures; and

2. an IEP reasonably calculated to enable the student to receive educational benefit.

The *Rowley* decision also states that, if a student is being educated in the general education classroom, the IEP should be reasonably calculated to enable the student to achieve passing marks and advance from grade to grade, although passing grades are not determinative that FAPE has been provided.

B. Applicability to Charter and Alternative Schools

Federal law requires the district to provide students with disabilities educational choices comparable to those choices offered to students without disabilities. These choices include the opportunity to attend a public charter school or alternative public school. Students enrolled in public charter and alternative schools are entitled to FAPE and retain all the rights and protections that are available under the IDEA.

C. Applicability to Detained Youth

Students with disabilities or suspected disabilities who are detained in city or county jails, juvenile detention centers, juvenile correctional facilities, or in Idaho prisons are entitled to FAPE.

1. Services to Youth Detained in City or County Jails

   The district in which the facility is located has the responsibility for Child Find and the provision of FAPE to eligible youth.

2. Services to Youth Detained in Juvenile Detention Centers (JDC)

   The district in which the facility is located has the responsibility for the provision of FAPE to eligible youth. Typically, detention in a JDC is short term, and the student most likely returns to his or her home district. If a district has a student who is detained in a JDC not located within the district boundaries, the district may find it beneficial to coordinate school assignments through the JDC's education staff while the student is in the facility.

3. Services to Youth Placed in the Custody of the Department of Juvenile Corrections (DJC)

   When a student is placed in the custody of the Department of Juvenile Corrections, the responsibility for the provision of FAPE resides with the Department of Juvenile Corrections.

4. Services to Youth in the Custody of the Department of Correction (DOC)

When a student is placed in the custody of the Department of Correction, the responsibility for the provision of FAPE resides with the Department of Correction through an agreement between the SDE and the Department of Correction.

D. Using Public and Private Insurance Funds to Provide FAPE

If a student is covered by a parent's private or public insurance or benefits, the district may access this insurance only if the parent provides informed consent. The consent requirements are different for accessing a parent's private insurance as opposed to public insurance (such as Medicaid).

If a district proposing to access a parent's public insurance to cover any of the costs associated with the provision of special education and/or related services, the district must do the following:

1. Provide written notification to the child's parents before accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent and annually thereafter. The written notification must explain all of the protections available to parents to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice must include a statement that the refusal to provide consent or the withdrawal of consent will not relieve the district's responsibility to ensure that all the required IEP services are provided at no cost to the parent. The notice must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.

2. Obtain a one-time written consent from the parent after providing the written notification before accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (*e.g*., billing for services); and (c) the agency to which the disclosure may be made (*e.g*., Medicaid). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services. Such consent may be withdrawn at any time by the parent.

3. If the child on an IEP moves into a new district, the new district responsible for providing a FAPE must provide the parents with written notice and must obtain consent before accessing the parent's public insurance.

If a district is proposing to access a parent's private insurance to cover any of the costs associated with the provision of special education and/or related services, the district must get parental consent each time the district proposes to access private insurance.

Chapter 3
CHILD FIND

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Chapter 3
Child Find

The Child Find system involves three basic steps leading to the determination of whether or not a student has a disability and requires special education. The steps are location, identification, and evaluation. This chapter describes location and identification activities. The evaluation process is covered in Chapter 4.

Section 1. District Responsibility

The district is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students suspected of having disabilities, ages three (3) through the semester they turn twenty-one (21), who may need special education, regardless of the severity of the disabilities. The district is also responsible for coordinating with the Department of Health and Welfare (DHW) regarding the Child Find system for children ages birth through two (2) years. The district may appoint an individual to coordinate the development, revision, implementation, and documentation of the Child Find system.

The Child Find system shall include all students within the district's geographic boundaries including students who are:

1. enrolled in the district, however this would not include a student who is placed in that public school by another district;

2. enrolled in charter and alternative schools;

3. enrolled in homeschool;

4. enrolled in parentally placed private elementary and secondary schools (including religious schools) located in the district; including out-of-state parentally-placed private school children with disabilities;

5. not enrolled in elementary or secondary school, including resident children ages three (3) through five (5);

6. advancing from grade to grade;

7. highly mobile students (such as migrant and homeless as defined by the McKinney Vento Homeless Act [see Glossary]); and

8. wards of the state.

Section 2. Locating Students

Locating students who may have disabilities involves coordinating with other agencies and promoting public awareness.

A. Coordination

For infants and toddlers, birth through two (2) years of age, Child Find is provided by the Idaho Infant/ Toddler Program (ITP). Although lead responsibility for the ITP has been designated to the DHW, interagency agreements provide for collaboration and coordination. The district shall use local interagency agreements for efficient use of resources and ease of service accessibility for students and families.

B. Public Awareness

The district shall take and document the necessary steps to ensure that district staff and the general public are informed of the following:

1. the availability of special education services;
2. a student's right to a free appropriate public education (FAPE);
3. confidentiality protections; and
4. the referral process.

This information may be provided through a variety of methods such as distributing brochures or flyers, including information in school or district publications, disseminating articles and announcements to newspapers, arranging for radio and television messages and appearances, speaking at faculty meetings or district in-services, and making presentations.

Section 3. Identification

The identification component of Child Find includes screening, early intervening through a problem-solving process, and referral to consider a special education evaluation. The procedural rights under the IDEA are afforded when the student is referred for a special education evaluation by the parent/adult student or the district.

A. Screening

Screening is an informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards, Idaho Core Standards, or Idaho Early Learning Guidelines (eGuidelines). A variety of methods may be used to screen students, including performance on statewide assessments, curriculum-based measures, daily work in the

classroom, teacher observations, hearing and vision screeners, developmental milestones, and/or kindergarten readiness measures.

Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Although screening is an important part of the Child Find system, screening cannot be used to delay processing a referral to consider a special education evaluation where immediate action is warranted.

B. General Education Intervention (Comprehensive Early Intervening Services)

Under the Local Education Agency (LEA) funding option, early intervening services are services for K-12 students who need additional academic and behavioral support to succeed in the *general education environment*. When a school's screening process reveals that a student or groups of students are at risk of not meeting the Idaho Content Standards or Idaho Core Standards, the general education problem-solving team shall consider the students' need for "supported" instructional and/or behavioral interventions in order to help the students succeed. These interventions are referred to as early intervening services or general education interventions, accommodations, and strategies. It is important to remember that students who receive early intervening services are not currently identified as needing special education or related services and do not have a right to a free appropriate public education. Therefore, the IDEA procedural safeguards are not applicable at this time.

Districts shall implement comprehensive coordinated services and activities that involve providing educational and behavioral evaluations, services, and supports. These services may also include professional development for teachers and other staff to enable them to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software. Comprehensive Early Intervening Services (CEIS) should be based on whole-school approaches such as; the three-tiered model, scientifically based curriculum and instruction, positive behavior supports, and a response to intervention system.

If a district chooses to use up to 15% of IDEA Part B funds for CEIS for students in K-12 who are not currently identified as needing special education, but who need additional support in the general education environment, additional requirements may apply that will affect maintenance of effort. In addition, if IDEA Part B funds are used, the district must annually report to the SDE:

1. The number of children receiving CEIS; and

2. The number of children who received CEIS and subsequently received special education services during the preceding two year period.

If a district is found to have a significant disproportionate representation in special education, there are additional requirements for use of funds in CEIS. Please see Chapter 10 for more information on CEIS.

C. General Education Problem Solving

1. Establishing a Problem-Solving Team

   The district shall establish a problem-solving team and a process to plan accommodations and interventions in general education and to ensure that referrals to consider a special education evaluation are appropriate. Team membership is established by the school or the district and would likely involve general educators and administrators, and could include counselors, specialists, and special education personnel. While parent/adult student involvement is valuable and encouraged, the district is not required to include the parent/adult student on the team.

   When problem solving involves a child three to five (3-5) years of age, the team should seek input from family members, child care programs, private preschools, or Head Start Programs, as appropriate. An early childhood problem-solving process needs to consider early childhood environments and the preschool student's need for supported instructional interventions in order for the student to participate in appropriate activities. IDEA Part B funds cannot be used to provide CEIS to preschoolers.

2. Referrals to the Problem-Solving Team

   Referrals to the problem-solving team may come from a variety of sources including parents, students, other family members, public or private school personnel, agencies, screening programs, or as a result of annual public notice.

   Referrals may be made for a variety of reasons dealing with academic and behavioral concerns and may involve, but are not limited to, teaching strategies, material accommodations, social skills training, cooperative learning concepts, classroom organization, and scheduling.

3. Interventions

   a. Interventions in general education or an early childhood environment shall be attempted before a student is referred to an evaluation team, unless the student's performance indicates an evaluation is warranted or a parent makes a request for a referral for a special education evaluation.

   b. Interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and should be clearly documented.

c. Documentation of the success or failure of accommodations and interventions shall be reviewed and discussed by the problem-solving team.

4. Problem-Solving Team Decisions Following General Education Intervention

Based on a review of data and information presented by the referring party and others, the team has several decision options. In the case of a preschool student, data and information shall be gathered and reviewed from such settings as child care programs, private preschools, Head Start Programs, or the home. Following an intervention, the problem-solving team shall review progress monitoring data from the intervention and other relevant information to determine what action is warranted. The team considers a variety of options, including whether to:

a. continue the general education intervention because the student is making adequate progress but needs more time to reach goals;

b. continue the intervention in a modified form;

c. explore services or programs outside of special education (such as Title I of the Elementary and Secondary Education Act, including English language programs; Section 504 accommodations; counseling); or

d. make a referral to consider a special education evaluation.

Although problem-solving activities are an important part of the system, they cannot be used to delay processing a referral for consideration of a special education evaluation where immediate action is warranted. Either a parent or a public agency may initiate a request for an initial evaluation. If a parent initiates a referral for a special education evaluation, the evaluation cannot be delayed or denied due to the child not completing the general education intervention process.

Section 4. Referral to Consider a Special Education Evaluation

A. Evaluation Team

The evaluation team is the group of people established by the IDEA that has the responsibility for making decisions regarding evaluation, assessments, and eligibility. The composition of the evaluation team will vary depending on the nature of the student's suspected disability and other relevant factors. The evaluation team shall include the same membership (although not necessarily the same individuals) as the IEP team and other professionals as needed to ensure that appropriate, informed decisions are made.

Unlike an IEP team, an evaluation team has the flexibility of conducting business with or without a meeting. The case manager can gather input from evaluation team members in a variety of ways. The parent/adult student shall be included in the evaluation team and shall be given the

opportunity to indicate whether he or she wishes the team to hold a meeting with all members attending.

B. Referrals to Consider Special Education

The procedure for handling referrals to consider a special education evaluation for students suspected of having a disability includes the following:

1. Unless immediate action is warranted and documented, a referral to consider a special education evaluation is sent to the evaluation team *after* the problem-solving team has determined:

    a. the student's response to research-based interventions in general education (or age-appropriate activities for preschool) has not resulted in adequate progress; and

    b. language and cultural issues are not the main source of the student's academic or behavioral discrepancy from peers.

2. A *Referral to Consider a Special Education Evaluation/Reevaluation* form shall be completed.

3. Procedural safeguards are activated when a referral is made to consider a special education evaluation. If the referral came from someone other than the parent/adult student (see Glossary) the parent/adult student shall be notified. In either case, the parent/adult student shall be provided with a copy of the *Procedural Safeguards Notice*. At the same time, the parent/adult student shall be afforded an opportunity to provide input regarding the need for and scope of the initial evaluation, including the opportunity to hold a meeting if desired.

4. The evaluation team (including the parent/adult student) reviews all available records, including family and health history, past school experiences, the results of general education interventions, and previous assessments and evaluations. The evaluation team shall decide what additional assessments, if any, are needed. This review and determination process can take place at a face-to-face meeting of the evaluation team or through an alternate format, unless the parent/adult student desires that a meeting be held.

    a. If the evaluation team determines that an evaluation is warranted, written notice shall be provided to the parent/adult student describing the proposed evaluation and written consent shall be obtained from the parent/adult student.

    b. If the evaluation team determines that an evaluation is not warranted at this time, the team should seek other avenues for services to meet the student's needs. The person initiating the referral, if other than the parent/adult student,

> may be informed as to why the evaluation is not being conducted. Written notice of the district's refusal to evaluate a student for special education services shall be provided to the parent/adult student when he or she makes a referral for a special education evaluation and the district determines that the evaluation is not warranted.

Note: Districts are prohibited from requiring that a student obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation, or receiving services under the IDEA.

See Chapter 4 for more information on evaluation and eligibility.

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EVALUATION AND ELIGIBILITY

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Chapter 4
Evaluation and Eligibility

Chapter 3 discusses Child Find procedures used to locate and identify students with suspected disabilities. This chapter contains the requirements for the special education evaluation and eligibility process, from referral to consider special education through to the determination of eligibility. The Idaho State Department of Education has provided State Eligibility Criteria for special education services for eligibility consistent with the IDEA for districts to use while determining eligibility.

Section 1. Evaluation Team

The evaluation team is a group of people outlined by IDEA with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the individualized education program (IEP) team (although not necessarily the same individuals) and other qualified professionals as needed to ensure that appropriate and informed decisions are made. The specific composition of the evaluation team reviewing existing data will vary depending upon the nature of the student's suspected disability and other relevant factors. The parent/adult student is a member of the evaluation team and shall be provided an opportunity to provide input and participate in making team decisions. The evaluation team may conduct its review without a meeting unless the parent/adult student requests that a meeting be held.

Additional Membership Requirements**:**

The determination of whether a student suspected of having a *specific learning disability* shall be made by the student's parents and a team of qualified professionals, which shall include:

1. The student's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; and

2. A school psychologist is a required member of the team. When considering oral expression and listening comprehension, a speech language pathologist is a required member who may collaborate with or replace the school psychologist as the professional required to conduct and interpret evaluative examinations

Section 2. Purpose of an Evaluation

The purpose of the evaluation process is to determine the eligibility of a student for special education services. This pertains to both initial determination and three year review of eligibility, or re-evaluation. It is also a process for gathering important information about a student's strengths and service needs. An evaluation process shall include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent.

A. Definitions

Although the terms "evaluation" and "assessment" are often interchanged, there are significant differences between the meanings of the two terms. In an effort to clarify, the terms are defined as follows:

1. Evaluation refers to procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The screening of a student by a teacher or specialist to determine appropriate *instructional* strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

2. Assessment is integral to the evaluation process and includes the formal and informal processes of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. A test is one method of obtaining credible information within the assessment process. Tests may be standardized or non-standardized, criterion-referenced (e.g. curriculum-based measures) or norm-referenced, and usually elicit responses from students to situations, questions, or problems to be solved. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal data.

B. Evaluation Components

The district shall conduct a full and individual initial evaluation before the provision of special education and related services are provided to a student suspected of having a disability. A parent or a public agency may initiate a request for an initial evaluation to determine eligibility.

To be eligible for services under the IDEA, a student must have a disability that:

1. meets the Idaho state disability criteria;

2. adversely affects educational performance; and

3. results in the need for specially designed instruction and related services.

In addition, the information from the evaluation can be used to consider the following:

1. the nature and extent of special education and related services needed by the student in order to participate and progress in the general education curriculum or curriculum aligned to the Idaho Content Standards, Idaho Core Standards, or the Idaho Early Learning Guidelines (eGuidelines); and

2. the least restrictive environment (LRE) for the student.

The above information also pertains to evaluations for determining Part B eligibility for children transitioning from the Infant/Toddler Program (ITP).

Section 3. Written Notice and Consent for Assessment

Written notice shall be provided and informed consent shall be obtained before assessments are administered to a student as part of an evaluation.

A. Written Notice Requirements

Written notice shall be provided to the parent/adult student within a reasonable time before the district proposes to initiate the evaluation or re-evaluation of a student. Written notice shall be in words understandable to the general public. It shall be provided in the native language or other mode of communication normally used by a parent/adult student unless it is clearly not feasible to do so.

If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:

1. the notice is translated orally or by other means in the native language or other mode of communication;

2. the parent/adult student understands the content of the notice; and

3. there is written evidence that the above two requirements have been met.

The written notice shall include the following:

1. a description of the evaluation or reevaluation proposed or refused by the district;

2. an explanation of why the district proposes to evaluate or reevaluate the student;

3. a description of any other options the district considered and the reasons why those options were rejected;

4. a description of each assessment procedure, test, record, or report that the district used as a basis for the proposed or refused evaluation or reevaluation;

5. a description of any other factors relevant to the evaluation or reevaluation;

6. a statement that the parent/adult student has special education rights and how to obtain a copy of the *Procedural Safeguards Notice* (Note: If this is the initial evaluation, the parents should get a copy of the procedural safeguards with the initial notice of the special education evaluation); and

7. sources for parents to contact in obtaining assistance in understanding the *Procedural Safeguards Notice.*

Written notice shall be provided to the parent/adult student within a reasonable time in the following instances:

1. to conduct any additional assessments and review initial information as part of the initial evaluation or reevaluation;

2. to explain refusal to initiate assessment; and

3. when the evaluation team determines that additional assessments are not required

See Chapter 11 for more information on written notice.

B. Consent Requirements

1. Definition of Consent: Consent means that the parent/adult student:

    a. has been fully informed in his or her native language or other mode of communication of all information relevant to the assessment for which consent is sought;

    b. understands and agrees in writing (as indicated by signature) to the activities described; and

    c. understands that granting of consent is voluntary and may be revoked in writing at any time *before* the assessment is completed. However, once the assessment has been completed, revocation of consent cannot be used to have the assessment disregarded.

2. Consent for initial evaluation

    a. Informed written consent shall be obtained from the parent/adult student before the district conducts assessments as a part of an initial evaluation of the student to determine if he or she qualifies as a child with a disability;

    b. Parental consent for initial evaluation should not be construed as consent for initial provision of special education and related services;

    c. The school district shall make reasonable documented efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child has a disability and to identify the educational needs of the child. If a parent refuses consent, the district does not violate its obligation to provide FAPE if it declines to pursue the evaluation. If the parent does not

provide consent, the district may offer an SDE facilitated meeting, mediation, or request a due process hearing to challenge the decision.

d. If the child is a ward of the State and is not residing with the child's parent, the district is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility if:

   1) despite reasonable efforts to do so, the district cannot locate the parent;

   2) the rights of the parents of the child have been terminated in accordance with Idaho law; or

   3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Idaho law and consent for initial evaluation has been given by an individual appointed by the judge to represent the child.

e. If a district is using any data gathered during general education interventions for a student suspected of being a student with a disability, and that data may be used for a later eligibility determination, the district shall promptly request consent to evaluate the student.

C. Consent for Reevaluation

1. Written consent shall be sought for reevaluation that requires new assessments. Reevaluation consisting solely of review of existing data does not require written notice.

2. Informed parental consent for a reevaluation need not be obtained if the public agency can demonstrate through documentation that it made reasonable efforts to obtain consent and the child's parent has failed to respond.

D. When Consent Is Not Required

Parental consent is *not* required for:

1. the review of existing data as part of an evaluation or reevaluation;

2. the administration of a test or other assessment that is administered to all students, unless consent is required of parents of all students;

3. teacher or related service provider observations, ongoing classroom evaluations, or criterion-referenced tests that are used to determine the student's progress toward achieving goals on the IEP; and

4. screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation, which may include group or individual curriculum-based or norm-referenced measures.

E. Refusing Consent or Failure to Respond to a Request for Consent

1. The parent/adult student can refuse consent for assessment(s).

2. For an initial evaluation, if consent is refused or the parent/adult student fails to respond, the student cannot be assessed. However, the district may request SDE facilitation, mediation, or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates that assessment is appropriate and there is no appeal, then the student may be assessed. However, the district does not violate its obligations to provide FAPE if it declines to pursue the evaluation. Consent for the initial evaluation shall not be construed as consent for the initial provision of special education services should the student be deemed eligible.

3. If a parent of a child who is homeschooled or placed in a private school by the parents at their own expense does not provide consent for initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the district may not use SDE mediation or due process procedures in order to gain consent and the district is not required to consider the child eligible for services.

Note: A district shall not use a parent's refusal for consent to one service or activity to deny the parent or student any other service, benefit, or activity.

See Chapter 11 for more information on consent and reasonable efforts.

F. Timeline

The time between receiving written consent for initial assessment and eligibility determination cannot exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days. The time between eligibility determination and the development of the IEP cannot exceed thirty (30) calendar days. The implementation of the IEP shall not exceed thirty (30) calendar days from the eligibility determination, unless all parties agree to an extension. For children transferring from ITP, eligibility shall be determined and an IEP developed by the child's third birthday. If a child turns three during the summer, and the child does not require Extended School Year (ESY) services, special education and related services may begin in the new school year.

In unusual circumstances, all parties may agree in writing to an extension of the sixty (60) day period for the purpose of initial assessment. These circumstances may include the following:

1. The child enrolls in a school in another school district after the sixty (60) day timeline began and prior to the determination by the child's eligibility in the previous school

district. If the new school district is making sufficient progress in determining eligibility, the parent and district may agree to a different timeline.

2. The parent repeatedly fails or refuses to produce the student for an evaluation after the district has made reasonable efforts to schedule an evaluation.

Section 4. Information from Other Agencies or Districts

Consent for release of information shall be received before the district seeks to obtain information about the student from other agencies, unless otherwise authorized by law. Upon receipt of consent, the case manager will send letters requesting information to individuals or agencies that have relevant information about the student. A copy of the signed consent form for release of information shall be included with the letters and a copy shall be retained in the student's confidential file. Sources of this additional information may include records from health and social service agencies, private preschool programs, legal service agencies, and non-school professionals such as physicians, social workers, and psychologists.

Federal laws and regulations do not require consent for the district to:

1. request information from other districts that the student has attended; or

2. send information to other districts in which the student intends to enroll.

For children transferring from the ITP, eligibility shall be determined and the IEP developed by the date that the child turns three (3) years of age. See Chapter 5 and Appendix 5B for additional information on collaboration with the ITP throughout the transition process.

Section 5. Evaluation and Eligibility Determination Procedures

A. Areas to Assess

The student shall be assessed in all areas related to the suspected disability, which includes areas such as functional, developmental, and academic skills needed to participate and progress in the general education curriculum. If needed, qualified personnel shall conduct an individual assessment of assistive technology needs, including a functional evaluation in the individual's customary environment. The evaluation of each suspected to be a student with a disability shall be full and individualized and sufficiently comprehensive to identify all of the student's suspected special education and related service needs whether or not commonly linked to the disability category in which the student may be classified. For youth with IEPs, no later than age sixteen (16), appropriate transition assessments shall be conducted. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), appropriate transition assessments shall be conducted.

Evaluation teams shall be especially mindful of cultural and linguistic differences during the evaluation and eligibility process. Caution is advised in the selection of informal or formal assessments that are nonbiased, administration of assessments, interpretation, and application of outcomes in order to appropriately identify culturally or linguistically diverse students for special education services.

See Appendix 4 for more guidance on determining eligibility for culturally and linguistically diverse students.

B. Determination of Needed Initial or Reevaluation Data

As part of an initial evaluation or reevaluation, the evaluation team shall review existing evaluation data regarding the student including:

1. assessments and information provided by the parent/adult student concerning the student;

2. current classroom-based assessments and observations, and/or data regarding the student's response to scientific research-based interventions;

3. observations by teachers and related service providers; and

4. results from statewide and district wide testing.

Based on that review, and input from the parent/adult student, the evaluation team will decide on a case-by-case basis what additional data, if any, are needed to determine:

1. whether the student meets eligibility criteria for special education;

2. the student's present levels of academic and functional performance, including academic achievement and related developmental needs of the student;

3. whether the student needs specially designed instruction; or

4. whether any additions to the special education and related services are needed to enable the student to:

    a. meet the measurable annual goals set out in the student's IEP; and

    b. be involved in and progress in the general education curriculum (for preschool students, to participate in appropriate activities).

If the evaluation team determines additional assessments are not required for the purpose of determining whether the student meets eligibility criteria during an initial evaluation or a reevaluation, the district shall provide written notice to the parent/adult student of the decision

and the reasons for that decision. The parent/adult student shall also be informed of his or her right to request assessments to determine eligibility and to determine the child's educational needs. The district will provide written notice if a parental request for additional assessment is denied.

C. Assessment Procedures and Instruments

The district shall ensure the evaluation or reevaluation meets the following requirements:

1. The child shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and transition needs.

2. Assessments and other materials shall be selected and administered so as not to be discriminatory on a racial or cultural basis.

3. Assessments and other materials shall be provided and administered in the student's native language, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally unless it is not feasible to provide or administer. Attempts to provide a qualified examiner in the student's native language or mode of communication shall be documented.

   In all direct contact with a student, the language normally used by the student in the home or learning environment shall be used. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that which is normally used by the individual (e.g., sign language, Braille, or oral communication).

4. Materials used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than solely measuring the student's English language skills. (See Appendix 4C for further information.)

5. A variety of assessment tools and strategies shall be used to gather relevant academic,~~,~~ developmental and functional information about the student, including information provided by the parent/adult student and information related to enabling the student to be involved in and progress in the general education curriculum (or, for a preschooler, to participate in appropriate activities).

6. Assessments are used for the purposes for which the assessments or measures are valid and reliable.

7. Assessments shall be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

8. Assessments and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient or standard score.

9. Assessments shall be selected and administered to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those are the factors that the test purports to measure).

10. No single measure or assessment may be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.

11. The district shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.

12. The district shall provide and use assessment tools and strategies that produce relevant information that directly assists persons in determining the educational needs of the student.

13. All services and assessments shall be provided at no expense to the parent/adult student.

14. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with the child's prior and subsequent schools to ensure prompt completion of the full evaluation.

15. The evaluation shall be full and individualized and sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category.

D. Eligibility Determination

1. Upon completion of the student's initial evaluation or reevaluation, the evaluation team will consider the findings and determine whether the student meets or continues to meet eligibility criteria found in Section 7 of this chapter. The evaluation team will draw upon information from a variety of sources, such as norm-referenced, standardized tests, parent/adult student input, teacher input, physical condition, social or cultural background, adaptive behavior, and functional assessments to interpret evaluation data and determine eligibility.

2. Special Rule for Eligibility Determination

A student cannot be identified as a student with a disability if the primary reason for such a decision is:

a. lack of appropriate instruction in reading, including the essential components of reading instruction as defined by the Elementary and Secondary Education Act—phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies;

b. lack of appropriate instruction in math; or

c. Limited English Proficiency.

3. Related Services

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. An IEP team may determine that a student found eligible for special education has a need for a related service. However, if a student with a disability needs only a related service and not special education, then the student is not eligible for the related service, unless it is considered to be special education under State standards, as in the case of speech therapy and language therapy.

E. The Eligibility Report

The evaluation team shall prepare an Eligibility Report and provide a copy of the report to the parent/adult student.

The Eligibility Report shall include:

1. names and positions of all evaluation team members;

2. information regarding the student's need for specially designed instruction (special education and related services);

3. confirmation and supporting data that the disability is not primarily due to lack of appropriate instruction in reading, including the essential components of reading — phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies or math;

4. information about how the student's disability adversely affects his or her educational performance;

5. all data on the student as required in the State Eligibility Criteria for the area of suspected disability;

6. confirmation and supporting data that the student's learning difficulties are not primarily due to Limited English Proficiency;

7. the date of the eligibility determination;

8. the name and position of all those administering assessments; and

9. in the case of Specific Learning Disability eligibility determination, certification in writing that the report reflects each member's conclusions (agreement), and in the case of team member disagreement with the conclusions, a written statement shall be attached to the eligibility report presenting the dissenting team member's conclusions.

Section 6. Reevaluation and Continuing Eligibility

A. Reevaluation Requirements

The district shall ensure that an individual reevaluation of each student with a disability is conducted in accordance with all the required evaluation procedures outlined in this chapter.

A reevaluation:

1. shall occur at least once every three (3) years unless the parent/adult student and the district agree in writing that a three (3) year reevaluation is not necessary. However, an updated Eligibility Report, documenting all eligibility criteria, shall be completed by the reevaluation due date to establish and document continuing eligibility;

2. a reevaluation is not required more than once per year unless the parent/adult student and the district agree otherwise. If the parent makes a request within the year and the district does not agree, the district shall send written notice of refusal.

The district shall ensure a reevaluation is conducted more frequently than every three (3) years if:

1. it is determined that the education or related service needs, including academic achievement and functional performance, of the student warrants a reevaluation; or

2. if the parent/adult student or the student's teacher requests a reevaluation.

B. Reevaluation Prior to Discontinuation

1. The district shall evaluate a student with a disability before the team determines that the student is no longer eligible for special education.

2. Reevaluation is not required in the following two circumstances:

    a. before the termination of a child's eligibility due to graduation, if the student meets comparable academic requirements that are equally as rigorous as those required of nondisabled students and receives a regular diploma;

    b. the student has reached the end of the semester in which he or she turns twenty-one (21) years of age.

Note: Although a reevaluation is not required in these two cases, the district shall provide the student with a summary of his or her academic achievement and functional performance, including recommendations on how to assist the student in meeting his or her post school goals.

C. Informing the Parent/Adult Student

Approximately one month before the reevaluation is due, contact shall be made with the parent/adult student informing him or her that:

1. the reevaluation will be scheduled within the month, unless the district and parent/adult student agree it is unnecessary; and

2. input will be sought from the parent/adult student.

Note: The IDEA allows the process of reviewing existing data and determining what, if any, additional, assessments are required without a meeting.

D. Nature and Extent of Reevaluation

Before any reassessment of the student, the evaluation team will determine the nature and extent of the student's needs by reviewing existing data. See Section 5 of this chapter for more information regarding the determination of needed data.

1. No Additional Information Needed

    a. If the evaluation team decides that no additional assessments are needed to determine whether the student continues to be eligible for special education services, the district shall provide written notice to the parent/adult student of his or her right to request further assessment.

    b. If the parent/adult student requests an additional assessment to determine whether the student continues meet criteria for special education services under the IDEA, then the district shall conduct the assessment.

c. If the parent/adult student requests an additional assessment for reasons other than eligibility, such as admission to college, then the district shall consider the request and provide written notice of its decision.

2. Additional Assessments Needed

Based on recommendations from the evaluation team, the district will seek consent to administer the needed assessments and provide the parent/adult student with written notice regarding proposed assessments. If the parent/adult student fails to respond after the district has taken reasonable measures to obtain consent for assessments as part of a reevaluation, the district may proceed with the assessments. The district shall maintain documentation of its measures to seek consent. See section 3B of this chapter for a definition of reasonable measures.

If the parent/adult student denies consent to reassess, the student cannot be assessed. However, the district may request SDE mediation or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates the assessment is appropriate and there is no appeal, then the student may be assessed. All reevaluation procedures shall be provided at no cost to the parent/adult student.

E. Eligibility Report for Reevaluations

The evaluation team will consider evaluation findings and determine whether the student continues to meet criteria for special education services.

The evaluation team is required to prepare an Eligibility Report detailing how review of existing data demonstrates that the student continues to meet eligibility requirements even if no new assessments were conducted. The report shall address each required eligibility component and include results of previous assessments if they are being used to determine eligibility. Refer to Section 5 of this chapter for eligibility requirements.

Section 7. State Eligibility Criteria

The district will use the eligibility criteria and assessment procedures set forth by the SDE for placement in special education. This section contains a definition and the eligibility criteria for each specific disability that shall be used to determine whether an individual qualifies as a student with a disability in need of special education.

All disabilities except Specific Learning Disability (SLD) and Developmental Delay (DD) are applicable for students three (3) through twenty-one (21) years of age. For Specific Learning Disability, students must be legal kindergarten age through twenty-one (21) years. Only students ages three (3) through nine (9) can be identified in the Developmental Delay (DD) category. Use of the DD category is optional for the district. If the district elects to use the DD category, it

applies only to students from age three (3) up until their tenth (10th) birthday, in addition to the criteria outlined in this chapter.

A. Three-Prong Test of Eligibility

To demonstrate eligibility for special education services all three of the following criteria shall be met and documented. This is often called the three-prong test for eligibility.

The Eligibility Report shall document each of the following three criteria:

1. the student has a disability according to the established Idaho criteria;

2. the student's condition adversely affects educational performance; and

3. the student needs specially designed instruction.

Meets State Eligibility Requirements: The state eligibility requirements for specific disabilities are listed in this chapter.

Adverse Impact: A determination made by the evaluation team that the student's progress is impeded by the disability to the extent that the student's educational performance measures significantly and consistently below the level of similar age peers preventing the student from benefiting from general education. Educational performance refers the student's performance in academic achievement, developmental and or functional skills. The phrases "adverse impact" and "adverse effect" are used interchangeably in this Manual and have the same meaning.

Needs Specially Designed Instruction: Special education is specially designed instruction, provided at no cost to the parents, to meet the unique needs of a student with a disability. Specially designed instruction means adapted, as appropriate to meet the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the child to the general curriculum so that he or she can meet Idaho Content Standards or Idaho Core Standards that apply to all students.

B. Disability Categories

1. Autism Spectrum Disorder

Definition: An Autism Spectrum Disorder is a developmental disability, generally evident in the early developmental period, significantly affecting verbal or nonverbal communication and social interaction, and adversely affecting educational performance.

a. Persistent deficits in social communication and social interaction across multiple contexts, currently or by history:

b. Symptoms must be present in the early developmental period, but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life.

c. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and hyper- or hypo-reactivity to sensory input.

d. Characteristics vary from mild to severe as well as in the number of symptoms present and are not primarily the result of intellectual disability, developmental delay, or an emotional disturbance.

State Eligibility Criteria for Autism: An evaluation team will determine that a student is eligible for special education services as a student with autism when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;

b. The student has a developmental disability, generally evident in the early developmental period that significantly affects social communication and social interaction;

c. The student must meet the disability definition (above) of an autism spectrum disorder as determined by an evaluation team to include a school psychologist and a speech-language pathologist (a team must consider a private evaluation or diagnosis provided by a parent from a psychiatrist, a physician or a licensed psychologist as meeting the definition of autism spectrum disorder);

d. The student's condition adversely affects educational performance;

e. The student needs specially designed instruction.

2. Intellectual Disability

Definition: Intellectual Disability is defined as significantly sub-average intellectual functioning that exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period, and adversely affect the student's educational performance.

State Eligibility Criteria for Intellectual Disability: An evaluation team will determine that a student is eligible for special education services as a student with an intellectual disability when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student has a full-scale intelligence standard score (IQ) at or below 70, plus or minus the standard error of measurement (at the 95 percent confidence level) of the test being used, based on an assessment by a licensed psychologist or certified school psychologist using an individually administered intelligence test.

c. The student exhibits concurrent deficits in adaptive functioning unexpected for his or her age in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, or safety.

d. The student's condition adversely affects educational performance.

e. The student needs specially designed instruction.

Caution is advised when assessing students with cultural and language issues to prevent inappropriate identification of these students as having an intellectual disability. When determining eligibility, tests measuring intellectual ability shall be used with care; that is, only those tests designed and normed for the population being tested may be used. Tests measuring intellectual ability that are translated into another language by the examiner or an interpreter yield invalid test results and shall not be used.

3. Deaf-Blindness

Definition: A student with deaf-blindness demonstrates both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be appropriately educated with special education services designed solely for students with deafness or blindness.

State Eligibility Criteria for Deaf-Blindness: An evaluation team will determine that a student is eligible for special education services as a student with deaf-blindness when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student exhibits simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.

c. The student is diagnosed by an optometrist or ophthalmologist for vision loss and by an otologist, audiologist, or physician for hearing loss to make a final diagnosis as deaf-blindness.

d. The student's condition adversely affects educational performance.

e. The student needs specially designed instruction.

4. Deafness

Definition: Deafness is a type of hearing loss that adversely affects educational performance and is so severe that with or without amplification the student is limited in processing linguistic information through hearing.

State Eligibility Criteria for Deafness: An evaluation team will determine that a student is eligible for special education services as a student who is deaf when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student exhibits a severe hearing loss that hinders his or her ability to process linguistic information through hearing, with or without amplification.

c. The student has been diagnosed by an audiologist as deaf.

d. The student's condition adversely affects educational performance.

e. The student needs specially designed instruction.

5. Developmental Delay

Definition: The term developmental delay may be used only for students ages three (3) until their tenth (10th) birthday who are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

a. cognitive development – includes skills involving perceptual discrimination, memory, reasoning, academic skills, and conceptual development;

b. physical development – includes skills involving coordination of both the large and small muscles of the body (i.e., gross, fine, and perceptual motor skills);

c. communication development – includes skills involving expressive and receptive communication abilities, both verbal and nonverbal;

d. social or emotional development – includes skills involving meaningful social interactions with adults and other children including self-expression and coping skills; or

e. adaptive development – includes daily living skills (e.g., eating, dressing, and toileting) as well as skills involving attention and personal responsibility.

The category of developmental delay should not be used when the student clearly meets the eligibility criteria for another specific disability category.

A student cannot qualify for special education services under developmental delay beyond his or her tenth (10th) birthday unless he or she has been determined to be eligible as having a disability other than developmental delay.

State Eligibility Criteria for Developmental Delay: An evaluation team may determine that a student is eligible for special education services as a student with a developmental delay when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student is at least three (3) years of age but less than ten (10) years of age.

c. The student has developmental and/or learning problems that are not primarily the result of limited English proficiency, cultural difference, environmental disadvantage, or economic disadvantage.

d. The student meets either of the following two criteria, in one or more of the broad developmental areas listed below.

Criteria:

1) The student functions at least 2.0 standard deviations below the mean in one broad developmental area (30 percent delay in age equivalency, or functions at or below the 3rd percentile).

2) The student functions at least 1.5 standard deviations below the mean in two or more broad developmental areas (25 percent delay in age equivalency, or functions at or below the 7th percentile).

Broad Developmental Areas:

1) Cognitive skills (e.g., perceptual discrimination, memory, reasoning, pre-academic, and conceptual development);

2) Physical skills (i.e., fine, gross, and perceptual motor skills);

3) Communication skills (i.e., including verbal and nonverbal, and receptive and expressive);

4) Social or emotional skills; or

5) Adaptive skills, including self-help skills.

e. The student's condition adversely affects educational performance.

f. The student needs specially designed instruction.

6. Emotional Disturbance

Definition: A student with an emotional disturbance exhibits one or more of the following characteristics over a long period of time, and to a marked degree, that adversely affects his or her educational performance:

a. an inability to learn that is not primarily the result of intellectual disability; hearing, vision, or motor impairment, or other health impairment;

b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

c. inappropriate types of behavior or feelings under normal circumstances;

d. a general pervasive mood of unhappiness or depression;

e. a tendency to develop physical symptoms or fears associated with personal or school problems; or

f. Schizophrenia.

The term *does not* include students who are socially maladjusted unless it is determined they have an emotional disturbance.
State Eligibility Criteria for Emotional Disturbance: An evaluation team will determine that a student is eligible for special education services as a student with emotional disturbance when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student has been documented exhibiting characteristics consistent with the criteria (a-f in this section) by one or more of the following: school psychologist, licensed psychologist, psychiatrist, physician, or certified social worker.

c. The student has been observed exhibiting one or more of the six (6) behavioral or emotional characteristics listed in the definition of emotional – behavioral disability.

d. The characteristic(s) has been observed:

    1) for a long period of time (at least 6 months); and

    2) by more than one knowledgeable observer; and

    3) in more than one setting; and

    4) at a level of frequency, duration, and/or intensity that is significantly different from other students' behavior in the same or similar circumstances.

e. The student's condition adversely affects educational performance in the area of academics, peer and teacher interaction, participation in class activities, and/or classroom conduct.

f. The student needs specially designed instruction.

See Appendix 4A for additional information on determining eligibility for Emotional Disturbance.

7. Other Health Impairment (OHI)

Definition: A student classified as having Other Health Impairment exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. These health problems may include, but are not

limited to, asthma, attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, and stroke to such a degree that it adversely affects the student's educational performance.

A student with ADD/ADHD may also be eligible under another category (generally specific learning disability or emotional disturbance) if he or she meets the criteria for that other category and needs special education and related services. All students with a diagnosis of ADD/ADHD are not necessarily eligible to receive special education under the IDEA, just as all students who have one of the other conditions listed under other health impairment are not necessarily eligible, unless it is determined to adversely affect educational performance and require specially designed instruction.

State Eligibility Criteria for Other Health Impairment: An evaluation team will determine that a student is eligible for special education services as a student with an Other Health Impairment when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems.

c. The student has been diagnosed by a physician with a condition consistent with an Other Health Impairment described above. In the case of ADD/ADHD, an educational determination may be provided by a school psychologist. Diagnosis from a licensed psychologist or other diagnostician must be considered by the evaluation team.

d. The student's condition adversely affects educational performance.

e. The student needs specially designed instruction.

8. Hearing Impairment

Definition: The IDEA disability category of hearing impairment describes a permanent or fluctuating hearing loss that adversely affects a student's educational performance but is not included under the category of deafness.

State Eligibility Criteria for Hearing Impairment: An evaluation team will determine that a student is eligible for special education services as a student with a hearing impairment when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student does not qualify as deaf.

c. The student is diagnosed by an otologist, audiologist or physician as having a substantial hearing loss.

d. The student's condition adversely affects educational performance.

e. The student needs specially designed instruction.

9. Specific Learning Disability

Definition: Specific Learning Disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Only a school age child may be identified as a student with a specific learning disability.

State Eligibility Criteria for Specific Learning Disability: In determining whether a child has an SLD, the child must meet at a minimum, the following criteria:

a. The student does not make sufficient progress in response to effective, evidence-based instruction and intervention for the child's age or to meet state-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standards in one or more of the following areas:

1) Oral expression;
2) Listening comprehension;
3) Written expression;
4) Basic reading skills;
5) Reading comprehension;
6) Reading fluency
7) Mathematics calculation; or

8) Mathematics problem solving.

AND

b. The student demonstrates low achievement in the area(s) of suspected disability listed above as evidenced by a norm-referenced, standardized achievement assessment. For culturally and linguistically diverse students, the preponderance of evidence must indicate low achievement.

AND

c. The student demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning.

AND

d. The student's lack of achievement is ***not*** primarily the result of:
   1) A visual, hearing, or motor impairment;
   2) Intellectual disability
   3) Emotional disturbance
   4) Environmental, cultural or economic disadvantage
   5) Limited English Proficiency
   6) A lack of appropriate instruction in reading, including the essential components of reading;
   7) A lack of appropriate instruction in math.

AND

e. The disability adversely impacts the student's educational performance and the student requires specially designed instruction.

Evaluation Procedures:

In order to demonstrate the initial eligibility criteria under this category, the following procedures must be followed.

1) The evaluation for determining SLD eligibility and requirements for parent notification and involvement shall be conducted in accordance with the procedures detailed in Chapter 4, Section 3, of this Manual.

2) The evaluation must address the eligibility criteria as listed in the *SLD Eligibility Criteria* (see above). To meet these criteria, the following information is required:

   i. Evidence of insufficient progress in response to effective,

evidence-based instruction and intervention indicates the student's performance level and rate of improvement are significantly below that of grade-level peers. This is documented/demonstrated with the following data:

a) Data that helps establish that the core curriculum is effective for most students. The most recent whole grade performance data to verify appropriate instruction in the area(s) of concern may include results from the standards-based assessment system. If the referred student belongs to a population of students whose performance is regularly disaggregated, whole grade data for the disaggregated group should also be reviewed and considered.

b) Information documenting that prior to, or as part of, the referral process, the student was provided appropriate instruction in general education settings. Appropriate instruction includes consideration of both child specific information and whole grade performance data. Child specific data regarding appropriate instruction may include: (1) verification that core (universal) instruction was provided regularly; (2) data indicating that the student attended school regularly to receive instruction; (3) verification that core instruction was delivered according to its design and methodology by qualified personnel; and (4) verification that differentiated instruction in the core curriculum was provided.

c) Data-based documentation of student progress during instruction and intervention using standardized, norm-referenced progress monitoring measures in the area of disability.

d) A record of an observation of the student's academic performance and behavior in the child's learning environment (including the general classroom setting) has been conducted by an evaluation team member other than the student's general education teacher. The purpose of the observation is to document how the areas of concern impact the student's performance in the classroom. The observation should also document the name and title of the observer and the site, date, and duration of the observation. The team must decide to:

1. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was conducted before the child was referred for an evaluation; or

2. Have at least one member of the team conduct an observation of the child's academic performance in the educational environment after the child has been referred for an evaluation, and parental consent has been obtained.

AND

ii. Evidence of low achievement in one or more of the suspected area(s). These include:

a) Oral expression;
b) Listening comprehension;
c) Written expression;
d) Basic reading skills;
e) Reading comprehension;
f) Reading fluency
g) Mathematics calculation; or
h) Mathematics problem solving

This evidence must indicate performance that is significantly below the mean on a cluster, composite, or two (2) or more subtest scores of a norm-referenced, standardized, achievement assessment in the specific academic area(s) of suspected disability. There are cases when the use of norm-referenced assessment is not appropriate, for example, students who are culturally and linguistically diverse. Refer to guidance documents regarding procedures on evaluating students who are culturally and linguistically diverse and the use of preponderance of evidence.

AND

iii. Evidence of a pattern of strengths and weaknesses in psychological processing skills that impact learning.

An assessment of psychological processing skills is linked to the failure to achieve adequately in the academic area(s) of suspected disability and must rely on standardized assessments. These assessments must be conducted by a professional who is

qualified to administer and interpret the assessment results. The student's performance on a psychological processing assessment demonstrates a pattern of strengths and weaknesses that help explain why and how the student's learning difficulties occur. Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test psychological processing.

AND

iv. The following criteria must be considered when evaluating the student's low achievement. The team must determine that the student's learning difficulty is ***not*** primarily the result of:

a) a visual, hearing, or motor impairment

b) an intellectual disability

c) an emotional disturbance
d) environmental or economic disadvantage

e) cultural factors

f) Limited English Proficiency (LEP)

10. Multiple Disabilities

Definition: Multiple disabilities are two or more co-existing severe impairments, one of which usually includes an intellectual disability, such as intellectual disability/blindness, intellectual disability/orthopedic, etc. Students with multiple disabilities exhibit impairments that are likely to be life long, significantly interfere with independent functioning, and may necessitate environmental modifications to enable the student to participate in school and society. The term does not include deaf-blindness.

State Eligibility Criteria for Multiple Disabilities: An evaluation team will determine that a student is eligible for special education services as a student with multiple disabilities when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student meets eligibility criteria for severe concomitant impairments, the combination of which causes such significant educational problems that the

student cannot be accommodated by special education services designed solely for one of the disabilities.

c. The student meets State Eligibility Criteria as outlined for each disability category.

d. The student's condition adversely affects educational performance.

e. The student needs specially designed.

11. Orthopedic Impairment

Definition: Orthopedic impairment means a severe physical limitation that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (clubfoot, or absence of an appendage), an impairment caused by disease (poliomyelitis, bone tuberculosis, etc.), or an impairment from other causes (cerebral palsy, amputations, and fractures or burns that cause contracture).

State Eligibility Criteria for Orthopedic Impairment: An evaluation team will determine that a student is eligible for special education services as a student with an orthopedic impairment when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student exhibits a severe orthopedic impairment. The term includes congenital anomalies, impairments caused by disease, and impairments from other causes that are so severe as to require special education services.

c. The student has documentation of the condition by a physician or other qualified professional.

d. The student's condition adversely affects educational performance.

e. The student needs specially designed instruction.

12. Speech or Language Impairment: Language

Definition: A language impairment exists when there is a disorder or delay in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems. The impairment may involve any one or a combination of the following:

a. the form of language (morphological and syntactic systems);

b. the content of language (semantic systems); and/or

c. the function of language in communication (pragmatic systems).

A language disorder does not exist when language differences are due to non-standard English or regional dialect or when the evaluator cannot rule out environmental, cultural, or economic disadvantage as primary factors causing the impairment.

State Eligibility Criteria for Language Impairment: An evaluation team will determine that a student is eligible for special education and related services as a student who has a language impairment when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. At least two procedures, at least one of which yields a standard score, are used to assess receptive language and/or expressive language.

c. The student has attained scores on a standardized measure that are 1.5 standard deviations or more below the mean, or at or below the 7th percentile, in either receptive or expressive language.

d. The student's disability adversely affects educational performance.

e. The student needs specially designed instruction. (Speech/language therapy can be specially designed instruction or a related service.)

Caution is advised when evaluating a student whose native language is other than English. The acquisition of the English language is not to be mistaken as a language impairment.

13. Speech or Language Impairment: Speech

The term speech impairment includes articulation/phonology disorders, voice disorders, or fluency disorders that adversely impact a child's educational performance. The following eligibility criteria and minimum assessment procedures have been established for all three types of speech impairments.

a. Articulation/Phonology Disorder

Definition: Articulation is the ability to speak distinctly and connectedly. Articulation disorders are incorrect productions of speech sounds including omissions, distortions, substitutions, and/or additions that may interfere with intelligibility. Phonology is the process used in our language that has common elements (sound patterns) that affect different sounds. Phonology disorders are

errors involving phonemes, sound patterns, and the rules governing their combinations.

1) An articulation/phonology disorder exists when:

   i. the disorder is exhibited by omissions, distortions, substitutions, or additions;

   ii. the articulation interferes with communication and calls attention to itself; and

   iii. the disorder adversely affects educational or developmental performance.

2) An articulation/phonology disorder does not exist when:

   i. errors are temporary in nature or are due to temporary conditions such as dental changes;

   ii. differences are due to culture, bilingualism or dialect, or from being non-English speaking; or

   iii. there are delays in developing the ability to articulate only the most difficult blends of sound or consonants within the broad range for the student's age.

State Eligibility Criteria for Articulation/Phonology Disorder: An evaluation team will determine that a student is eligible for special education and related services as a student who has an articulation/phonology disorder (speech impairment) when all of the following criteria are met:

1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

2) At least two procedures are used to assess the student, one of which yields a standard score.

3) The student must have a score that is at least 1.5 standard deviations below the mean, or at or below the 7th percentile, on a standardized articulation/phonological assessment, or the speech impairment is judged as moderate on the standardized measure for students ages three (3) through twenty-one (21) years.

4) The student's disability adversely affects educational performance.

5) The student needs specially designed instruction. (Speech/language therapy can be specially designed instruction or a related service.)

b. Fluency Disorder

Definition: A fluency disorder consists of stoppages in the flow of speech that is abnormally frequent and/or abnormally long. The stoppages usually take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

1) A fluency disorder exists when an abnormal rate of speaking, speech, interruptions, repetitions, prolongations, blockages of airflow and/or voicing interferes with effective communication.

2) A fluency disorder does not exist when developmental dysfluencies are part of normal speech development and do not interfere with educational or developmental performance.

State Eligibility Criteria for Fluency Disorder: An evaluation team will determine that an individual is eligible for special education and related services as a student who has a fluency disorder (speech impairment) when all of the following criteria are met:

1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

2) The student has a fluency rating of moderate or severe on the Fluency Communication Rating Scale for student's age three (3) through twenty-one (21) years. See the documents section of this chapter for the Fluency Communication Rating Scale.

3) The student's disability adversely affects educational performance.

4) The student needs specially designed instruction. (Speech/language therapy can be a primary or a related service.)

c. Voice Disorder

Definition: Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

A student who has a suspected laryngeal-based voice disorder and has not been evaluated by an ear, nose, and throat (ENT) physician

(otorhinolaryngologist/otolaryngologist) may not receive voice therapy services from a speech-language pathologist.

1) A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:

    i. interfere with communication;

    ii. draw unfavorable attention to the speaker;

    iii. adversely affect the speaker or listener; or

    iv. are inappropriate to the age and gender of the speaker.

2) A voice disorder does not exist when the vocal characteristics of quality, pitch, intensity, or resonance:

    i. are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;

    ii. are the result of regional dialectic or cultural differences or economic disadvantage; or

    iii. do not interfere with educational or developmental performance.

State Eligibility Criteria for Voice Disorder: An evaluation team will determine that a student is eligible for special education and related services as a student who has a voice disorder (speech impairment) when all of the following criteria are met:

1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

2) The student has a voice production rating of moderate or severe on the Voice Rating Scale for students aged three (3) through twenty-one (21) years. See the documents section of this chapter for the Voice Rating Scale.

3) An ear, nose, and throat (ENT) physician's (otorhinolaryngologist) statement documents that voice therapy is not contraindicated.

4) The student's disability adversely affects educational performance.

5) The student needs specially designed instruction. (Speech/language therapy can be a primary or a related service.)

See the documents section of this chapter for information on documenting adverse effects on educational performance for students with speech/language disorders.

NOTE: A student may receive speech or language services if he or she under is eligible for special education and needs speech or language services as a related service in order to benefit from special education without meeting the eligibility criteria for speech and language impairment.

14. Traumatic Brain Injury (TBI)

Definition: Traumatic brain injury refers to an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

State Eligibility Criteria for Traumatic Brain Injury: An evaluation team will determine that a student is eligible for special education services as a student who has a traumatic brain injury when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student has an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both.

c. The student has documentation of a traumatic brain injury.

d. The student's condition adversely affects educational performance.

e. The student needs specially designed instruction.

15. Visual Impairment Including Blindness

Definition: Visual impairment refers to an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes

both partial sight and blindness. Partial sight refers to the ability to use vision as one channel of learning if educational materials are adapted. Blindness refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials.

State Eligibility Criteria for Visual Impairment: An evaluation team will determine that a student is eligible for special education services as a student with a visual impairment when all of the following criteria are met:

a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b. The student has documentation of a visual impairment, not primarily perceptual in nature, resulting in measured acuity of 20/70 or poorer in the better eye with correction, or a visual field restriction of 20 degrees as determined by an optometrist or ophthalmologist.

c. The student's physical eye condition, even with correction, adversely affects educational performance.

d. The student needs specially designed instruction.

Documents

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FLUENCY COMMUNICATION RATING SCALE

Student: School: Date:

	Nondisabling Condition	Mild	Moderate	Severe
Frequency	Frequency of dysfluent behavior is within normal limits for student's age, gender, and speaking situation and/or less than 1 stuttered word per minute.	Transitory dysfluencies are observed in specific speaking situation(s) and/or 1-2 stuttered words per minute.	Frequent dysfluent behaviors are observed in specific speaking situations(s) and/or 4-10 stuttered words per minute.	Habitual dysfluent behaviors are observed in a majority of speaking situations and/or more than 10 stuttered words per minute.
Descriptive Assessment	Speech flow and time patterning are within normal limits. Developmental dysfluencies may be present.	Rate of speech interferes with intelligibility. Sound, syllable, and/or word repetitions or prolongations are present with no other secondary symptoms. Fluent speech periods predominate.	Rate of speech interferes with intelligibility. Sound, syllable, and/or prolongations are present. Secondary symptoms including blocking, avoidance, and physical concomitants may be observed.	Rate of speech interferes with intelligibility, sound, syllable, and/or word repetitions and/or prolongations are present. Secondary symptoms predominate. Avoidance and frustration behaviors are observed.
Comments:				

VOICE RATING SCALE

Student: School: Date:

	Nondisabling Condition	Mild Descriptive	Moderate Descriptive	Severe Wilson Voice Profile Scale
Pitch	Pitch is within normal limits.	There is a noticeable difference in pitch that may be intermittent.	There is a persistent, noticeable inappropriate raising or lowering of pitch for age and gender, or evidence of dysphonia.	+3 Pitch -3 Pitch -2 Pitch +2 Pitch
Intensity	Intensity is within normal limits.	There is a noticeable difference in intensity that may be intermittent.	There is a persistent, noticeable inappropriate increase or decrease in the intensity of speech, or the presence of aphonia.	-3 Intensity +2 Intensity -2 Intensity
Quality	Quality is within normal limits.	There is a noticeable difference in quality that may be intermittent.	There is a persistent, noticeable breathiness, glottal fry, harshness, hoarseness, tenseness, strident, or other abnormal vocal quality.	-2 Laryngeal +3 Laryngeal +2 Laryngeal - 3 Laryngeal
Resonance	Nasality is within normal limits.	There is a noticeable difference in nasality that may be intermittent.	There is a persistent noticeable cul-de-sac, hyper- or hypo-nasality, or mixed nasality.	-2 Resonance +3 Resonance +4 Resonance
Description of Current Physical Condition	No consistent laryngeal pathology; physical factors influencing	Laryngeal pathology may be present. Physical factors indicated in moderate	Probable presence of laryngeal pathology. Physical factors may include nodules, polyps, ulcers, edema,	Physical factors may include: - unilateral or bilateral

	quality, resonance, or pitch, if present at all, are temporary and may include allergies, colds, or abnormal tonsils and adenoids.	and/or severe levels may be present.	partial paralysis of vocal folds, palatal insufficiency, enlarged/insufficient tonsils and/or adenoids, neuromotor involvement, or hearing impairment.	paralysis of vocal folds - larynx-gectomy - psycho-somatic disorders - neuromotor involvement of larynx muscles, i.e., cerebral palsy
Comments:				

DOCUMENTATION OF ADVERSE EFFECTS ON EDUCATIONAL PERFORMANCE FOR STUDENTS WITH SPEECH/LANGUAGE DISORDERS (SLD)

Documentation of adverse effects on educational performance can be gathered from a thorough assessment of communication skills. The assessment shall include student, parent, and teacher input.

Information shall be recorded by the speech-language pathologist (SLP) on the *Eligibility Report* form.

An assessment of a student's ability to communicate, rather than isolated skill assessment, will provide information on how the impairment affects the student overall. The following errors and problems should be considered when determining how the student's ability to communicate may adversely affect educational performance:

1. Sound errors, voice quality, or fluency disorders inhibit the student from reading orally in class, speaking in front of the class, or being understood by teachers, peers, or family members.

2. Sound errors, voice quality, or fluency disorders embarrass the student. Peer relationships suffer as a result, or peers may make fun of the student.

3. Sound errors cause the student to make phonetic errors in spelling or have difficulty in phonics.

4. Grammatical errors create problems with a student's orientation in time.

5. Morphological errors inhibit the student from using or making complete sentences.

6. Semantic problems slow the student's ability to follow directions, give directions, make wants and needs known, make oneself understood, relate information to others, or fully participate in daily living.

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INDIVIDUALIZED EDUCATION PROGRAMS

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Chapter 5
Individualized Education Programs

If a student is eligible for special education services, they have met the requirements of eligibility under the IDEA. Eligibility requires a student to meet the following three prongs: 1) the student has a disability that meets the criteria; 2) the disability adversely affects the student's educational performance; and 3) the student requires specially designed instruction.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability including instruction conducted in the classroom, the home, hospitals, institutions, and other settings. The definition of special education also includes the following: instruction in physical education, speech/language pathology, travel training, and vocational education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to (1) address the unique needs of the student that result from his or her disability and (2) to ensure access to the general curriculum so that the student can meet the Idaho Content Standards and Idaho Core Standards that apply to all students.

The Individualized Education Program (IEP) is a written document that is developed for each eligible student with a disability and documents the specially designed instruction and related services. The IEP is the product of team collaboration among a parent/adult student, district personnel, and other IEP team members who, through full and equal participation, identify the unique needs of a student with a disability and plan the special education services to meet those needs.

In developing each student's IEP, the IEP team shall consider: 1) the strengths of the student; 2) the concerns of the parents for enhancing the education of their child; 3) the results of the initial or most recent evaluation of the student; and 4) the academic achievement, developmental, and functional needs of the student.

Section 1. IEP Initiation

A. Purpose of Meeting

The primary purpose of an IEP team meeting is to design an IEP that shall meet the unique needs of a student with a disability. The IEP team determines the special education and related services reasonably calculated to enable the student to receive educational benefits in the least restrictive environment. The parent/adult student shall be invited to the meeting and participate meaningfully. (Note: transition age students shall be invited to the IEP meeting). The IEP team members should come prepared to discuss specific information about the student's individual needs and the type of services to be provided to address those needs.

The meeting format should invite open discussion that allows participants to identify and consider all the relevant needs of the student related to his or her disability and what is necessary to provide access to, participate in, and make progress in the general education curriculum. Placement decisions shall be considered *after* the special education services are determined and shall not be the determining factor in developing the IEP content.

Informal or unscheduled conversations involving district personnel on various issues (e.g., teaching methodology, lesson plans, or coordination of service provisions) are not considered a meeting as long as no decisions are made regarding issues addressed on the student's IEP. A meeting does not include preparatory activities in which district personnel engage to develop a proposal or a response to a parent/adult student proposal that will be discussed at a later meeting.

B. Team Decision Making

The IEP meeting serves as a communication vehicle between IEP team members enabling them, as equal participants, to make joint, informed decisions regarding the student's special education services. All members of the IEP team are expected to work toward consensus regarding IEP decisions to ensure that the student receives a free appropriate public education (FAPE). Consensus means consent of all IEP team members to support the decision of the team, which requires that all members of the team have had an opportunity for meaningful participation.

If there is a lack of consensus between the parent/adult student, district personnel, and other IEP team members regarding an IEP decision, then school personnel on the IEP team should seek consensus within the school team and make the decision providing written notice to the parent/adult student. If there is a lack of consensus among school personnel, then the district representative on the IEP team shall make the decision and provide written notice to the parent/adult student. The parent/adult student should be made aware of the procedures in Section 2J of this chapter, "Parent/Adult Student Objection to the IEP" and their procedural safeguards, including due process rights.

C. When IEP Meetings Are Held

An IEP meeting shall be held for one or more of the following reasons:

1. to develop an IEP within thirty (30) calendar days of determination that the student needs special education and related services;

2. to review the IEP periodically, but no longer than one year (365 days) from the date of development of the current IEP, with the IEP in effect at the beginning of each school year;

3. when another agency fails to deliver transition or other services outlined in the IEP;

4. to consider revisions to the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;

5. at a reasonable request (as determined by the district) of any member of the IEP team (Note: Written notice shall be provided the parent/adult student who requests an IEP meeting when a district refuses to hold one);

6. to review behavioral intervention strategies and/or develop a behavioral plan as part of the IEP;

7. to address the IDEA discipline requirements (see Chapter 12); or

8. to review the results of any reevaluation or independent educational evaluation (IEE).

NOTE: Under the IDEA, an IEP team meeting may not be required to amend the IEP (see IEP Amendments).

D. IEP Team Members and Roles

The IEP team is a group of individuals responsible for developing, reviewing, or revising an IEP for a student with a disability.

Role	Description
Parent of the student *or* Adult Student if rights have transferred	The term "parent" refers to a biological or adoptive parent, foster parent, a judicially decreed guardian (does not include State agency personnel if the student is a ward of the state), a person acting in place of a parent, or a surrogate parent who has been appointed by the district. The term "acting in place of a biological or adoptive parent" includes persons such as a grandparent, stepparent, or other relative with whom the student lives as well as persons who are legally responsible for a student's welfare. A foster parent may act as a parent if the natural parent's authority to make educational decisions on behalf of his or her child has been terminated by law. A foster parent shall be an individual who is willing to make educational decisions required of a parent, and has no interest that would conflict with the interests of the student. If more than the biological or adoptive parents meet the definition of parent, the biological or adoptive parents serve as the parents in the IEP process, unless a judicial decree or order identifies a specific person or persons to make educational decisions for the student. An "adult student" is a student with a disability who is eighteen (18) years of age or older to whom special education rights have transferred under the IDEA and Idaho Code. (See Chapter 11, Section 2C, for more information.) In this case, the parent may attend the IEP meeting as an individual who has knowledge or special expertise regarding the student at the invitation of the adult

Role	Description
	student or the district.
District Representative	The district representative or designee shall be qualified to provide or supervise the provision of special education to meet the unique needs of students with disabilities. The representative shall be knowledgeable about the general education curriculum and about the availability of resources in the district. They shall have the authority to allocate resources and to ensure that the IEP will be implemented. Examples of the district representative include the building principal, the special education director, the district superintendent and others who meet the criteria described above. The district representative may be another member of the IEP team if all the criteria above are met.
Special Education Teacher/Provider—not less than one	This individual generally will be the student's special education teacher or service provider who is responsible for implementing the student's IEP. For example, in the case of a student receiving services from a speech-language pathologist, but not a special education teacher, it is more appropriate for the speech-language pathologist to fill this role on the IEP team.
General Education Teacher—not less than one	A general education teacher of the student is required to participate in developing the IEP if a student is, or may be, participating in the general education environment. Regardless, a representative that is knowledgeable of the general education curriculum at the student's grade level shall be present. For preschool-age students, the general education teacher may be the kindergarten teacher or an appropriate designee. Designees at the preschool level may include a care provider, Head Start teacher, or community preschool teacher if that person meets State and/or national licensing standards.
Individual who can interpret evaluation results and implications	This person may be someone who participated in the evaluation of the student. He or she shall be able to explain the results, the instructional implications, and the recommendations of the evaluation.
Student	Whenever appropriate, the IEP team includes the student with a disability. A student shall be invited by the district to attend any IEP meeting at which post-secondary goals and transition services needed to assist the student in reaching those goals will be discussed. If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student's preferences and interests are considered.

Role	Description
Representative of a Private School (if applicable)	If a student is enrolled in or referred to a private school, the district shall ensure that a representative of the private school is invited to the IEP meeting. If a representative cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
Representative of Transition Agency(s) (Parent/Adult student consent shall be obtained prior to inviting the Transition Agency Representative to participate in the IEP team meeting).	If transition services are being discussed, a representative of any participating agency that is likely to be responsible for providing or paying for transition services shall be invited (with the prior consent of a parent/adult student). If a representative does not attend, steps should be taken to obtain participation from the agency in transition planning.
Part C Coordinator or Representative	A Part C coordinator or other representative may be invited by the district to the IEP meeting. Parents shall be informed of their right to request an invitation of an Infant Toddler Program representative(s) to the initial IEP meeting.
Other	At the discretion of the parent/adult student or the district, other individuals who have knowledge or special expertise regarding the student, including related service personnel, may be included as IEP team members. The determination of having knowledge and special expertise regarding the student shall be made by the parent/adult student or district person who invited the individual to be a member of the IEP team.

NOTE: The general education teacher, special education teacher, district representative, or individual who can interpret implications of evaluation results may be excused from an IEP meeting, in whole or in part, if the parent/adult student and district agree in writing. If the meeting deals with the excused member's areas of the curriculum and/or services, he or she shall provide written input to the IEP team prior to the meeting. Written input shall include substantive data (e.g., based on assessment, providing meaningful guidance to the team, regarding the purpose of the meeting, reflecting on general education curriculum). If a district representative is excused, a staff member in attendance shall have the authority to bind the district to the decisions of the team.

E. The General Educator's Role in IEP Development

If a student is or may be participating in the general education curriculum or environment, not less than one of the student's general education teachers shall participate to the extent appropriate in developing the IEP. The general education teacher's role in the development, review, and revision of the IEP includes:

1. discussion of the student's involvement and progress in the general education curriculum, if known;

2. determination of appropriate positive behavioral interventions and other strategies for the student; and

3. determination of supplementary aids and services, program accommodations/adaptations, and supports for school personnel.

F. Invitation to IEP Team Meetings

To the extent possible, the district should encourage the consolidation of all IEP team meetings, including meetings that may involve eligibility, reevaluation and IEP development.

The district shall meet the following requirements.

1. Schedule the meeting at a place and time mutually agreed on by the parent/adult student and the district.

2. Invite the parent/adult student, and if applicable the secondary transition age student, to the meeting early enough to ensure that he or she can attend. The district shall keep a record of this invitation. The invitation shall include the following:

    a. the purpose(s), time, and location of the meeting;

    b. who will attend the meeting by role;

    c. information regarding the parent's/adult student's right to bring other people to the meeting and invite a Part C representative if appropriate; and

    d. notification that post-secondary goals and transition services will be discussed, as applicable.

    The invitation should clarify the parent's/adult student's (or secondary transition age student's) role on the team and request that he or she come prepared to discuss the unique needs and characteristics of the student, the types of services needed, and the goals that would indicate the success of the services.

3. Invite the student, if appropriate or required, to attend and participate in his or her IEP team meeting. If the student is a minor, the parent shall make the decision regarding the student's attendance. If a purpose of the meeting is to consider transition, and the student does not attend, the district shall take other steps to ensure that the student's preferences and interests are considered.

4. The invitation may be either written or oral. In either case, the district shall document that all the required components noted in item 2 above were included in the

invitation. In addition, the parent/adult student shall be given a physical copy of the *Procedural Safeguards Notice* once annually, preferably at the annual review, unless the parent requests additional copies.

5. When one of the purposes of the IEP team meeting is to consider transition services, the invitation shall:

    a. indicate this purpose;

    b. invite the student; and

    c. identify any other agency that will be invited, with parent's/adult student's consent, to send a representative.

6. The district shall take appropriate action to ensure that a parent/adult student understands the proceedings at an IEP team meeting, including arranging for an interpreter for a parent/adult student who has hearing loss or whose native language is other than English.

7. The IEP team may meet without the parent/adult student if he or she cannot attend the meeting or cannot be convinced to attend the meeting. However, the district shall document its attempts to arrange a mutually agreed upon time and place for the meeting. Documentation could include records of telephone calls or conversations, copies of correspondence sent to the parent/adult student and any responses received, and detailed records of any visits made to the parent/adult student. If a meeting is held without the parent/adult student, the district shall offer and document alternative methods, such as conference calls, to gain his or her participation in the development of the IEP.

    Alternatives to physical meetings such as video and telephone conferencing may take the place of physical IEP meetings if the parent/adult student and district agree.

Section 2. IEP Development

Nothing requires additional information be included in a student's IEP beyond what is explicitly required by IDEA or requires the IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

NOTE: IEP team meeting minutes are not part of the official IEP document.

A. General Demographic Components for All IEPs

All IEPs shall include the date of the IEP meeting and the following general demographic components: the student's name as it appears in school records, native language, birth date, and

identification number (for State reporting or Medicaid purposes only), names of parents, address, phone number, school, and grade.

B. Documentation of Participants

The district shall ensure the attendance and participation of the IEP team members at the IEP meeting. Documentation of attendance can be accomplished by listing team member roles on the IEP and checking their attendance status. Prior to the beginning of the meeting, an excusal form, with the parent/adult student's signature of approval, shall be attached identifying any required district members not present at the IEP team meeting.

The attendance list is not a reflection of agreement or disagreement with the IEP; it is only an indication of attendance. As with any team member, the parent's/adult student's inclusion on the list does not indicate agreement or disagreement with the IEP contents. If the parent/adult student disagrees with all or part of the IEP, the district should remind the parent/adult student that he or she may file a written objection. Any participant at the IEP team meeting may file a minority report if he or she disagrees with a program decision. A minority report shall not prevent the implementation of an IEP team decision.

NOTE: See Section 2J of this chapter for additional information on parent/adult student objections.

C. Present Levels of Academic Achievement and Functional Performance, Goals, and Benchmarks/Objectives

The IEP identifies present levels of academic achievement and functional performance and measurable goals that enable the IEP team to track the effectiveness of services and to report progress toward goals.

1. Statements of present levels of academic achievement and functional performance in an area of need include:

    a. How a school-age student's disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).

    b. For preschool students, present levels of academic achievement and functional performance should describe how the disability affects the student's participation in appropriate activities.

2. Although the content of present levels of academic and functional performance statements are different for each student individual present level of academic and functional performance statements will meet the following requirements:

    a. the statement shall be written in objective, measurable terms and easy-to-understand non-technical language;

b. the other components of the IEP, including special education services, annual goals, and, if applicable, benchmarks/objectives for students who participate in Alternate Assessments based on Alternate Achievement Standards shall show a direct relationship with the content of present levels of academic and functional performance;

c. the statement shall provide baseline data for goal development;

d. the statement shall reference general education Idaho Content Standards or Idaho Core Standards or Idaho Employability Skills for Career Ready Practice or Idaho Early Learning Guidelines (eGuidelines), as applicable;

e. a statement of the student's strengths and needs; and

f. a statement how a student's disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).

3. Annual goals shall reflect the needs described in the present levels of academic and functional performance statements. Measurable academic achievement, developmental, and functional annual goals are designed to meet the student's needs that result from the student's disability, to enable the student to be involved in and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability.

   a. A goal is a written, measurable statement, developed from the baseline data, describing what a student is reasonably expected to accomplish within the time period covered by the IEP, generally one year.

   b. Goals are written to enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability.

   c. A goal shall include the behavior, the performance criteria, and the evaluation procedure.

4. For students taking Alternate Assessments based on Alternate Achievement Standards a description of benchmarks or short-term objectives. The district has the discretion which benchmarks/objectives as described in this paragraph for all students eligible for IEP services to use.

D. Progress Toward Goals

The IEP shall include a statement describing:

1. How the student's progress toward IEP goals will be measured and the progress monitoring schedule;

2. How and when the parent/adult student will be informed of the student's progress toward the annual goals, including the extent to which progress is sufficient to enable the student to achieve the goals by the end of the IEP time period.

Periodic written progress statements related to progress toward annual goals will be reported, at minimum, concurrent with the issuance of report cards.

E. Statements of Special Education and Related Services

Each student's IEP shall describe the specific special education and related services, based on peer-reviewed research to the extent practicable, which will be provided to or on behalf of the student. Special education includes specially designed instruction to meet the unique needs of the student.

The term "related services" refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education as described in the IEP. These services include, but are not limited to:

- audiology
- speech therapy
- language therapy
- psychological services
- physical therapy
- occupational therapy
- therapeutic recreation
- early identification and assessment of students' disabilities
- rehabilitation counseling services
- orientation and mobility services
- medical services for diagnostic or evaluative purposes
- school nurse services
- social work services in school
- supports for school staff
- parent counseling and training. Parent counseling and training includes helping a parent (a) understand child development and the special needs of his or her child and (b) acquire skills to support the implementation of his or her child's IEP.
- interpreter services

NOTE: The Idaho Educational Interpreter Act (Title 33, Chapter 13) was implemented on July 1, 2009, this statute establishes standards for all educational interpreters in Idaho. The complete statute can be found at: *http://www3.state.id.us/idstat/TOC/33013KTOC.html*

The above list of related services is not exhaustive and may include other developmental, corrective, or supportive services, transition services or assistive technology. Although services

may be of benefit to a student with a disability, all of the services listed above may not be required for each individual student. Related services are the responsibility of the district only if the IEP team determines they are required to assist the student to benefit from special education. Further, the student is not entitled to related services if (a) he or she is not eligible for special education or (b) the parent/adult student does not consent to initial provision of special education services.

EXCEPTION: "Related Services" does not include a medical device that is surgically implanted or the replacement of such device, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. The district is responsible to appropriately monitor and check devices to make sure the devices are functioning properly. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

THIRD PARTY PAYERS: Consent from the parents/adult student is required when the district bills Medicaid or the parent's insurance for services provided. See Chapter 11 for details.

F. Supplementary Aids, Services, and Other IEP Considerations

Supplementary aids and services may include general education curriculum accommodations and/or adaptations, support for school staff, positive behavioral intervention plans, extended school year services, transportation, transition services, assistive technology services, and travel training services deemed appropriate by the IEP team shall be provided whether or not the district currently has these services in place.

The description of services in the IEP shall:

1. Identify the program accommodations and supplementary aids to be provided to the student in the areas of need.

2. List the specific services that will meet the unique needs of the student, allowing him or her to advance appropriately toward attaining the annual goals, and:

    a. be involved in and make progress in the general education curriculum;

    b. participate in extracurricular and other nonacademic activities; and

    c. be educated and participate with other students with disabilities and with students without disabilities to the maximum extent appropriate.

    NOTE: The public agency shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

3. State the projected starting date and expected duration of the services, and accommodations/adaptations.

4. List the anticipated time per session and frequency of sessions per week or month. The amount of service may not be stated as a range**.**

5. State the location where services and accommodations/adaptations will be provided (such as a general education classroom, resource room, etc.) Note: Location does not mean specific site.

Based on the unique needs of each student, the IEP team should consider any of the following services that may be appropriate for the student and should document such services on the IEP accordingly:

1. Supplementary Aids and Services

   "Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with students without disabilities to the maximum extent appropriate in accordance with LRE requirements.

   The determination of which supplementary aids and services are appropriate for a particular student shall be made on an individual basis. Supplementary aids and services may include the following: assistance of an itinerant special education teacher, related service provider, or paraprofessional; support or training for the general educator; use of resource services; provision of note takers; supports for extracurricular or other nonacademic activities; and supports for participation in statewide or district wide achievement testing.

2. Accommodations and Adaptations

   NOTE: "Modifications" include accommodations and adaptations. Idaho uses the terms accommodations and adaptations to describe two separate instructional and assessment practices.

   Accommodations and adaptations include any changes that allow students with disabilities the same opportunity as students without disabilities to participate in and benefit from the educational program, activities, and services of the district.

   Accommodations are intended to make educational opportunities more accessible. This may involve the setting, communication modality, equipment, and/or supplemental aids and services. Examples include Braille editions, large print, pencil grips, tape recorders, note takers, and computers with spell check.

Accommodations are changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results and do not fundamentally alter the requirements or course expectations.

Adaptations are changes in educational expectations for the student with a disability compared to peers without disabilities. These adaptations include actual changes in the general education curriculum and instruction or the use of an alternative or supplemental curriculum. Adaptations include strategies such as reading aloud the reading portion of a test, using spell/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and invalidate assessment results and provide non-comparable results. Examples include fewer concepts to be mastered, different test questions, and material at a different reading level.

Whenever the IEP team determines that accommodations and/or adaptations are needed to ensure academic progress, these shall be indicated in the IEP. Any accommodations and/or adaptations required in physical education, vocational education, and statewide or district wide assessments shall be included in the IEP.

3. Assistive Technology Devices and/or Services

   The district shall ensure that assistive technology devices and/or services are made available to a student, if required, as special education, related services, or supplementary aids and services. The following points are definitions and clarifications of terms:

   a. “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a device that is surgically implanted or the replacement of such device.

      The district shall permit the student to use school-purchased assistive technology devices at home and in other settings if the IEP team determines that the student needs access to these devices in non-school settings to receive FAPE. An example of this would be to complete homework. The district may hold a parent/adult student liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the district if it is lost, stolen, or damaged because of negligence or misuse at home or in another setting outside of school time.

Assistive technology devices should be designed using "universal design" principles. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities. This includes products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

b. "Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

    1) an evaluation of the student's assistive technology needs, including a functional assessment in the student's customary environment;

    2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

    3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

    4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

    5) training or technical assistance for a student with a disability or, if appropriate, that student's family; and

    6) training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services or are otherwise substantially involved in the major life functions of a student with a disability.

c. The district shall ensure that the hearing aids worn by deaf or hard-of-hearing students in school are functioning properly.

d. The district is responsible to appropriately monitor and check surgically implanted devices to make sure the devices are functioning properly, if the team has determined that those services are necessary. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

4. Extended School Year Services

The district shall provide extended school year (ESY) services for students with disabilities who qualify for such services. The ESY programs for eligible students shall meet the requirements of FAPE. The student's educational program is based on individual needs and is not determined by what programs are readily available within the district. The student cannot be required to fail, or to go for an entire school year without ESY services, simply to prove a need. The IEP team shall consider the following in the development and provision of an ESY program:

a. The term "extended school year services" means special education and/or related services that are provided beyond the regular school year:

1) to a student with a disability;

2) in accordance with the student's IEP; and

3) at no cost to the parent/adult student.

The goal of ESY services is to assist students with disabilities with the emergence and maintenance of specific IEP goals addressed during the school year preceding the ESY. These may include goals related to independence, behavior, socialization, communication, and academics. The ESY services for special education students provide a different focus from general summer school programs.

b. The ESY services shall be considered in light of the totality of the circumstances, including the following:

1) Emerging skill: Few, if any, gains are made during the regular school year. A skill is in the process of emerging, and the IEP team believes that with ESY services the student would make reasonable gains; or

2) Regression-Recoupment: The student would regress to such an extent and the amount of time required to relearn a skill or behavior becomes so significant that the student would be unable to benefit from his or her special education; or

3) Self-Sufficiency: An interruption in services would threaten the acquisition of critical life skills that aid in the student's ability to function as independently as possible, thereby continuing the student's reliance on caretakers, including institutionalized care. Critical life skills relate to those skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance the student's integration with individuals without disabilities. Skills may include such things as toileting,

feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

c. Decisions concerning ESY services shall be based on collected data and written documentation. Types of data and information may include, but are not limited to, the following:

1) Criterion-referenced test data: Consider daily/weekly probes or pre-test/post-test data.

2) Norm-referenced test data: Consider pre-test/post-test data.

3) Anecdotal records: Consider information collected throughout the school year.

4) Physical, mental, or emotional health factors: Consider the educational, medical, and psychological records of the student as well as the prognosis or judgments of educators, medical personnel, parents, and others that work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.

5) History: Consider evidence of past regression or past ESY services. The IEP team should not automatically assume that a student who has received ESY services in the past will be eligible for ESY services in the future, but it is a factor to consider.

6) Data on observed performance: Consider data maintained on the student concerning performance observed in the classroom, during community-based activities, and as part of IEP progress monitoring.

7) Teacher interviews and recommendations: Consider progress reports by teachers, therapists, and others who have direct contact with the student before and after breaks in educational programming.

8) Parent/Adult student input: Consider parent observations of the student as well as parent/adult student requests for ESY services.

d. The ESY services shall be clearly delineated in an IEP. The district can meet this requirement by amending the current IEP using an amendment form or by developing a complete ESY IEP. See Section 1C of this chapter for more information.

e. The district may not limit ESY services to particular categories of disability or unilaterally limit the amount or duration of these services.

5. Transportation

Transportation is a related service if special arrangements resulting from the student's disability are required to assist a student with a disability to benefit from special education. The student's individual needs concerning his or her education are the main considerations in determining services—this includes transportation services.

The IEP team shall consider how the student's disability affects his or her need for transportation, including determining whether the student's disability prevents the student from using the same transportation provided to students without disabilities, or from getting to school in the same manner as students without disabilities. This includes transporting a preschool-age student to the site at which the district provides special education and related services to the student, if that site is different from the site at which the student receives other preschool or day-care services.

When the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA shall be afforded to the student in matters concerning transportation.

Transportation needs may include, but are not limited to, the following:

a. travel to and from school and between schools to access special education;

b. travel in and around school buildings;

c. specialized equipment including lifts and ramps, if required to provide special transportation; or

d. other services that support the student's use of transportation, such as:

1) special assistance (e.g., an aide on the bus and assistance getting on and off the bus);

2) safety restraints, wheelchair restraints, and child safety seats;

3) accommodations (e.g., preferential seating, a positive behavioral support plan for the student on the bus, and altering the bus route);

4) training for the bus driver regarding the student's disability or special health-related needs; or

5) attending non-academic and extracurricular activities if required by the IEP.

6. Special Considerations

   As appropriate, the IEP team shall also consider and include in the IEP the following:

   a. If the student's behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, supports and other strategies to address that behavior.

   b. If the student has limited English proficiency, the IEP team shall consider the language needs of the student. Cognitive academic language proficiency (CALP) shall be determined by administering appropriate language dominance tests.

   c. If the student is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines that Braille is not appropriate for the student. This determination can only be made after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille).

   d. The IEP team shall consider the communication needs of the student. In the case of the student who is deaf or hearing impaired, the IEP team shall consider the language needs of the student, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, the student's academic level, and his or her full range of needs including opportunities for direct instruction in the student's language and communication mode.

G. Statewide and Districtwide Achievement Testing

Students with disabilities are to be included in all statewide and district wide assessments. Participation rates and performance data, both aggregate and disaggregate, for students with disabilities are reported to the public annually.

The IEP team shall determine how the student will participate in statewide and district wide assessments—without accommodations, with accommodations, with adaptations, or by means of the alternate assessment. The IEP team determines what accommodations and/or adaptations to use based on those that are used regularly by the student during instruction or classroom testing and on what is listed in the accommodations section of the IEP.

The IEP team shall determine whether the student meets the state criteria for the alternate assessment. It should be noted that some students might participate in parts of the regular assessment and parts of the alternate assessment. For example, a student may participate with accommodations in the *regular* reading portion of the statewide assessment and may participate in the math portion of the statewide assessment using the *alternate* assessment.

The following guidelines shall be used to determine how the student will participate in statewide and district wide assessments:

1. Regular Assessment without Accommodations

   The IEP team determines and documents in the IEP that a student with a disability can adequately demonstrate his or her knowledge, abilities, or skills on statewide and district wide assessments without accommodations.

2. Regular Assessment with Accommodations

   Appropriate accommodations for students with disabilities shall be based on the individual needs of each student. Accommodation decisions are made by the IEP team and shall be recorded in the IEP. Accommodations should facilitate an accurate demonstration of academic achievement, developmental, and functional performance on State and district-wide assessments. They should not provide the student with an unfair advantage or change the underlying skills that are being measured by the test. Accommodations shall be the same or nearly the same as those used by the student in completing classroom assignments and assessment activities. The accommodations shall be necessary for enabling the student to demonstrate knowledge, ability, skill, or mastery. Accommodations *do not* invalidate test results.

3. Regular Assessments with Adaptations

   A student may be unable to demonstrate what he or she knows or is able to do without using an adaptation. However, an adaptation inherently circumvents the underlying skills that the test is measuring; therefore, an adaptation *always* invalidates the assessment result. If an adaptation is included in the IEP for statewide and/or district wide assessments, it shall be one that the student uses in completing classroom assignments and assessment activities on a regular basis. Further, the use of an adaptation in statewide and district wide assessments shall be clearly coded on the student's score sheet.

   The IEP team has the authority to make the decision that a student needs an adaptation in order to participate in statewide and district wide assessments, even though the adaptation *will* cause the student to score as "not proficient" and to be counted as NOT participating in the assessment under AYP determinations. All IEP team members, including the parent/adult student, shall understand (a) the possible consequences that could result from this decision and (b) its effect on diploma options and post school activities involving education, career opportunities, military service, and community participation.

4. Alternative Assessments based on Alternate Achievement Standards

   If the student cannot participate in some or all of the general assessments, the IEP shall contain a statement that includes the reason the student cannot participate in the

general assessment and the alternate assessments—language arts, reading, math or science—in which the student will participate.

a. Students Eligible to Take Alternative Assessments based on Alternate Achievement Standards

The IEP team shall find that the student meets all of the criteria listed below to determine that he or she is eligible to participate in the alternate assessment:

1) The student's demonstrated cognitive ability and adaptive behavior prevent completion of the general academic curriculum even with program accommodations and/or adaptations;

2) The student's course of study is primarily functional-skill and living-skill oriented (typically not measured by State or district assessments); and

3) The student is unable to acquire, maintain, or generalize skills in multiple settings and to demonstrate performance of these skills without intensive and frequent individualized instruction.

b. Students Not Eligible to Take Alternative Assessments based on Alternate Achievement Standards

Students are *not* to be included in Alternative Assessments based on Alternate Achievement Standards for any of the following reasons:

1) The only determining factor is that the student has an IEP;

2) The student is academically behind because of excessive absences or lack of instruction; or

3) The student is unable to complete the general academic curriculum because of socioeconomic or cultural differences.

H. LRE Explanation and Placement Decisions

The IEP shall explain the extent, if any, to which the student will *not* participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities.

In recommending the appropriate placement in the least restrictive environment (LRE) for the student with a disability, the IEP team shall consider the student's needs and the continuum of services to meet those needs. The parent/adult student shall be involved in the placement decision. Removal from the general education environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary

aids and services cannot be achieved satisfactorily. A student with a disability is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and adaptations in the general education curriculum. In addition, a student with a disability shall be educated with students without disabilities in the general education classroom to the maximum extent appropriate.

NOTE: The district's reassignment of students (with or without disabilities) to another classroom or building in the district is *not* a change of placement for a student with a disability as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; and going to a different school as a result of moving from one grade level to another grade level.

See Chapter 6 for more information on placement in the LRE

I. Consent for Initial Provision of Special Education and Related Services

The district shall make reasonable efforts to obtain informed consent from the parent/adult student before the initial provision of special education and related services to the student.

If the parent/adult student communicates in writing, he or she refuses special education and related services following the evaluation and determination of eligibility, the district shall not provide special education and related services to the student. If the parent/adult student fails to respond to a district's documented efforts to gain consent for initial provision of special education and related services, the district shall not provide special education and related services to the student. In both cases:

1. The district shall not be in violation of the requirement to provide FAPE to the student or the requirement to provide special education and related services;

2. The district shall not be required to convene an IEP meeting or develop an IEP for the student; and

3. The district shall not use mediation and/or due process in order to obtain consent or a ruling allowing initial placement.

If the parent/adult student wishes to move forward with the provision of services stated on the IEP and placement in special education, consent for initial placement in special education shall be obtained after the development of an IEP. Consent means that the parent/adult student understands and agrees in writing to the carrying out of the activity for which consent is sought.

J. Parent/Adult Student Objection to the IEP

If the parent/adult student disagrees with an IEP program or placement change proposed by the district, he or she may file a written objection to all or parts of the proposed change. If the parent/adult student files a written objection that is postmarked or hand delivered within ten (10)

days of the date he or she receives written notice from the district of the proposed change, the changes to which the parent/adult student objects cannot be implemented. If the changes have already been implemented, implementation of those changes shall cease. The district and parent/adult student may use methods such as additional IEP team meetings, IEP facilitation, or SDE mediation to resolve the disagreement. If these attempts to resolve the dispute fail, the district may request a due process hearing to obtain a hearing officer's decision regarding the proposed change, unless it is an initial IEP. However, the written objection cannot be used to prevent the district from placing a student in an interim alternative educational setting (IAES) in accordance with the IDEA procedures for discipline of a student.

If the parent/adult student files a written objection to an IEP change or placement change proposed by the district any time *after* ten (10) calendar days of receiving written notice, the student shall remain in the placement described in the disputed IEP, and that IEP is implemented as written until the disagreement is resolved unless the parent/adult student agree otherwise.

See Chapter 11 for information about the prior written notice requirements regarding the provision of FAPE and educational placement.

See Chapter 13 for more information about the various forms of dispute resolution.

K. Additional Transition Components for Secondary-Level IEPs

Secondary transition services are defined as a coordinated set of activities for a student with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post school activities including postsecondary education, vocational education, integrated employment (including supported employment), continuing in adult education, adult services, independent living, or community participation. The activities include instruction, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These activities are based on the individual student's needs, taking into account the student's strengths, preferences and interests. The following are required components for all secondary students receiving special education services.

1. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), the IEP shall include:

    a. present levels of academic and/or functional performance based on an age appropriate transition evaluation;

    b. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;

    c. transition services, including courses of study, that will reasonably enable the student in reaching postsecondary goals identified on the IEP;

d. evidence that the student was invited to the IEP team meeting where transition services are to be discussed; if the student does not attend the IEP meeting, the IEP team must take other steps to ensure the student's preferences and interests are considered;

e. if appropriate, evidence a representatives of any participating agency was invited to the IEP team meeting with a prior consent of the parent or student who has reached age of majority; and

f. the graduation requirements for the student receiving special education services. Refer to Chapter 7 for more detailed information on documentation of high school graduation in the IEP.

The postsecondary goals and transition services shall be updated on the IEP annually.

2. Not later than the student's seventeenth (17th) birthday, the IEP shall include a statement that the student and parent has been informed whether or not special education rights will transfer to the student on his or her eighteenth (18th) birthday. Special education rights will transfer from the parent to the student when the student turns eighteen (18) years old unless the IEP team determines that:

a. the student is unable to provide informed consent with respect to his or her special education program; or

b. the parent has obtained legal guardianship.

(For more information on the transfer of rights see Chapter 11)

3. When a student exits from special education as a result of earning a regular diploma or aging out, the district shall provide the student with a summary of his or her academic achievement and performance along with recommendations concerning how to assist the student in meeting postsecondary goals.

L. Following the Meeting

Following the IEP team meeting, a copy of the IEP and written notice of proposed or refused actions shall be given to the parent/adult student. IEPs and written notice should also be given to the parent/adult student whenever a change is made to the IEP or upon request.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the IEP shall have access to the IEP and be informed of his or her specific responsibilities. This includes being informed of any specific accommodations, adaptations, or supports that shall be provided to the student to ensure that the IEP is implemented appropriately.

Section 3. IEP Reviews

A. Annual Reviews

Each student's IEP shall be reviewed at least annually by the IEP team, once every year (365 days). Meetings may be held any time throughout the school year, as long as the IEP is reviewed annually and is in effect at the beginning of each school year. Either at or after the annual review, written notice that the new IEP changes will be implemented shall be provided to the parent/adult student.

The IEP review includes the following purposes:

1. to determine whether the student's annual goals have been achieved;
2. to revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. to determine whether any additional assessments are necessary and to address the results of those conducted;
4. to address information about the student provided to, or by, the parent/adult student;
5. to address the student's anticipated needs;
6. to monitor the continuing eligibility of the student based on an evaluation or review of a variety of data, which may include formal or informal assessment, progress toward IEP goals and when applicable benchmarks/objectives;
7. to write a new IEP; and
8. to consider a reevaluation to determine if a student is no longer eligible and special education services should be discontinued.

B. IEP Amendments

In making changes to a student's IEP after the annual IEP meeting for a school year, the parent/adult student and the district may agree in writing not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend the student's current IEP. The parent/adult student will be provided with a revised copy of the IEP with the amendments incorporated. The annual review date remains the date of the original IEP.

If the parent/adult student believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP team meeting. The district shall grant any reasonable request for such a meeting. If the district refuses to convene an IEP meeting requested by the parent/adult student, the district shall provide written notice to the parent/adult student, including an explanation of why the district has determined the meeting is unnecessary.

If any other member of the IEP team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP team meeting.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the amended IEP shall have access to the amendment and be informed of his or her specific responsibilities.

Section 4. IEPs for Transfer Students

Idaho Administrative Procedures Act [IDAPA 08.02.03.109.04(f)] requires the new (receiving) district to request a copy of the eligibility documentation and most current IEP within two (2) school days. Within five (5) school days of receiving this information, the new district determines if a new assessment is required. In the meantime, if the parent agrees, an interim IEP may be developed and implemented, or the existing IEP implemented. If there is no agreement, the student is placed in general education. Within fourteen (14) calendar days the receiving district will request the full educational record of the transferring student from the former school.

A. Transfer from an Idaho School District

When a student with a disability transfers school districts with a current IEP in Idaho, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent/adult student, until such time as the district adopts the previously held IEP or develops, adopts, and implements a new IEP. The receiving district shall request, as soon as possible, but no more than two (2) school days, the eligibility documents and the most current IEP from the sending district. Once the district has formally received a request for a student's record from another Idaho district, the district shall forward copies or the original documents as soon as possible, but no more than five (5) school days, of the request. Within fourteen (14) calendar days the receiving district will request the full educational record of the transferring student from the former school. If originals are sent, the sending district shall maintain a copy for audit purposes.

Note: The current IEP shall be implemented if a new IEP cannot be developed within five (5) school days of the student's enrollment or if a reevaluation will be taking place.

B. Transfer from an Out-of-State District

When a student with a disability transfers from out of state to an Idaho school district with a current IEP in that other state, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent/adult student, until such time as the district conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP.

C. Transfer to an Out-of-State District

Within ten (10) school days of receiving a request from an out of state school district for copies of eligibility documentation and a transferring student's IEP, a district shall send the requested information to the receiving district.

Section 5. IEPs for Children from the Infant/Toddler Program

A. Interagency Agreement and Protocols

The school district, as the local lead agency for Part B, shall initiate the development of a signed interagency protocol with the regional Infant/Toddler Program (ITP) of the Department of Health and Welfare (DHW), the lead agency under Part C of the IDEA. The protocol shall be in accordance with the current state Interagency Agreement for Early Childhood Special Education Services and Early Intervention for Children Ages Two through Five. See Appendix 5B.

The protocol will outline the obligations of each agency to ensure:

1. a smooth and effective transition of children served under Part C to early childhood special education services (ECSE) under Part B;

2. by the child's third birthday, eligibility for Part B services has been determined and an IEP or Individual Family Service Plan (IFSP) has been developed and implemented; and

3. each district and agency shall participate in transition planning conferences.

   NOTE: A child, who turns three (3) after May 1, has been determined eligible for Part B services, and parental consent has been obtained for initial placement for Part B services, can be served as outlined in the IFSP by the ITP until school starts in the fall. This is the case unless specified differently in the local interagency protocol.

B. Part C to Part B Transition Planning

In the case of a child who may be eligible for ECSE services, the district shall participate in a transition planning conference with the family arranged by the ITP. The conference will be conducted at least ninety (90) calendar days (and up to nine (9) months at the discretion of all parties) before the child's third (3rd) birthday to discuss eligibility requirements under Part B of the IDEA, needs and concerns of the child and family, and any services the child may receive.

For a complete and detailed description of all required transition activities, documentation and timelines, refer to Appendix 5B.

The ITP has the responsibility to:

1. notify the school district and SDE of potentially eligible children;

2. invite and coordinate a transition planning meeting to review the process to determine eligibility and assess service options available;

3. establish a plan for facilitating the transition of the toddler with a disability to early childhood special education services;

4. provide the district with a copy of the Child Outcome Summary Form (COSF) completed at exit; and

5. upon invitation, attend the initial IEP meeting.

The school district has the responsibility to:

1. make contact with the family and provide notice of procedural safeguards and written information about the Part B and early childhood special education services (this information may be provide in person, at a transition conference, or by mail);

2. attend and participate in the transition planning meeting;

3. determine eligibility and develop an IEP or IFSP prior to child's third birthday;

4. consider the Part C COSF exit outcome data to help determine Part B early childhood entry outcome data;

5. invite ITP representatives, at the request of the parent, to the initial IEP meeting; and

6. obtain consent for initial provision of special education and related services under Part B.

C. IEP or IFSP Required

1. By the child's third (3rd) birthday, the district shall have an IEP or IFSP in place for each student three (3) through five (5) years old who is eligible for ECSE services.

2. In developing the IEP, the IEP team shall consider the content of the IFSP including:

    a. the least restrictive environment statement; and
    b. the educational component that promotes school readiness, pre-literacy, language and numeracy skills.

3. The IFSP may serve as the IEP of the child, if:

a. agreed by the district and the child's parents;

b. a detailed explanation of the differences between the IFSP and the IEP is provided to the parents (See Appendix 5B);

c. parental written informed consent is obtained; and

d. developed according to the IEP procedures outlined in Section 2 of this chapter. If the district elects to use an IFSP, the district is required to implement only the educational components of the IFSP.

D. Consent and Notice Requirements

1. Notice Announcing Initial IEP Team Meeting: The district shall inform the parents of their rights to request the participation of ITP representatives at the initial IEP team meeting for children previously served by Part C.

2. Release of Information: The district shall obtain written parental consent for the release of information to obtain pertinent student records from non-educational agencies such as ITP, developmental disabilities agencies, medical providers, day-care centers, and Head Start.

3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility, the student's present levels of academic and functional performance, and goals or services on the IEP, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier under Part C). Otherwise, only written notice to inform the parent of the district's decision to use the current evaluation data, and not to conduct any further assessments, shall be provided to the parent. The parent shall also be informed of his or her right to request additional assessments.

4. Consent for Initial Provision of Special Education and Related Services: Parental consent for the initial provision of special education and related services and written notice for the implementation of the IEP or IFSP under Part B is required. Eligibility, initial provision of services, and LRE placement shall be documented for Part B services.

Section 6. Students with Disabilities in Adult Prisons

The following requirements apply for students with disabilities ages eighteen (18) to the semester when they turn twenty-one (21) who are convicted as adults under Idaho law and incarcerated in adult prisons:

1. A student identified as a student with a disability, who is eligible for special education, and who is convicted as an adult and incarcerated in an adult prison, is not subject to child find, but if already identified is entitled to FAPE until age twenty-one (21).

2. The student will not participate in statewide assessments.

3. Transition planning and services do not apply if the student will remain in prison beyond the semester of his or her twenty-first (21st) birthday.

The IEP team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

Chapter 6
LEAST RESTRICTIVE ENVIRONMENT

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Chapter 6
Least Restrictive Environment

The IDEA states that, to the maximum extent appropriate, all students with disabilities, three (3) to twenty-one (21) years of age, are to be educated with age appropriate peers who are nondisabled. This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The district shall have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student.

An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an individualized education program (IEP) while being educated with peers who are nondisabled to the maximum extent appropriate as determined by the IEP team on a case by case basis. The student's IEP shall indicate the LRE for the student and explain to what extent, if any, the student will or will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. This provision includes students with disabilities placed in public or private institutions or other care facilities.

Special classes, separate schooling, and other removals of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education class, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

Section 1. Least Restrictive Environment Considerations

A. When to Make and Review Placement Decisions

1. Placement decisions for a student with a disability are made following the determination of the individual needs, goals, and required services.

2. Placement decisions are revisited at least annually by the IEP team, which includes the parent/adult student and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options available.

3. Placement decisions are reconsidered, as appropriate, when an IEP team is convened to review a student's academic, functional, or developmental progress.

B. Considerations in Placement Decisions

LRE decisions are made individually for each student. The IEP team shall consider the following when determining the LRE in which the IEP can be implemented:

1. IEP Goals and Services: The student's goals and services are developed prior to the determination of the services and settings. The services and settings needed by each

student with a disability must be based on the student's unique needs that result from his or her disability, not on the student's category of disability.

2. Age Appropriate Peers: Students with disabilities shall be educated with age-appropriate peers to the maximum extent appropriate. A student with a disability is not removed from age-appropriate general education environments solely because of needed accommodations and/or adaptations in the general education curriculum.

3. School of Attendance: A student with a disability shall be educated in the school as close as possible to the student's home and unless the IEP requires some other arrangement, the student is educated in the school he or she would attend if not disabled.

4. Harmful Effects: Consideration shall be given to any potential harmful effect on the student or on the quality of services the student needs.

5. Accommodations and/or Adaptations: A student with a disability is not removed from general education settings solely because of needed accommodations and/or adaptations in the general education curriculum.

6. Participation in Nonacademic and Extracurricular Services and Activities:

    a. A student with a disability shall be allowed to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development, and assistance in making outside employment available.

    b. The IEP team determines the supplementary aids and services that are appropriate and necessary for the student to participate in nonacademic settings and extracurricular services and activities.

C. Documentation of Placement Decisions

If the student will not participate *entirely* in the general education classroom, curriculum, and/or nonacademic and extracurricular activities, the IEP shall include a written explanation justifying the IEP team's decisions including the consideration of supplementary aids and services. The district shall provide the parent/adult student with prior written notice whenever the IEP team proposes to change or refuses to change the educational placement of the student.

Section 2. District Responsibility for Continuum of Settings and Services

The continuum of settings includes instruction in general classes, special classes, special schools, home instruction and instruction in hospitals and institutions. In addition, the continuum makes provision for supplemental services, such as resource services or itinerant instruction, to be provided in conjunction with the general classroom. In determining appropriate settings and services for a student with a disability, the IEP team shall consider the student's needs and the continuum of alternate placements and related services available to meet those needs. Regardless of placement, the student shall be given appropriate access to the general education curriculum, as determined by the IEP team. The district shall be able to justify the available continuum of services and placement decisions for individual students.

All LRE considerations also apply to preschool students ages three (3) to five (5) years with disabilities who are entitled to receive a free appropriate public education (FAPE). Settings for implementing IEPs for students of legal kindergarten-age are the same as for all other school-age students. Settings for implementing IEPs for preschool-age students may include public or private early childhood programs. Public schools that do not operate early childhood programs for preschool students without disabilities are not required to initiate such programs solely to satisfy LRE requirements. IEP teams in public schools that do not have an inclusive public preschool that can provide all the appropriate services and supports to meet the individual needs of preschool students with disabilities, shall explore alternative methods to ensure LRE requirements are met for preschool students ages three (3) to five (5) years, which may include:

1. providing opportunities for participation (even part-time) of preschool students with disabilities in public or private regular early childhood programs operated for preschool students without disabilities by other agencies, such as Head Start;

2. placing preschool students with disabilities in the following:

    a. private early childhood programs for preschool students *without* disabilities; or,

    b. private early childhood programs or other community-based early childhood settings that integrate students *with and without* disabilities; and,

3. locating classes for preschool students with disabilities in elementary schools.

See Chapter 11 for information regarding prior written notice requirements that apply to proposed or refused changes in educational placement.

Section 3. Federal Reporting of LRE

The IEP includes a section for reporting the educational environments required for the Federal Child Count (annual report of children served collected on any date between October 1 and December 1 of each year). This section is for reporting the amount of time the student spends in

the general education environment, with or without special education and related services. After determining the LRE and the educational environments in which the student will receive their general education instruction and special education services, the IEP team will document the educational environment for federal reporting.

Chapter 7
DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

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Chapter 7
Discontinuation of Services, Graduation, and Grading

Section 1. Discontinuation of Services

A. Students Who Are No Longer Entitled to Services

The district will follow appropriate procedures to discontinue special education services to students who are no longer entitled to those services.

1. Student No Longer Meets Eligibility Criteria

   If it is suspected that a student no longer meets the eligibility criteria for the IDEA, the evaluation team will conduct a reevaluation and arrange to have additional assessments conducted if necessary. If the student is no longer eligible under the Idaho eligibility standards, the district will provide the parent/adult student with written notice of this decision prior to discontinuing special education services.

2. Student Completes Requirements for a High School Diploma

   The district's obligation to provide special education services ends when the student meets the district and State requirements that apply to all students for receipt of a regular high school diploma without adaptations. Although this is considered a change of placement, a reevaluation is not required. Prior to graduation and the discontinuation of special education services the district shall:

   a. provide the parent/adult student with written notice of the district's obligation to provide special education services ends when the student obtains a regular high school diploma; and

   b. provide the parent/adult student with a written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

3. Student Reaches Maximum Age

   For students who have not yet met their district's high school graduation requirements, the district's obligation to provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age. This is considered a change of placement that does not require a reevaluation. If a student is turning twenty-one (21), the district shall:

a. provide the parent/adult student with written notice the district's obligation to provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age; and,

b. provide the parent/adult student written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

B. Change in District Obligation to Provide Services

Under certain circumstances, a student may continue to be eligible for special education services, but the district's obligation to provide services changes.

1. Transfer to Another District

   When a student is no longer a legal resident of the district, the district will forward the student's special education records electronically or by mail within five (5) calendar days of the request from the new district. The records shall include, at least, the student's most recent individualized education program (IEP) and eligibility documentation. The sending district will retain copies or originals of the most recent five (5) years of programmatic and fiscal records, including IEPs and eligibility documentation. During an audit, Child Count verification, or monitoring, this documentation may be needed to demonstrate that the student was eligible for special education and received special education services from the district. Note: Districts are required to maintain Medicaid-related records for six (6) years. See Chapter 11 for more information.

2. Enrollment in Private School or Receives Homeschooling

   When a parent/adult student withdraws a student from public school and enrolls him or her in a private school or provides homeschooling, the district's responsibilities vary depending on the circumstances. See Chapters 2 and 9 for more information.

3. Dropouts

   When a student drops out of school, written notice will be sent to the parent/adult student and a copy of the notice will be placed in the student's special education confidential file. If the student reenrolls and is still eligible for special education, the previous IEP can be implemented if it is current and appropriate. A new IEP shall be developed if needed.

C. Parent/Adult Student Revokes Consent for Special Education Services

When a parent/adult student revokes consent for special education services in writing, prior written notice shall be provided specifying when the special education and related services will cease. Note: A parent/adult student has the right to revoke consent for IEP services in their entirety, not service by service. The written notice shall include a statement indicating the district stands ready, willing, and able to provide FAPE should the student remain eligible for special education services.

Section 2. Graduation

Graduation means meeting district and State requirements for receipt of a high school diploma. If a student is not granted a regular high school diploma or if the high school diploma is granted based on completion of adapted graduation requirements, the student is entitled to receive a free appropriate public education (FAPE) through the semester in which he or she turns twenty-one (21) years of age or determined no longer eligible as a result of a reevaluation. A General Education Development (GED) certificate does not meet district requirements that are comparable to a regular high school diploma. The IEP team making these decisions shall include a district representative knowledgeable about State and local graduation requirements.

A. Individualized Education Program (IEP) Team Requirements Regarding Graduation

1. Determine whether the student will meet all state and local requirements to be eligible to graduate from high school and anticipated graduation date.

2. Develop the course of study in collaboration with the Parent Approved Student Learning Plan required for every student prior to the end of eighth (8th) grade. The Student Learning Plan will be reviewed annually and may be revised at any time.

3. Beginning no later than the end of the student's ninth (9th) grade, review annually the student's course of study, identify and make changes to the course of study needed for the student to meet graduation requirements and become a contributing member of society.

4. Document any accommodations and adaptations made to the district's and State's regular graduation requirements on the student's behalf.

    a. Graduation Requirements with Accommodations

    Accommodations to graduation requirements are determined by the IEP team and are deemed necessary for the student to complete graduation requirements. Further:

        1) Accommodations to graduation requirements must specifically address completion of the student's secondary program.

2) Accommodations will maintain the same level of rigor to the district and State graduation requirements. For example, a teacher may use different instructional strategies or alternate methods for assessing the student's acquisition of skills that are equally rigorous.

3) Accommodations made to any district or State graduation requirement shall be stated in the student's IEP.

b. Graduation Requirements with Adaptations

Long-term consequences for the student shall be considered when adaptations are made to graduation requirements. Further:

1) Adaptations to graduation requirements shall specifically address completion of the student's secondary program.

2) Adaptations may alter the level of rigor required in the district or State graduation requirements. Examples of adaptations include changes made to course content, objectives, or grading standard that alter the level of rigor.

3) Adaptations of any district or State graduation requirement shall be stated on the student's IEP. The team shall discuss with the parents the effect of adaptations on regular education diploma and FAPE.

5. Demonstration of Proficiency of State Content Standards State Board of Education rule (IDAPA 08.02.03.105.06) requires that each student achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) in math reading and language usage in order to graduate. Each student's IEP will include a statement of how the student will demonstrate proficiency on the Grade 10 Idaho Standards Achievement Test as a condition of graduation. If the method to demonstrate proficiency is different than meeting proficient or advanced scores on the high school ISAT or the ISAT-Alt, a student with an IEP may meet this requirement by:

a. achieving the proficient or advanced score on the Idaho Standard Achievement Test (ISAT) or, for eligible students, on the Idaho Standard Achievement Test – Alternate (ISAT-Alt); or

b. demonstrating proficiency on the content standards through some other locally established plan; or

c. having an IEP that outlines alternate requirements for graduation or documents assessment adaptations (adaptations that will invalidate the assessment score).

B. Graduation Ceremonies

A special education student who completes his or her secondary program through meeting graduation requirements or criteria established on his or her IEP will be afforded the same opportunity to participate in graduation ceremonies, senior class trips, etc., as students without disabilities. It should be noted the participation in his or her graduation ceremony does not, in and of itself, equate to the receipt of a regular high school diploma or completion of their secondary program.

Section 3. Transcripts and Diplomas

A. Transcript

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts shall adhere to the following conditions:

1. Accommodations that allow the student to complete and demonstrate that he or she has met graduation requirements will not be noted on the transcript.

2. Adapted course work may be noted on the transcript if the parent/adult student is informed in advance and the designation is not discriminatory or identify the student as having a disability or receiving special education.

3. Course designations, titles, or symbols that are used solely to identify adapted course work that is taken by students with disabilities will not be used.

B. Diploma

1. For students who are eligible for special education services, the district will use a regular diploma at the completion of their secondary program through meeting graduation requirements or criteria established on his or her IEP; this includes students who meet the graduation requirements with accommodations and/or adaptations.

2. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities in the same graduating class.

Section 4. Grades, Class Ranking, and Honor Roll

Grades earned by students with disabilities will not be categorically disregarded or excluded from district wide grade point average (GPA) standing. The district may establish objective criteria for class rankings, honors, etc., that weight courses according to degree of difficulty or exclude non-core courses so long as such practices are nondiscriminatory.

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CHARTER SCHOOLS

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Chapter 8
Charter Schools

Federal law requires that students with disabilities be offered educational choices comparable to those offered to students without disabilities. One of these choices is the opportunity to attend a public charter school. Each public charter school, whether a charter school within a district or a charter school LEA (Local Education Agency), shares in the obligation to accept and appropriately serve students with disabilities under the IDEA in the same manner as any other public school.

The LEA charter school board of directors/trustees is required to adopt and ensure that the LEA implements this Manual.

Section 1. Definition and Parent/Student Rights

A. Definition of Charter Schools

In Idaho, a charter school is a public school authorized by Chapter 52, Title 33-5205, Idaho Code. A charter school operates as a nonprofit, publicly funded, nonsectarian school in one of three ways:

1. as a school within a district, if authorized by the local board of trustees of a school district (LEA);

2. as a school authorized by the district, but operating as a separate LEA; or

3. as its own LEA, if authorized by the Idaho Public Charter School Commission or a college or university.

A charter school is bound by the conditions of its charter, all applicable state and federal law.

B. The Rights of Charter School Students and Their Parents

A charter school student is a public school student. Students with disabilities who attend charter schools and their parents have all of the same rights granted to students who attend other public schools. These rights are provided under the IDEA: the Elementary and Secondary Education Act (ESEA), reauthorized as the No Child Left Behind Act (NCLB); Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA); and the Family Education Rights and Privacy Act (FERPA). Idaho law specifically states that charter schools cannot discriminate against any student on any basis prohibited by federal or state constitutions or any federal, state or local law.

1. Charter schools must have open enrollment that includes:

    a. giving all students an equal opportunity to attend

b. being open and accessible to all students, including students with disabilities; and

c. admitting students on the basis of a lottery if more students apply for admission than can be accommodated

2. A charter school shall not adopt an admission standard, policy or procedure that would have the effect of prohibiting or discouraging a student with a disability from enrolling or attending, or have the effect of prohibiting or discouraging a parent of a student with a disability from enrolling his or her child in the charter school by:

   a. establishing an examination or other academic criteria for admission;

   b. requiring any activity in which the school is unwilling to accommodate or adapt their curriculum or academic standards to meet the needs of the student with a disability; and

   c. requiring any activity in which the school suggests implicitly or explicitly that another school district would be a better placement or more capable of providing special education services or delivering education instruction (commonly referred to as "counseling out").

3. A charter school must provide every student with a disability a Free and Appropriate Public Education (FAPE), which shall include appropriate special education services starting the first day of school or upon the first day the student enrolls and begins attending school.

Under Idaho state law, the charter of an authorized charter school outlines specific mission statements, policies and procedures, and the manner by which special education services will be provided.

Section 2. Responsibility for Services

A. Charter School Authorized by the District and Not an LEA (See definition in Section 1.A.1)

The district is ultimately responsible to ensure that the requirements of the IDEA are met with respect to students attending charter schools authorized by the district. A charter school's compliance with the IDEA, Part B, is required regardless of whether the charter school receives any Part B funds.

1. To ensure that a charter school authorized by the district meets the IDEA requirements, the district shall ensure services to students with disabilities attending the charter schools are provided in the same manner as the district serves students with disabilities in its' other schools, including providing supplementary and related

services onsite at the charter school to the same extent to which the district has a policy or practice of providing such services on the site to its' other public schools.

2. The district shall have information on file with the State Department of Education (SDE) that demonstrates students with disabilities who attend charter schools authorized by the district will receive special education and related services from either the district or the charter school (or a combination of both).

3. The district will ensure that its charter schools participate in all monitoring activities conducted by the SDE.

4. The district shall provide Part B funds and comparable services to the charter school within the district on the same basis as it provides such funds to other public schools within the district.

B. Charter School Operating as an LEA (See definition in Section 1.A.2)

Charter schools authorized by the Idaho Public Charter School Commission or a college or university are automatically LEAs. A district authorized school may with the approval of the district become an LEA. A charter school LEA, whether virtual or brick-and-mortar or combination thereof, has an obligation to accept and appropriately serve students with disabilities and is solely responsible to ensure that the requirements of the IDEA are met with respect to students enrolled. Compliance with the IDEA, Part B, is required regardless of whether the public charter school receives any Part B funds. A charter school LEA shall:

1. participate in all monitoring activities conducted by the SDE; and,

2. in its first year of operation, participate in an onsite technical assistance visit by an SDE special education team to ensure that the essential components of a special education program are in place.

Section 3. Essential Components of a Special Education Program

The Idaho charter school law requires each petition for a charter to describe the manner by which special education and related services will be provided to eligible students with disabilities.

Prior to approving a petition for a charter school, the authorizing entity shall ensure the petition includes:

1. provisions for nondiscriminatory enrollment procedures to be publically displayed on the charter school's website and in the charter school's enrollment application form;

2. adequate plans, policies, procedures, contractual or other arrangements, and budget to ensure that students with disabilities attending the charter school will receive special

education and related services that meet all the requirements of the IDEA. The petition should describe how the charter school will:

a. have special education and related services as identified in student IEPs, in place by the first day of the school year;

b. conduct Child Find activities and evaluations;

c. develop, review, and revise IEPs in accordance with state and federal law;

d. employ and use highly qualified special education personnel;

e. meet LRE requirements;

f. implement the IDEA discipline procedures; and

g. protect student and parent rights.

3. provisions to employ special education and related services professionals who are appropriately licensed and/or certificated for the duties they are assigned;

4. a provision for professional development plan for the training needs of special education personnel as well as general education teachers in order to meet the needs of students with disabilities who are enrolled in the charter school;

5. a plan that ensures access to charter school programs, as required by the ADA. This plan may include the actual location of the school, classrooms, and settings within the classrooms to permit access by students with disabilities;

6. a transportation plan for special education students who may, because of the nature of their disabilities, be entitled to specialized transportation as a related service, even if the charter school does not provide transportation to other students; and

7. provisions for notifying the authorizing entity in the event that a formal complaint or due process hearing request is filed by or on behalf of a charter school student.

Section 4. Charter Schools and Dual Enrollment

Under Idaho Code, section 33-204, parents of public charter school students "shall be allowed to enroll the student in a public school for dual enrollment purposes." Special education services (specifically designed instruction and services calculated to meet the unique needs of a student with a disability) shall be the obligation of the public charter school. The district shall allow public charter school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a 504 plan, if needed.

Public charter school students may not dually enroll solely for special education. The Board of Directors/Trustees of the public charter school and the traditional school district shall adopt procedures governing dual enrollment.

For detailed requirements and responsibilities governing dual enrollment of charter school students, see Idaho Code, section 33-203.

Section 5. Funding

A. State Funds

The SDE will make apportionment payments (from state general funds) to each charter school based on attendance figures. The SDE will pay state funds directly to charter schools using the funding formula described in state law. A charter school may also be eligible for the following funds:

1. state funds for special education students who live in licensed group, foster, or personal care services homes under the provision of Idaho Code 33-1002B;

2. district-to-agency contract funds under a provision of Idaho Code 33-2004;

3. funds to serve high numbers of students with emotional disturbance under Idaho Code 33-2005; and

4. state enhancement funding sources.

B. Federal Funds

The SDE disburses federal flow-through funds to all authorized local education agencies (LEAs).

1. Charter School as Part of a District (not an independent LEA)

   The district provides funds under Part B to those charter schools that are part of the district on the same basis as the district provides funds and comparable services to the other public schools. This includes proportional distribution based on relative enrollment of students with disabilities. This distribution is made at the same time as the district distributes funds to their other public schools and must be consistent with Idaho's charter school law. The individual school's approved charter will identify whether the district will provide funding or services of comparable value.

a. The amount of funds or comparable services will generally be equal to the per student amount the district is allocated from the SDE in the current year multiplied by the charter school's Child Count from the **previous** school year.

b. Under certain circumstances the district shall allocate Part B funds to an eligible charter school based on the number of special students enrolled and served in the **current** school year.

1) The district will allocate funds to a charter school within five (5) months of opening or significantly expanding its enrollment if the charter school notifies the district at least 120 calendar days before it opens or significantly expands its enrollment due to a significant event that is unlikely to occur on a regular basis (such as the addition of one or more grades or educational programs in major curriculum areas), and it takes place before February 1.

2) When these conditions are met, the district will allocate funds to the charter school as follows:

i. If the opening or expansion occurs prior to November 1, the charter school will be allocated funds in the current school year based on the current school year's Child Count.

ii. If the opening or expansion occurs after November 1 but before February 1, the charter school will be allocated a pro-rata share of funds in the current school year based on the number of enrolled special education students with active IEPs 30 days after the opening or expansion. The pro-rata share will be the number of days the charter school will be open or expanded, divided by the number of days in the school year, multiplied by the number of special education students.

3) If the opening or expansion occurs on or after February 1, the charter school will be allocated funds in the following school year based on the **following** school year's Child Count.

c. For school districts that have authorized a virtual charter school and the charter school's students are enrolled in the district but live outside district boundaries and receive education outside the district, the SDE will determine the district's Part B funding in the following way:

1) The calculation of the district's allocation will be made exclusive of the charter school's enrollment and special education enrollment (student count).

2) After calculating the allocations for all districts using the federal funding formula and the distribution formula for any supplemental award, the SDE will determine the statewide average per-student allocation.

3) The SDE will add to the district's base allocation an amount equal to the statewide average per-student allocation times the number of students with disabilities enrolled in and determined to be eligible for and receiving special education services.

2. Charter School Operating as an LEA

Public charter schools that are LEA's are responsible for adopting and implementing approved policies and procedures for special education and providing an assurance that funds will be used in accordance with Part B allowable uses.

a. In the second and subsequent years of operation, Charter School LEAs will be allocated Part B funds in the same manner as all school districts – in accordance with the federally prescribed funding formula for the distribution of flow through funds.

b. The policy for providing federal special education funds to new charter LEAs in the first year of operation, as required by federal regulation, includes the following steps:

1) The LEA submits its Child Count as required by IDEA.

2) A SDE Special Education Monitoring Team visits the new LEA to review the files of the students reported on the Child Count.

3) The monitoring team determines the number of students meeting all eligibility requirements and receiving appropriate special education and related services.

4) Based upon the number of students determined to be eligible, amounts of first- year Part B funds for allocation to the charter LEA are calculated as follows:

i. The statewide average per-student amount of Part B funding in the current year is determined.

ii. That amount is multiplied by the number of students who meet all eligibility requirements and are receiving appropriate special education services to determine the total allocation.

5) The charter LEA then shall complete the Part B application documents. These include:

   i. Assurances and Policies and Procedures Adoption

   ii. Maintenance of Effort Assurance

   iii. Title Part B Budget Form

6) Once the application is submitted and approved, the charter LEA may begin drawing down these funds for the approved special education purposes.

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PRIVATE SCHOOL STUDENTS

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Chapter 9
Private School Students

Note: For the purposes of this Manual, the term "private school student" is the same as a "nonpublic school student." A homeschool student is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

The IDEA and Idaho Administrative Code includes the following:

- statutory and regulatory language, which states that students who are voluntarily enrolled in private schools are not entitled to all of the same services, including the right to a free appropriate public education (FAPE), as public school students;
- district responsibilities for special education students under Idaho's dual enrollment law; and
- the legal requirements that come into play when a parent unilaterally enrolls his or her child in a private school and asks the district for reimbursement of these costs.

Section 1. Definitions of Private School Placements

In order to describe the district's responsibilities for serving private school students, it is helpful to distinguish three separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why.

A. Definition of Voluntary Enrollment by a Parent

A parent may choose to enroll his or her child in a private school for a variety of personal reasons, such as to obtain a religious education, to attend a school with a particular philosophy or curriculum, or because the parent is dissatisfied with the services offered or provided by the district. This is considered a voluntary enrollment. See Section 2 and Section 4 of this chapter for district responsibilities. Note: The IDEA distinguishes between for profit and nonprofit private schools. If a student is placed in a for profit private school by their parents the service plan provisions do not apply.

B. Definition of District Placement

At times, the district may place a student in a private school or facility to fulfill its obligation to provide FAPE. These placements are always made by an individualized education program (IEP) team in accordance with the requirements of Section 3 of this chapter.

C. Definition of Unilateral Placement by Parents when FAPE is an Issue

A parent may enroll a student in a private school or provide services from a private provider at parental expense. The parent may initiate a due process hearing to seek reimbursement for the costs associated with the placement from the district. All students who are placed by a parent when FAPE is an issue are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of student enrollment in a private school in this situation is included in Section 5 of this chapter.

Section 2. Students Voluntarily Enrolled by Parents

A. District Consultation with Private School Representatives (may be done in coordination with Title 1 requirements for consultation)

To ensure timely and meaningful consultation a district will consult with private nonprofit elementary and secondary school representatives and representatives of parents of parentally placed private school students with disabilities during the design and development of special education and related services for the students. The consultation process shall include:

1. Child Find: The Child Find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.

2. Proportionate Share of Funds: The determination of the proportionate amount of federal special education funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated. Refer to Section 2G of this chapter for information regarding the calculation of the proportionate share of funds.

3. Determination of Special Education and Related Services: Given the amount of funds to be dedicated by the district, the discussion will include the consideration of how, where, and by whom special education and related services will be provided for parentally placed private school students with disabilities, including:

    a. types of services, including direct services and alternate service delivery mechanisms;

    b. how such services will be apportioned if funds are insufficient to serve all students;

    c. how and when these decisions will be made; and

    d. how the provided services will be evaluated.

4. Ongoing Communication: Clarify how the private school and district will operate throughout the school year to ensure that parentally placed private school students with disabilities identified through the Child Find process can meaningfully

participate in special education and related services. Annual consultation is not required to make these decisions. The district determines the period between consultations based on changing circumstances within the district, such as significant changes in the total amount of funds to be expended and/or the number and location of private school students with disabilities.

5. Written Affirmation: When timely and meaningful consultation has occurred:

    a. the district will obtain a written affirmation signed by the representatives of participating private schools;

    b. if the representatives do not provide the affirmation within a reasonable period of time the district will forward the documentation of the consultation process to the State Department of Education (SDE).

6. District Decisions: Following consultation with the private school representatives, the district will make final decisions concerning items a-d addressed above in number 3.

7. Written Explanation by the District Regarding Services: If the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

B. Compliance with Consultation Process

1. General Compliance: A private school official has the right to submit a complaint to the SDE that the district:

    a. did not engage in consultation that was meaningful and timely; or

    b. did not give due consideration to the views of the private school official.

2. Procedure for Complaint

    a. If the private school official wishes to submit a complaint, the official will provide the basis of the complaint to the SDE.

    b. The district will forward the appropriate documentation to the SDE.

    c. The SDE will render a written decision whether the district complied with the consultation process requirements.

    d. If the private school official is dissatisfied with the decision of the SDE, the official may submit a complaint to the Secretary of the US Department of Education by providing the basis of the complaint against the district to the

Secretary, and the SDE will forward the appropriate documentation to the Secretary.

C. Child Find Requirements

The district shall have an ongoing Child Find system to locate, identify, and evaluate all students with disabilities ages three (3) through twenty-one (21) who are educated within the district's geographic boundaries. This includes students who have been placed by a parent in a private nonprofit elementary or secondary school (including a religious school) located in the district regardless of the student's state or local residency. Note: Parents can also ask the district of residence (assuming it is different than the district where the private school is located) to evaluate their student. Both districts would have Child Find responsibilities and cannot share information between the districts without written parental consent. The district of residence would have Child Find responsibilities for students placed in for-profit schools and for children aged three (3) to five (5).

The Child Find process will be designed to encompass the following:

1. The Child Find process will ensure the equitable participation of parentally placed private and homeschool students with disabilities.

2. Child Find activities for private school students will be similar to Child Find activities for public school students, which include the evaluation process within comparable timelines.

3. The district will consult with private school representatives and representatives of parents who place their children in private schools regarding the Child Find procedures.

Note: The cost of Child Find is not counted toward the pro-rated proportionate share that the district must spend on services.

D. Annual Count of Eligible Students

The district shall conduct an annual count of eligible students and report to the State Department of Education the number of private school children evaluated, the number found eligible and the number who are provided with special education services. Students aged three (3) to five (5) must have their special education services identified on an IEP since Idaho does not have state-funded preschool programs. This count will be used to determine the amount of funds the district shall expend providing special education and related services to private school students in the next school year (see Section 2E). The district will consult with representatives of private school students to determine how to conduct the count.

E. Provision of Services

Provision of services applies to all eligible students who attend non-profit private elementary and secondary schools within the district's geographical boundaries regardless of where they reside. Parentally placed private school students with disabilities do not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Services offered to parentally placed private school students are determined through the district and private school consultation process.

1. District Responsibilities

    a. Private school students with disabilities may receive a different amount of services than public students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private school student to receive only a related service or piece of equipment.

    b. Special education and related services provided to parentally placed private school students with disabilities, including materials and equipment, will be secular, neutral and non-ideological.

    c. The district is required to offer FAPE to private school students who reside in their district, including when the student attends a private school outside of the district boundaries. Unless the parent makes clear their intention to keep their child in the private school, the district of residence must develop an IEP.

    d. Services may be provided at a public school building or another agreed upon site (including parochial schools to the extent consistent with the law) determined by the district in consultation with appropriate representatives of private school students.

    e. Services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

2. Eligibility for Services

    If an evaluation team determines that a student needs special education and related services:

    a. The district of residence shall offer to make FAPE available upon enrollment or dual enrollment in a district public school. The district of residence must develop an IEP for the student who is parentally placed in private school unless the parent makes clear an intent not to consider public school enrollment. The district has no obligation to implement that IEP unless the student enrolls in the public school.

b. If the parent chooses not to enroll the student in the district of residence and designated funds are available in the district in which the private school is located, a meeting will be held to develop a Services Plan (SP). The meeting will include a representative of the private school to develop a SP. The SP is developed by the same members that would constitute the IEP team.

c. Any services the district provides to a private school student shall be in accordance with an SP.

3. Service Plan (SP) Development

The SP shall describe the specific special education and related services that will be provided to the student in light of the determinations that have been made by the district. To the extent appropriate, the district shall initiate and conduct meetings to develop, review, and revise SPs in accordance with the following requirements:

a. Given the services that the district has elected to provide to private school students, the SP must meet the requirements of the IEP to the extent appropriate (see Chapter 5). The SP excludes sections pertaining to:

1) extended school year (ESY) services;

2) participation in statewide and district wide assessments;

3) placement determination (least restrictive environment);

4) Child Count federal report settings; and

5) elements that, although typical for an IEP, would be inappropriate given the services the district has elected to provide.

b. An SP shall be in effect at the beginning of each school year and accessible to each person responsible for its implementation.

c. Meetings shall be held to review and revise SPs at least annually to address any lack of student progress toward goals and in the general education curriculum.

d. The SP team members include the same members as an IEP team. The district will ensure that a representative of the private school attends these meetings or participates by some other means.

e. A parent shall be invited to SP meetings at a mutually agreed upon date and time. The invitation must indicate the purpose, time, and location of the meeting. The parent shall be informed that he or she may bring other persons knowledgeable about the student to the meeting. A copy of the SP will be given to the parent.

f. The team developing the SP will consider the student's strengths and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the SP.

g. If necessary for a private school student to benefit from or participate in the services the district has elected to provide, the district shall provide transportation from the student's school or home to the site where services will be provided. The district shall take the student back to either the private school or the home, depending on the timing of the services. In this sense, transportation is not a related service but a means of making the services offered accessible. Transportation costs may be included in the district's expenditure requirement. The district is not required to transport the student from home to the private school.

F. Dispute Resolution

Due process hearings are available to parents of private school students only on the issue of Child Find and evaluation. Parents may challenge decisions regarding the provision of services by filing a state complaint with the SDE. (See Chapter 13 for more information on dispute resolution options.)

G. Determining the Proportionate Funding for Private School Students

IDEA requires school districts to dedicate at least a proportionate share of funds received under Part B to provide services for parentally placed students with disabilities who attend private schools within the boundaries of the district, regardless of their place of residence. To determine this proportionate amount, the district shall first determine the number of these private school students through the Child Find activities developed in the consultation process with private school representatives.

The number of parentally placed private school students is divided by the total (public and private) number of students with disabilities in the district to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by the district under Part B grants Section 611 (ages three (3) to twenty-one (21) and Section 619 (ages three (3) to five (5) to determine the district's obligation.

Example for the XYZ School District:

a. The number of parentally placed private school children within the district on December 1, 2015: **10**

b. The number of public school children with disabilities on December 1, 2015: **90**

c. Percentage of private school children with disabilities: **A** divided by **A+B = 10%**

d. Total Part B funds allocated for school year 2016-2017: **$150,000**

e. Amount the district shall spend on providing special education and related services to parentally placed private school students in 2016-2017: **C x D = $15,000**

1. State and local funds may supplement but may not supplant the proportionate amount of federal funds required to be expended for parentally placed private school children with disabilities.

2. The costs of private school consultations and of carrying out Child Find activities may not be paid from the proportionate share of funds.

3. The cost of any special education or related service, such as direct service, consultation, equipment, materials, or transportation may be used to determine that the district has satisfied its expenditure requirement for private school students with disabilities.

4. If all proportionate funds set aside for private school students in a given fiscal year are not expended in that year they shall be carried forward into the next year for the purpose of providing equitable services.

H. Expenditure Guidelines

1. The district may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the district shall:

    a. retain title and exercise continuing administrative control over all equipment and supplies;

    b. ensure that all equipment and supplies are used only for Part B purposes;

    c. ensure that all equipment and supplies can be removed without remodeling the private school; and

    d. remove equipment and supplies if necessary to prevent unauthorized use.

2. The district may use Part B funds to pay an employee of a private school to provide services to students with disabilities when the employee performs the services:

    a. outside of his or her regular hours of duty; and

    b. under public supervision and control.

3. Part B funds shall not be used to:

a. finance the existing level of instruction in the private school or otherwise benefit the private school;

b. meet the needs of the private school; or

c. meet the general needs of students enrolled in the private school.

4. Part B funds shall not be used for repairs, remodeling, or construction of private school facilities.

5. If it is possible for classes to include students enrolled in both public and private schools, then the classes must not be organized separately on the basis of school enrollment or religion.

6. The district shall not appropriate any funds to private schools controlled by any church, sectarian, or religious denomination.

Section 3. Students Placed by the District

When the district places a student with a disability in a private school or facility, as a means of providing special education services through the IEP team process, the district shall ensure the following:

1. All special education procedures and timelines are followed.

2. Special education and related services are provided in accordance with an IEP.

3. A representative of the private school or facility attends or participates in the meeting to develop the IEP. If the representative cannot attend other measures such as conference telephone calls will be used to ensure participation.

4. The responsibility for reviewing and revising IEPs remain with the district.

5. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP meeting conducted in a geographical area outside the jurisdiction of the district.

6. The placement in the private school or facility is the least restrictive environment for that student.

7. The student is provided an education that meets state and district standards.

8. The student is afforded the same rights as students with disabilities who attend public schools.

9. The parent is afforded the same rights as parents of students attending public schools.

In accordance with federal and state law, the SDE shall approve special education programs in private schools and facilities. The district shall ensure a program is approved prior to placing a student in that school or facility.

At the discretion of the district, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting, the district shall ensure that the parent and a district representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

Section 4. Dual Enrollment of Private School Students by Parents

According to Idaho Code, parents of private school students "shall be allowed to enroll the student in a public school for dual enrollment purposes." Private school students who are dually enrolled are considered to be nonpublic school students. The district shall allow private school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and

2. receive accommodations in the general education courses for which they are enrolled on a Section 504 plan, if needed.

Private school students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

The reporting of attendance for private school students in the district is allowed under dual enrollment. If a student attends at least 2.5 hours per week without rounding hours, he or she shall be included in the weekly aggregate attendance. The average daily attendance (A.D.A.) is computed as .5 if the aggregate weekly hours are 2.5 or greater but less than 4.0 hours. When there are 4.0 hours or greater, divide by 4 to get the A.D.A.

Dually enrolled private school students could also be eligible to receive services that have been agreed upon through the district and private school consultation process. These services would be delivered through a SP.

Section 5. Unilateral Placement of Student by Parents when FAPE is an Issue

A. General Provisions for Reimbursement to the Parent

1. The district is required to make FAPE available to all eligible students with disabilities. If parents do not access FAPE, then the district is required to make provisions for private school students to receive Part B services consistent with Section 2E of this chapter.

2. The district is not required to pay for costs of tuition, special education, or related services and associated costs at a private school or facility for a student who was unilaterally placed there by a parent if the district made FAPE available to the student in a timely manner. If a parent disagrees with the availability of FAPE and there is a question about financial responsibility, the parent may request a due process hearing.

3. If the parent of a student with a disability enrolls the student in a private elementary or secondary school, without the consent of the district, a court or hearing officer may order the district to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:

    a. the district had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and

    b. the parent's placement is appropriate.

4. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards. A private school will be deemed appropriate if the parent demonstrates that the private placement provides educational instruction specially designed to meet the unique needs of the child with a disability, supported by such services as are necessary to permit the child to benefit from that instruction.

B. Denial or Reduction of Reimbursement to the Parent

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. The parent did not inform the district that he or she rejected the placement proposed by the district to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This notification by the parent shall be provided to:

    a. the IEP team at the most recent IEP meeting prior to removing the student from the public school; or

b. the district, in writing, at least ten (10) business days (including any holidays that occur on a business day) prior to removing the student from public school.

2. Prior to removal of the student from the public school, the district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.

3. A judicial decision finds unreasonableness with respect to the actions taken by the parent.

Reimbursement shall not be reduced or denied under any of the following circumstances:

1. The district did not notify the parent of his or her obligation to provide the notice set forth in number 3 above or the district prevented the parent from providing that notice.

2. The parent had not received written notice.

3. The district's proposed placement would likely result in physical harm to the student.

Reimbursement may not be reduced or denied at the discretion of a court or hearing officer for failure to provide this notice if:

1. The parents are not literate or cannot write in English, or

2. The district's proposed placement would likely result in serious emotional harm to the student.

Section 6. Out of State Students Residing in Residential Facilities

For school-age special education students from outside the state of Idaho who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities within the state of Idaho, the school district in which the residential facility is located will provide education services to such students if requested by the licensed public or private residential facility and an agreement is entered into with the residential facility. The district will be given the opportunity to provide input on any federally required education programs or plans for such students.

A. Contract for Education Services

The contract with a residential facility will include the following provisions:

1. The education services to be provided by the district.

2. The amount to be paid by the licensed public or private residential facility.

The amount paid will be equal to the district's full cost of providing the education services delineated by the contract as determined by the district. Such students will be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the district.

In the event a residential facility fails to sign a contract with the district agreeing to pay the full cost for providing education services, the school district in which the residential facility is located will not be responsible for providing education services to the out-of-state students residing in the residential facility.

B. Determining Residency

In determining whether a student is from outside the state of Idaho, the school district in which the residential facility is located will determine the primary residency of the student's parent or guardian. Proof of Idaho residency will be established by showing an Idaho motor vehicle driver's license, payment of Idaho state income taxes, or other documentation evidencing residency within the state of Idaho.

Documents

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Affirmation of Consultation with Private School Officials and Representatives of Parents

P.L. 108-448 Individuals with Disabilities Education Improvement Act (IDEA) requires that timely and meaningful consultation occur between the district and private school representatives.

The following topics are to be discussed during the consultation:

- The Child Find process and how parentally placed private school students suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

- The determination of the proportionate amount of Federal funds available to serve such students, including the determination of how the amount was calculated;

- The consultation process among the district, private school officials, and representatives of such students, including how such process will operate throughout the school year to ensure that such students identified through the Child Find process can meaningfully participate in special education and related services;

- How, where, and by whom special education and related services will be provided for such students, including a discussion of types of services, including direct services and alternate service delivery mechanism, how such services will be apportioned if funds are insufficient to serve all [such students], and how and when these decisions will be made; and

- If the district and a private school official disagree on the provision of services or types of services, the district will provide a written explanation of its decision to the private school official.

The district shall obtain a written affirmation signed by the representatives of participating private schools. If such representatives do not provide such affirmation within a reasonable period of time, the district shall forward documentation of the consultation process to the State Department of Education (SDE).

A private school official shall have the right to submit a complaint to the SDE that the district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. The district shall forward the appropriate documentation to the SDE. If the private school official is dissatisfied with the decision of the SDE, such official may submit a complaint to the Secretary of Education by providing the basis for the noncompliance.

Provision of equitable services shall be provided by employees of the district or through contract by the district with an individual, association, agency, organization, or other entity. Special education and related services provided to such students, including materials and equipment, shall be secular, neutral, and non-ideological.

The control of funds used to provide special education and related services, and title to materials, equipment, and property purchased with [Federal special education] funds shall be in the district for the uses and purposes provided, and the district shall administer the funds and property.

We agree that the district provided timely and meaningful consultation regarding the bulleted items above.

_____	_____	_____	_____
District Official	Date	Private School Official	Date

_____	_____
District Name & Number	Private School Name

Chapter 10
IMPROVING RESULTS

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Chapter 10
Improving Results

This chapter reflects the changes in the IDEA that focus on improving educational outcomes, analyzing and reporting data to the public, and ensuring that personnel who work with students with disabilities are prepared to meet their unique needs.

Section 1. Monitoring Priorities and Indicators

IDEA requires increased accountability for programs serving students with disabilities. Monitoring priorities include both performance and compliance goals. Accountability areas established by IDEA include a free appropriate public education (FAPE) in the least restrictive environment (LRE), Effective General Supervision, and Disproportionality. Each priority area encompasses specific performance indicators. These indicators include both performance and compliance components. Data on those indicators shall be collected, submitted to the State Department of Education (SDE), and publicly reported annually. That data shall be used to evaluate the effectiveness of programs and identify strategies to improve student outcomes.

The district is required to submit timely and accurate data from which the district's performance will be calculated based on the indicators in the Idaho's State Performance Plan, posted online annually on the SDE website.

A. SDE Responsibility

As part of the SDE general supervision responsibilities, the SDE is required to collect, review, and analyze data on an annual basis to determine if the state and districts are making adequate progress toward the required performance goals. This accountability process includes:

1. measuring performance on goals both for the state and the districts;

2. monitoring based on district performance and compliance data with the IDEA, and progress made toward meeting state goals;

3. identifying districts in one of the following categories: Meets Requirements, Needs Assistance, Needs Intervention, Needs Substantial Intervention;

4. providing professional development and technical assistance statewide and targeted technical assistance to districts demonstrating the highest needs;

5. reporting to the public on the state and districts' performance on state goals; and

6. developing and submitting an Annual Performance Report/State Performance Plan, as needed, to address state performance on required goals.

B. District Responsibility

Progress on the state's performance goals is directly linked to the districts' efforts and progress in these same areas. On an annual basis and as part of the SDE's general supervision and accountability, the district shall:

1. ensure the data it collects and reports to the SDE regarding special education students and personnel is accurate;

2. use data-based decision-making procedures to review and analyze data to determine if the district is making adequate progress toward performance goals; and

3. adjust strategies, as needed, to meet goals and improve student outcomes.

Section 2. Comprehensive Early Intervening Services (CEIS)

Under the IDEA, the district may use up to 15% of its IDEA Part B allocation in any fiscal year to provide comprehensive early intervening services (CEIS) for students in kindergarten through grade twelve (12), (with a particular emphasis on students in kindergarten through grade three (3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

These funds may be used for activities that include:

1. Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software

2. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

Should a district be found in having significant disproportionality as provided under Part B, the district shall use 15% of its IDEA Part B allocations to provide comprehensive coordinated early intervening services.

A. Budget Requirements

If the district chooses to use IDEA Part B funds in any fiscal year to provide CEIS, the district will budget the amount used to provide these services, up to a maximum of 15% of the total allocation, in the Part B budget that is submitted annually to the SDE as part of the Part B and Preschool Application.

B. Reporting Requirements

When the district uses IDEA Part B funds to provide CEIS, an annual report shall be submitted to the SDE on:

1. The number of children who received CEIS; and

2. The number of children who received CEIS and subsequently receive special education and related services during the preceding two (2) year period.

C. Relationship between FAPE and CEIS

CEIS provided by the district shall not be construed to either limit or create a right to FAPE under the IDEA or to delay appropriate evaluation of a student suspected of having a disability.

Section 3. Personnel

The district shall ensure that personnel working with students with disabilities meet the qualifications established by the SDE and have the content knowledge and skills to meet the needs of these students.

A. Appropriate Certification or Licensure

Public school personnel shall meet the appropriate certification or licensure requirements for position assignments. Complete certification standards for personnel providing special education or related services may be found in the handbook titled Idaho Standards for the Initial Certification of Professional School Personnel. This handbook is available from the SDE Division of Certification.

The lists that follow are examples only. They do not include every possible position or licensing situation. For more information call the SDE Division of Certification at (208) 332-6800.

1. The following special education and related services positions require individuals who are employed by the district to be certificated and to meet any additional licensure requirements:

    a. audiologist;

    b. consulting teacher;

    c. counselor;

    d. director of special education;

    e. early childhood special education teacher;

f. school psychologist;

g. special education teacher;

h. speech-language pathologist; and

i. supervisor/coordinator of special education.

2. Some special education service providers need both licensure in their area of expertise and certification from the SDE.

   a. School nurses are certificated by the SDE and licensed by the State Board of Nursing.

   b. School social workers are certificated by the SDE and licensed by the Bureau of Occupational Licenses.

3. Some special education service providers must meet the licensure or certification requirements in their respective professions, but certification from the SDE is not required.

   a. Occupational therapists and physical therapists are licensed by the State Board of Medicine.

   b. Vocational education teachers are certificated by the Idaho Division of Professional-Technical Education.

   c. Vocational rehabilitation counselors must meet national standards for Certified Rehabilitation Counseling (CRC) to be employed by the Idaho Division of Vocational Rehabilitation.

4. Individuals who used a consultant specialist provision or a letter of authorization in the past are no longer able to use these emergency certificates as an alternative for individuals to become certificated teachers in Idaho. The district shall use the alternative authorization options to request alternative endorsement/certification when a professional position cannot be filled with someone who holds the appropriate endorsement/certification.

B. Highly Qualified Special Education Teachers

In addition to being certified, K-12 special education teachers in the district who teach core academic subjects shall meet the “highly qualified teacher standards” identified in the Elementary and Secondary Education Act (ESEA) formerly known as No Child Left Behind (NCLB). The highly qualified special education teacher requirement does not apply to preschool programs since early childhood education is not a part of the Idaho public elementary and secondary school system at this time.

1. General Requirements for Special Education Teacher

   Any K-12 special education teacher who is not teaching a core academic subject and only consults with regular education teachers or reinforces instruction from a regular education teacher is highly qualified if the teacher holds a K-12 Exceptional Child Certificate. No waiver or temporary certification qualifies. However, a special education teacher can meet the general requirements of highly qualified if they are enrolled in an approved alternative route to certification program.

2. Requirements for Special Education Teachers Teaching a Core Academic Subject

   If a special education teacher is the primary deliverer of instruction in a core content subject, they shall have met the highly qualified teacher standard in each area taught.

3. Requirements for Special Education Teachers Teaching Multiple Subjects

   In the case of a teacher who is not new to the profession, the special education teacher shall demonstrate competence in all the core academic subjects which the teacher teaches in the same manner as is required for elementary, middle, or secondary school teachers who are not new to the profession.

   In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, the teacher shall demonstrate competence in the other core academic subjects which the teacher teaches not later than two years after the date of employment.

4. Requirements for Special Education Teachers Teaching to Alternate Achievement Standards

   Both new and veteran special education teachers who teach core academic subjects exclusively to students assessed against alternate achievement standards (students with significant cognitive disabilities) shall be highly qualified by either:

   a. meeting the ESEA requirement for any elementary, middle school, or high school teachers who are new or not new to the profession; or

   b. meeting the requirements of ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, demonstrate subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those grade level standards.

5. Assurance of Highly Qualified Standards

   The district shall take measurable steps to recruit, train, hire, and retain highly qualified special education teachers. The district will collect and monitor data about

special education personnel qualifications and ensure that personnel are appropriately and adequately prepared to serve students with disabilities.

In Title I schools, parents will be notified if students are taught for four (4) or more consecutive weeks by a special education teacher who is not highly qualified.

C. Shortage of Personnel

If there is a shortage of highly qualified personnel, the district shall take measurable steps to recruit and hire highly qualified personnel to provide special education and related services to students with disabilities. However, when a professional position cannot be filled with an individual who has the appropriate certification, vacant positions may be filled with personnel on the following approved alternate pathways to teaching:

1. Teacher to New Certification: An individual holds a Bachelor's degree and a valid teaching certificate without full endorsement in area of need. The candidate works towards completing a preparation program for special education certification and is employed by the district.

2. Content Specialist: An individual who is highly and uniquely qualified in an area holds a Bachelor's degree. The candidate works towards completing a preparation program while employed by the district. The preparation program must include mentoring, one classroom observation per month until certified, and prior to entering the classroom; the candidate completes an accelerated study in education pedagogy.

3. Computer Based Route to Teacher Certification: An individual may acquire interim certification through a computer-based alternative route to teacher certification that is approved by the State Board of Education. On November 4, 2003, the Idaho State Board of Education passed a temporary rule approving ABCTE (American Board for Certification of Teacher Excellence) as an alternate route to Idaho certification. During the interim certification, teaching shall be done in conjunction with a two year mentoring program approved by the State Board of Education.

Further information and all requirements for each alternative route to certification are available in Idaho Administrative Code (IDAPA 08.02.02) and the Idaho Standards for the Initial Certification of Professional School Personnel document.

Nothing in the IDEA creates a right of action for due process on behalf of a student or class of students for failure to employ highly qualified staff.

D. Paraprofessionals, Assistants, and Aides

The district may employ paraprofessionals, assistants, and aides who are appropriately trained and supervised to assist in the provision of special education and related services to students with disabilities if they meet standards established by the SDE (find the "Standards for Paraprofessionals Supporting Students with Special Needs" on the SDE website).

Appropriate duties to be performed by paraprofessionals are:

1. provide one-on-one services for students as specified in the students' IEP;
2. assist with classroom management and organizing materials;
3. provide assistance in a computer lab or media center;
4. conduct parental involvement activities;
5. act as a translator;
6. assist in provision of services only under the direct supervision of a certified teacher or related service provider, specifically:
    a. a teacher/related service provider plans instruction and evaluates student achievement; and
    b. the paraprofessional works in conjunction with the teacher or related service provider as determined by the student's IEP.

A special education paraprofessional working in a Title I school-wide program shall be highly qualified as demonstrated by the competencies listed in the ESEA.

1. All Title I paraprofessionals must have a secondary school diploma or its recognized equivalent.
2. Additionally, except as noted below, paraprofessionals hired after January 8, 2002, and working in a program supported with Title I, Part A funds must have:
    a. Completed two years of study at an institution of higher education (In Idaho, this is thirty-two (32) credits from an accredited university or college); **or**
    b. Obtained an associate's (or higher) degree; **or**
    c. Met a rigorous standard of quality and be able to demonstrate, through a formal State or local academic assessment, knowledge of and the ability to assist in instructing, reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness) (in Idaho this is the ETS Parapro Praxis with a minimum score of 460).

The district may encourage qualified paraprofessionals employed in their classrooms to become certified teachers. The alternative route preparation program for para-educator to teacher must be completed within five (5) years of admission to the program. Candidates work toward completion of a preparation program while employed by the school district.

E. Educational Interpreters

The district may only employ an individual as an educational interpreter if they have met the state qualifications identified in Idaho Code 33-1304. Educational interpreters employed by the district shall complete a minimum of eighty (80) hours of training in the areas of interpreting or translating every five (5) years.

F. Supervision of Staff

A teacher and/or a related service provider with appropriate certification or licensure who has been informed of his or her specific responsibilities related to a student's IEP has the primary responsibility to ensure the appropriate implementation of the IEP. The district has policies and procedures for the supervision and evaluation of all certificated/licensed or contracted employees.

The certificated/licensed teacher and/or related service provider will generally be responsible for the supervision of all paraprofessionals, assistants, and aides who provide direct services to students with disabilities. All paraprofessionals, assistants, and aides must have a supervision plan developed by a certificated or licensed professional.

G. Professional Development Plan

The district will take measures to ensure that all personnel necessary to provide special education and related services according to the IDEA are appropriately and adequately prepared. Personnel may use a variety of opportunities for technical assistance and training activities to further develop professional knowledge and skills in order to meet the needs of students with disabilities.

To the extent the district determines it is appropriate, paraprofessional personnel may use the technical assistance and training activities offered by the district or SDE to improve practice for paraprofessional supports for special needs students (See Appendix for guidance materials for best practice).

Chapter 11
PROCEDURAL SAFEGUARDS

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Chapter 11
Procedural Safeguards

This chapter reflects changes in procedural safeguards as a result of the IDEA.

Section 1. Procedural Safeguards Notice

A parent/adult student has specific procedural safeguards given to him or her by the IDEA and state law. Each district has a document titled *Procedural Safeguards Notice* that is provided to parents/adult students which contains a full explanation of the special education rights. The *Procedural Safeguards Notice* shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner.

A. Procedural Safeguards Notice Contents

The following table lists various topics contained in the *Procedural Safeguards Notice* and identifies what chapter in this Manual provides more information about each topic.

Topic	Chapter
1. parental consent	11
2. written notice	11
3. access to educational records	11
4. independent educational evaluation (IEE)	11
5. the opportunity to present and resolve complaints, including: a. the time period in which to make a complaint b. the opportunity for the district to resolve the complaint c. the availability of SDE mediation d. the differences between a due process hearing complaint and state complaint	13
6. the student's placement during pendency of due process proceedings	13
7. procedures for students who are subject to placement in an interim alternative educational setting (IAES)	12
8. requirements for unilateral placement by parents of students in private schools at public expense	9
9. due process hearings, including requirements for disclosure of evaluation results and recommendations	13
10. civil actions, including the time period in which to file such actions	13
11. attorney fees	13

B. When the Procedural Safeguards Notice Is Provided

The district will provide a *Procedural Safeguards Notice* that includes a full explanation of the special education rights afforded the parent/adult student only once per year, except that a copy will be given to the parent/adult student:

1. upon an initial referral or parent/adult student request for evaluation;
2. upon the first occurrence of a filing of a due process hearing or a state complaint;
3. when a decision is made to take a disciplinary action that constitutes a change of placement; and
4. upon request by the parent.

A *Procedural Safeguards Notice* suitable for copying can be found in the document section of this chapter.

Section 2. Domestic Considerations

A. Parent

1. Definition

   The term "parent" means:

   a. a biological, adoptive, or foster parent of a child;
   b. a guardian (but not the state if the child is a ward of the state);
   c. an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives;
   d. an individual who is legally responsible for the child's welfare;
   e. an adult student; or
   f. a surrogate parent who has been appointed by the district.

2. Determining Who Has Parental Rights

   In determining who has parental rights, individuals should be considered in the following order of priority:

a. a biological parent; unless a Court orders a specific person to act as the parent or to make educational decisions on behalf of the child;

b. a person who has legal documentation (guardianship, power of attorney, custody agreement) of being responsible for the student's welfare;

c. a grandparent, stepparent, other relative, or foster parent with whom the student lives and who is acting as a parent; or

d. a surrogate parent appointed by the district to represent the student's interests in educational decisions.

B. Surrogate Parent

1. Definition

A "surrogate parent" is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA in any of the following circumstances:

a. No parent can be identified or located for a particular student.

b. The student is a ward of the state.

c. The student is an unaccompanied homeless youth.

The surrogate parent has the same rights as a biological parent throughout the special educational decision-making process.

2. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district's special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

a. A parent cannot be identified.

b. A parent cannot be found after reasonable efforts to locate the parent.

c. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student's education, including special education, provided he or she meets the criteria for a district-appointed surrogate.

d. The student is a homeless youth who is unaccompanied.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the biological parent is available but chooses not to participate. When a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth in item 3, below. The district will make reasonable efforts to assign a surrogate within thirty (30) calendar days after it determines that the student needs a surrogate.

3. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement, and the provision of FAPE. The surrogate parent shall:

a. Have knowledge and skills that ensure effective representation.

b. Have no personal or professional interest that conflicts with the interest of the student.

c. Meet the following conditions:

1) is not an employee of the SDE, the district, or any other agency that is involved in the education or care of the student; and

2) is not an employee of a nonpublic agency that provides educational care for the student.

Note: A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate can be appointed that meets all the requirements.

C. Adult Students and the Transfer of Rights

An “adult student” is a student who is at least eighteen (18) years of age to whom special education rights have transferred under the IDEA and Idaho Code.

1. Discussion of the Transfer of Rights: Not later than the student’s seventeenth (17th) birthday, the IEP team shall discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns eighteen (18) years of age unless:

a. the IEP team determines that the student does not have the ability to make informed decisions with respect to his or her educational program; or
b. a parent has obtained legal guardianship from a Court including the scope of educational matters.

2. Basis for Denial of Transfer: During the IEP meeting to discuss the transfer of rights, the IEP team will use the following as the basis for any denial of the transfer:

   a. Evaluation data, test results, written reports, teacher observation, education records, and parent input, including whether the parent intends to seek guardianship.

   b. Answers to the following questions:

      1) Is the student capable of understanding his or her rights?

      2) Is the student capable of exercising his or her rights?

      3) Is the student capable of understanding the consequences and impact of his or her decisions?

3. Following a Determination Concerning the Transfer of Rights: When the student's special education rights transfer at age eighteen (18), the parent and student will be informed that rights have transferred. The IEP shall contain a statement referring to the transfer (or not) of rights:

   a. If the team determines that there is no relevant information about the student to prohibit the transfer of rights at age eighteen (18), the student's IEP shall contain a statement that the student has been informed that special education rights will transfer to him or her. The parent retains the right to receive notices required by the IDEA.

   b. If the IEP team determines that the student lacks the ability to provide informed consent with respect to his or her educational program, a statement will be included in the IEP indicating that the parent, or other individual if the parent is not available, will retain all special education rights after the student reaches age eighteen (18).

   c. If rights have transferred, the district shall continue to provide notices to the parent, but nothing under the IDEA requires parent participation in the process.

4. Revoking a Transfer of Rights: There is nothing in federal or state law that prohibits the IEP team from changing its decision later, based on new information and input.

Under state law, a parent can provide legal documentation of a student's incompetence *after* the student reaches age eighteen (18).

D. Emancipated or Married Minors

Idaho law does not provide for the emancipation of minors. However, minors who have been emancipated by a court of law in another state are considered an adult in Idaho. Emancipated minors should be able to provide the legal court document awarding them the power and capacity of an adult. A student under age eighteen (18) who claims to be an emancipated minor, but is unable to provide documentation should be assigned a surrogate parent by the district if a parent cannot be located.

Students under the age of eighteen (18) who are married to an adult, eighteen (18) years or older, are not emancipated minors in Idaho and do not have the power and capacity of an adult student. Instead, the spouse acts as the guardian of the student regarding legal rights and responsibilities.

E. Ward of the State

The term "ward of the state" means a child who, as determined by the state where the child resides, is a foster child, or a ward of the state *or* is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 2A.

F. Child Custody

1. Definitions of Custody

   The following definitions of custody are used by Idaho courts in divorce proceedings:

   a. **Joint custody** means an order awarding custody of a minor child to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child frequent or continuing contact with both parents. A court may award either joint physical custody or joint legal custody, or both. If the court has declined an order awarding joint custody, the court order shall state in the decision the reason for denial of joint custody.

   b. **Joint physical custody** means awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents. The actual amount of time with each parent is determined by the court. Generally, one of the parents is awarded primary physical custody.

   c. **Joint legal custody** means that the parents or parties are required to share the decision-making rights, responsibilities, and authority relating to the health,

education, and general welfare of a child. In Idaho, parents have joint legal custody unless the rights of one or both parents have been terminated.

2. Conflicts Between Parents Who Have Joint Custody

   a. **Custody questions**: When it is known that a custody question exists that involves the relevant legal status of one or both parents of a student, the district will ask the parent(s) to furnish a copy of the pertinent court order or decree, if one exists, to clarify the question at issue. School personnel will abide by the most recent court order or decree.

      When district personnel receive conflicting information about custody, they will (a) initially follow the instructions of the parent with whom the child currently resides and (b) request a certified court document to clarify the custody issue.

   b. **Conflicting instructions**: When parents who have joint legal custody give conflicting instructions, the district's obligation is to inform the parents that any action proposed or refused will be based on the needs of the student and in accordance with the IDEA requirements. Both the district and either parent have options under the IDEA to resolve disagreements, including SDE Dispute Resolution processes such as mediation and due process hearings.

   c. **Access to records**: A parent who does not have primary physical custody has the same right to access records and to participate in special education decision making as does the parent with primary physical custody, unless otherwise specifically stipulated by a court. Idaho Code states, "Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child's custodial parent." Another provision of the law allows the parent with primary physical custody to request in writing that a minor child's address be deleted from any record to prohibit the other parent from learning the child's address by having access to school records.

   d. **Parental disagreement of consent:** When parents, both with legal authority to make educational decisions for their child, disagree on the revocation of consent for special education and related services, one parent may revoke consent for his or her child's receipt of special education and related services at any time. The district must accept either parent's revocation of consent, and provide written notice to the parents. After revoking consent, a parent maintains the right to subsequently request an initial evaluation which must be treated as an initial evaluation and not a re-evaluation for special education. A parent who disagrees with another parent regarding revocation of special

education services is not entitled to resolve the dispute through an IDEA due process hearing.

Section 3. Informed Consent

A. Definition

Consent is written approval given by a parent/adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information shall be provided in the native language or mode of communication of the parent/adult student, unless not feasible. The parent/adult student shall be informed that the approval is voluntary and may be revoked at any time prior to the action. Consent is indicated by the parent's/adult student's signature.

B. Actions Requiring Consent

The following actions require the district to obtain written consent. Some of the actions that require written consent from the parent/adult student also require prior written notice from the district.

1. Informed written consent *and* written notice are required when:

    a. Conducting assessments as part of an initial evaluation to determine whether a student is eligible for special education.

    b. Conducting any assessment for reevaluation that involves more than a review of existing information. This includes any assessments that are conducted after a student has been determined eligible for special education. If a specific assessment was not listed on the *Consent for Assessment* form, then the district shall secure written consent again in order to conduct that particular assessment.

    c. Initially providing special education and related services to a student with a disability.

2. Informed written consent is required when:

    a. Using an individual family service plan (IFSP) instead of an IEP for students ages three (3) through five (5).

    b. Disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations. The written consent shall specify the records that

may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.

c. Accessing private insurance to pay for services listed in the IEP.

d. The district requests to bill Medicaid (with some exceptions). The parent/adult student shall be informed of the frequency, amount, and type of services that the district will be submitting to Medicaid for reimbursement as identified on the student's IEP.

e. Inviting outside agency representatives providing transition services to an IEP team meeting.

f. Sharing of information between the district of location and the district of residence with a parentally placed elementary or secondary student.

g. The excusal of an IEP team member from an IEP meeting when the meeting involves a modification or discussion of the member's area of the curriculum or related services.

C. When Consent Is Not Required

The district is not required to obtain informed consent when:

1. a review of existing data is part of an evaluation or a reevaluation;

2. tests are administered to both general and special education students in a grade or class and consent is not required for all students;

3. teacher or related-service-provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals and benchmarks/objectives on the IEP;

4. screening to determine appropriate instruction strategies for curriculum implementation;

5. a disclosure of personally identifiable information to persons authorized to have access under FERPA or the Idaho Student Data Privacy Act, Idaho Code 33-133; **or**

6. an IEP team reviews and revises a student's IEP. However, the parent/adult student may file a written objection if he or she disagrees with all or part of the changes to the IEP.

D. Refusal to Give Consent

A parent/adult student may refuse to give written consent for an assessment, initial services or the release of information that the district believes is necessary to ensure FAPE during the reevaluation process.

If the parent does not provide consent for the reevaluation assessment, the district may choose not to pursue requesting SDE mediation and/or a due process hearing if the district determines through a review of existing data, that the information does not continue to support the determination of eligibility for special education services. In this case the district shall provide the parent with written notice of the proposed action to discontinue the provision of FAPE to the student based on a review of existing data.

The district may also choose to pursue the reevaluation through SDE mediation and/or by requesting a due process hearing. If the hearing officer determines that the action is necessary, and the parent/adult student does not appeal the decision, the district may proceed with the proposed action. The district shall provide the parent with written notice of the proposed actions.

The district shall secure written consent for the initial provision of special education and related services. There is no mechanism available to overturn a parent's/adult student's decision *not* to provide written consent for initial evaluation or initial provision of services. In the case of an initial evaluation or initial provision of services, if a parent/adult student fails to respond to reasonable measures to gain consent or does not consent, the district cannot be charged with failing to provide FAPE to the student and is not required to convene an IEP meeting or develop an IEP for special education or related services.

E. Failure to Respond to a Request for Consent Regarding Reevaluation Assessment

When a parent/adult student fails to respond to reasonable measures taken by the district to obtain written consent to determine continued eligibility, the district may proceed with the evaluation. The district shall have a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment. Failure to respond is not the same as refusing consent for reevaluation.

F. Revoking Consent for Evaluation

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked only before the action occurs. If consent is revoked for evaluation, the district may continue to pursue the action by requesting a due process hearing. If the hearing officer determines that the action for which consent is sought is necessary, and the decision is not appealed, the district may proceed with the action without the written consent of the parent/adult student. Consent must be revoked in writing.

Section 4. Written Notice

A. Definition

Written notice is the act of informing a parent/adult student in writing within a reasonable amount of time, before the district proposes to initiate or change, or refuses to initiate or change, the student's special education identification, the evaluation, educational placement, or provision of FAPE.

B. Criteria for Written Notice

1. Written notice must be provided in a reasonable amount of time before implementing the proposed action.

2. Written notice shall be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent/adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:

    a. The notice is translated orally or by other means in the native language or other mode of communication.

    b. The parent/adult student understands the content of the notice.

    c. There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

When a parent/adult student disagrees with the district's written notice of a proposed or refused action, he or she can attempt to remedy the dispute using SDE processes, such as IEP facilitation, mediation, formal complaint procedures, or due process hearing procedures afforded by the IDEA. In addition, the parent/adult student may have the right to prevent the district from taking action by filing a written objection with the district.

C. Written Notice Is Required

1. The district shall provide written notice before proposing to initiate or change the following:

    a. identification of the student;

    b. any assessments for initial evaluation or reevaluation;

    c. educational placement; or

d. the provision of FAPE.

2. After the district's decision to refuse a parent's/adult student's request to initiate or change the identification, assessment, placement, or provision of FAPE.

3. If the district refuses to convene an IEP team meeting at the request of a parent/adult student.

4. When the evaluation team determines that additional assessments are not required during a reevaluation to determine whether the student continues to meet eligibility criteria, the district shall provide written notice to the parent/adult student of the decision and the reasons for that decision. The parent/adult student must also be informed of his or her right to request assessments when necessary to determine continued eligibility.

5. If a parent files a due process hearing request, the district is required to give written notice specific to the issues raised in the due process hearing request within ten (10) days.

6. If the district has determined that the student is being removed for disciplinary purposes which constitutes a change of placement.

7. If the parent/adult student revokes consent for the continued provision of special education.

D. Written Notice is Not Required

The district is not required to provide written notice in the following situations:

1. when reviewing existing data as part of an evaluation or a reevaluation (however, the parent/adult student shall be afforded the opportunity to participate in the review of existing data);

2. when tests are administered to both general and special education students in a grade or class;

3. when teacher or related service provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals and benchmarks/objectives on the IEP; or

4. if outside observation is in relation to teacher's general practices.

E. Content of Written Notice

The content of written notice is intended to provide the parent/adult student with enough information so that he or she is able to fully understand the district's proposed action or refused action and to make informed decisions, if necessary.

The written notice shall include the following:

1. a description of the action proposed or refused by the district;

2. an explanation of why the district proposes or refuses to take the action;

3. a description of any other options the IEP team considered and the reasons why those options were rejected;

4. a description of each procedure, assessment, record, or report that the district used as a basis for the proposed or refused action;

5. a description of any other factors relevant to the proposed or refused action;

6. a statement that the parent/adult student has special education rights and a description of how to obtain a copy of the *Procedural Safeguards Notice*; and

7. sources to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

F. Objection to District Proposal

If a parent/adult student disagrees with an IEP program change or placement change that is proposed by the IEP team, he or she may file a written objection to all or part of the proposed change. The district will respond as follows:

1. If the objection is postmarked or hand delivered within ten (10) calendar days of the date the parent/adult student received the written notice, the changes to which the parent/adult student objects cannot be implemented.

2. If a proposed change is being implemented during the ten (10) day period and an objection is received, the implementation of that change shall cease.

3. If an objection is made after ten (10) calendar days, the district may continue to implement the change, but the parent/adult student retains the right to exercise other procedures under the IDEA.

The parties may resolve a disagreement using methods such as holding additional IEP team meetings, or utilizing SDE Dispute Resolution processes, such as facilitation or mediation. If

these attempts fail, the district may request a due process hearing regarding the proposed change. A parent's/adult student's written objection to an IEP or placement change cannot be used to prevent the district from unilaterally placing the student in an IAES in accordance with the IDEA procedures for discipline of a student.

Section 5. Confidentiality and Access to Records

The district shall collect, use, and maintain information about a student to make appropriate decisions concerning special education and the provision of FAPE. A student's special education case manager, usually the special education teacher, should organize all relevant records specific to district guidelines and the IDEA requirements.

The IDEA and FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes also provide for the right to review and inspect records.

A. Definition

A "record" is defined as personally identifiable information directly related to the student and maintained by the district or a party acting for the district. A student record can be written or electronic.

1. The term "record" may include, but is not limited to, the following:

    a. identifying data (name, address, parents, siblings, Social Security number, list of personal characteristics making identification reasonably certain by a person in the school community);

    b. academic work completed (courses taken, transcript);

    c. level of achievement (grades, portfolios, performance assessments, scores on standardized achievement tests, etc.);

    d. attendance data;

    e. scores and protocols of standardized intelligence, aptitude, and psychological tests;

    f. records of teachers, counselors, medical personnel, and psychologists working directly with a student if disclosed to others;

    g. interest inventory results;

    h. observations and verified reports of serious or recurring behavior patterns;

i. videotapes or audiotapes;

j. health data including medical assessments;

k. family background information;

l. transportation records;

m. student records maintained by agencies and individuals contracting with the district; and

n. email, text messages, or other written notes sent regarding the student or the student's family.

2. The term "record" does not include:

a. records of instructional, supervisory, ancillary, and administrative personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

b. records created by law enforcement units of schools and maintained separately for non-educational purposes; and

c. employment records about a student who is employed by a school or district. (Note: Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted);

d. records on a student who is eighteen (18) years of age or older, or is attending an institution of postsecondary education, that are:

1) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

2) made, maintained, or used only in connection with treatment of the student;

3) disclosed only to individuals providing the treatment (Note: "Treatment" does not include remediation educational activities or activities that a part of the program of instruction); and

e. grades on peer-graded papers before they are collected and recorded by a teacher.

B. Protection of Records

The district shall prevent unauthorized disclosure of personally identifiable information pertaining to students with disabilities. “Disclosure” is the release, transfer, or other communication of education records or of personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic. Districts must have a policy to protect personally identifiable information from security risk resulting from unsecured data transmittal or storage.

To ensure protection of records, the district shall do the following:

1. Obtain written and dated consent from the parent/adult student before disclosing personally identifiable information:

    a. to unauthorized individuals; or

    b. for any purpose except as authorized by law.

2. Designate and train a records manager to assure security of confidential records for students with disabilities.

3. Maintain a log of requests for access to education records if the request is not from a:

    a. a parent/adult student;

    b. a school employee with a legitimate educational interest;

    c. a party seeking designated directory information; or

    d. a party receiving the records as directed by a federal jury or other subpoena ordering no one to disclose the existence of the request to access records.

    This log includes the name, agency affiliation, date, and purpose for accessing the records. A log documenting denials for records and partially fulfilled requests should also be maintained.

4. Maintain, for public inspection, a current listing of names and positions of employees who have access to personally identifiable information.

5. Establish procedures to ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

6. Ensure that, if any education record includes information on more than one student, a parent/adult student will only be allowed to inspect, review, or be informed about the record of the student at issue.

7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality. All staff members, even those who do not have access to special education records, should be informed about what is considered appropriate and inappropriate access to and use of information within the records. The district may maintain a record of the training provided—including the name of the person or persons providing the training, dates of the training, those attending, and the subjects covered—for the purpose of documenting that new staff members have been trained as soon as possible after they have been hired.

C. Access to Records

The district shall:

1. Annually notify the parents of all students, including students with disabilities currently in attendance, of their rights under FERPA. The notice shall include all of the following:

    a. procedures for exercising the right to inspect and review education records;

    b. procedures for requesting amendment of records; and

    c. a specification of criteria for determining who constitutes a school official or employee in the district and what constitutes a legitimate educational interest.

2. Permit a parent/adult student, or his or her representative, to inspect and review any record relating to educational matters that is collected, maintained, or used by the district. The district will presume that a custodial or non-custodial parent has the authority to inspect and review a record relating to his or her child unless there are legal documents limiting access to those records under state law. A minor student's address will be deleted from any record if requested in writing by a custodial parent to prohibit a non-custodial parent from learning the address simply by having access to the school records.

    The district will make records available to a parent/adult student for review:

    a. without delay but no later than forty-five (45) days after the request;

    b. before any meeting regarding an IEP;

    c. before a resolution session; and

    d. not less than five (5) business days before any due process hearing.

The district should note that test protocols may be part of a student's educational record. Test publishers require districts to maintain the integrity and validity of tests. Parents or others authorized by the parent/adult student interested in a student's test results are allowed to view the student's responses to test items, but only if the information is shared in the presence of a person qualified to explain the results and meaning of the various items and data contained in the protocol.

3. Upon request, provide a parent/adult student with a list of the types of education records the school collects, maintains, or uses and where they are kept.

4. Respond to any reasonable request made by a parent/adult student for an explanation and interpretation of a record.

5. Provide a copy of education records if a parent/adult student would otherwise be unable to effectively exercise his or her right to inspect and review those records. An education record may include copyrighted test protocols which include personally identifiable information. A fee may be charged for the copies, but not to search for or retrieve information. The district shall publish a schedule of fees it intends to charge.

6. Always provide a parent/adult student a copy of the IEP and any documentation of identification and eligibility.

D. Disclosures Not Requiring Consent

Consent is generally required to disclose personally identifiable information to others. However, consent is not required when:

1. A school official or employee has a legitimate educational interest to access the records.

2. A representative of the Federal Comptroller General, the United States Department of Education, or the State Department of Education (SDE) accesses records necessary for an audit or evaluation of a federal program or for enforcement or compliance with federal regulations.

3. A student transfers to another school or school system in which the student intends to enroll unless a district has adopted a procedure requiring consent. However, the parent/adult student should be notified of the request for records at the last known address of the parent/adult student unless he or she initiated the request.

4. The health and safety of the student or other individuals is in jeopardy because of an emergency.

5. The disclosure concerns the juvenile justice system's ability to effectively serve the student or the ability to respond to court orders or subpoenas, as specified in state

law. The district will make a reasonable effort to notify the parent of the court order in advance of compliance, unless the subpoena specifically states that it is not to be disclosed.

6. An organization conducts studies on behalf of education agencies or institutions under specified FERPA criteria.

7. The disclosure is in connection with an application for financial aid and is necessary to determine eligibility for the aid, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid ("financial aid" means a payment of funds to an individual that is conditioned on the individual's attendance at an education agency or institution).

8. The district has designated information as "directory information" under the conditions in FERPA.

E. Destruction of Records

The district will maintain education records, including eligibility documentation and IEPs, for at least five (5) years after disenrollment from the district to demonstrate fiscal accountability and program compliance with the IDEA requirements. The district shall inform a parent/adult student when personally identifiable information collected, maintained, or used is to be destroyed because the information is no longer needed to provide educational services to the student.

Electronic copies will be treated as the original so long as those copies adequately capture any handwritten notes and signatures. Test Protocols and other assessment information shall be maintained during the period in which the report which utilizes such information is in effect.

Note: Medicaid-related records, specifically expenditure documentation, cost allocation process, all student records related to the Medicaid billing and service delivery (e.g., data sheets, IEPs, health care plans, physician recommendations for assessments and IEP services, evaluation recommendations, documented supervision of paraprofessionals), and revenue documentation, must be kept for a period of six (6) years.

The parent/adult student must be informed of the personally identifiable information that the district intends to destroy and that the information will be destroyed no earlier than forty-five (45) calendar days from the date of the notice. The parent/adult student must also be informed of the procedure to follow if he or she wishes to formally object to the destruction of the information and wants the records sent to him or her.

Written and electronic records of individual students are confidential. The district will ensure the complete destruction of the records which may include but is not limited to: shredding, permanently deleting, or burning, under supervision of the staff member responsible for the records if not released to the parent/adult student. The records manager should maintain a log that documents the date of destruction or release of records.

A permanent record of the student's name, address, phone number, grades, classes attended, immunization records, test scores, attendance record, grade level, and year completed may be maintained by the district without a time limitation. Any other personally identifiable information shall be destroyed at the request of the parent/adult former student. When informing the parent/adult student of his or her rights, the district should remind the parent/adult student that the records might be needed for Social Security benefits or other purposes in the future.

F. Request for Amendment of Records

A parent/adult student may request that the district amend the student's records if he or she believes that information collected, maintained, or used in the education record is inaccurate, misleading, or in violation of the privacy or other rights of the student. The district will use the following procedure:

1. The district, within a reasonable period of time—not to exceed forty-five (45) days of receipt of the request—must decide whether to amend the record. If the district refuses to amend the record, the parent/adult student must be informed of the refusal and be advised of the right to and procedure for requesting a district hearing under the district's FERPA policy. A district hearing is an informal hearing that does not have all the requirements of a due process hearing.

2. If a district hearing is requested and the district decides that the information is inaccurate, misleading, or in violation of the student's rights, the district shall amend the record and inform the parent/adult student in writing.

3. If a district hearing is requested and the district decides the information is accurate and does not violate the student's rights, the district shall inform the parent/adult student that he or she may place a statement in the record. This statement may comment on the information in the record or set forth the parent's/adult student's reasons for disagreeing with the district. Any statement placed with a record must accompany the record for as long as the district maintains the record. If the district discloses the record to any person, the district shall also disclose the statement.

G. District Hearings on Procedures for Records

Each district is required to have a FERPA policy which includes the rights to request a hearing challenging the accuracy of records.

H. Students' Rights

When special education rights transfer to a student under the IDEA and Idaho Code, the FERPA rights regarding education records also transfer to the student. The district shall inform the parent/adult student that both the IDEA and FERPA rights regarding education records transfer

although FERPA gives the parent of a student who is claimed to be a dependent for IRS purposes the right to request access without the consent of the student.

Section 6. Independent Educational Evaluations

A. Definition

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the district responsible for the education of the student in question.

B. Right to an IEE

1. A parent/adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the district. The parent/adult student is entitled to only one IEE at public expense for each district evaluation.

2. The parent/adult student has the right to an IEE at his or her own expense at any time, and the IEP team shall consider the results.

3. The parent/adult student is not automatically entitled to have additional assessments beyond those determined necessary by the district for an evaluation. However, if parent/adult student is interested in additional or different assessments and the district refuses to provide them and provides written notice of refusal. The parent/adult student may request a due process hearing.

4. A district may initiate a due process hearing, without undue delay, to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the evaluation conducted by the district was appropriate, the parent and/or adult student still has the right to an IEE but at his or her own expense.

5. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the district was not appropriate.

C. Procedures for Requesting an IEE

If a parent/adult student requests an IEE at public expense, the district may ask why he or she disagrees with the evaluation obtained by the district, but the district cannot require an explanation. The district shall give the parent/adult student the criteria under which an IEE can be obtained. The district's IEE criteria shall include the following information:

1. the location for the evaluation;

2. the required qualifications of the examiner;

3. the eligibility requirements for the specific disability categories; and

4. reasonable cost containment criteria applicable to personnel for specified assessments to eliminate unreasonably excessive fees.

Except for the criteria listed above, the district may not impose other conditions or timelines if doing so would be inconsistent with the parent's/adult student's right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

A parent/adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's cost criteria. If an IEE that falls outside the district's cost criteria is justified, that IEE will be publicly funded.

D. District Responsibilities Following IEE Requests

1. If a parent/adult student requests an IEE at public expense, the district shall do one of the following without unnecessary delay:

    a. Provide the district's IEE criteria and information about where an IEE may be obtained.

    b. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the parent/adult student may pursue an IEE, but at his or her own expense.

2. If a parent/adult student asks the district to pay for an IEE that has already been obtained, the district shall pay for the IEE if it meets the criteria for publicly funded IEEs. If the district believes that its evaluation was appropriate, but agrees to pay for the IEE, the district should state this in writing within the same document in which it agrees to pay. The district can also request SDE mediation.

E. Consideration of the IEE Results

If a parent/adult student obtains an IEE and makes that evaluation available to the district, the results must be considered by the district in any decision made with respect to the provision of FAPE. The results may also be presented as evidence at a hearing regarding the student. This is true regardless of whether the IEE is at the expense of the parent/adult student or district.

The results of an IEE cannot be the sole determining factor for eligibility. The evaluation team has the responsibility to use existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA.

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Part B PROCEDURAL SAFEGUARDS NOTICE

Revised: December 2014

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide you, the parents of a child with a disability, with a notice containing a full explanation of the procedural safeguards available under IDEA and U.S. Department of Education regulations. A copy of this notice must be given to you only one time a school year, except that a copy must also be given to you: (1) upon initial referral or your request for evaluation; (2) upon receipt of your first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of your first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action against your child that constitutes a change of placement; and (4) upon your request. [34 CFR §300.504(a)]

Your school district can provide more information on these rights. If you have questions, you should speak to the special education teacher, school principal, director of special education, or superintendent in the district.

For further explanation on any of these rights you may also contact:

Idaho Special Education Dispute Resolution

State Dept. of Education
P.O. Box 83720
Boise, ID 83720-0027
(208) 332-6914
(800) 432-4601
TT: (800) 377-3529
Fax: (208) 334-2228

For further assistance in matters relating to dispute resolution, you may contact:

DisAbility Rights Idaho

Boise Office:
4477 Emerald Street,
Suite B-100
Boise, ID 83706-2066
(208) 336-5353
(208) 336-5396 (fax)
(800) 632-5125 (toll-free)
Web:disabilityrightsidaho.org

DisAbility Rights Idaho

Pocatello Office:
1246 Yellowstone Ave.
Suite A-3
Pocatello, ID 83201-4374
(208) 232-0922
(208) 232-0938 (fax)
(866) 309-1589 (toll-free)

Idaho Parents Unlimited, Inc. (IPUL)
4619 Emerald, Ste. E
Boise, ID 83702
(208) 342-5884
(800) 242-IPUL (4785)
(208) 342-1408 (fax)
V/TT: (208) 342-5884
Web: *ipulidaho.org*

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GENERAL INFORMATION

PRIOR WRITTEN NOTICE

34 CFR §300.503

Notice

Your school district must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

Content of notice

The written notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of IDEA;
7. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; **and**
8. Provide a description of other reasons why your school district proposed or refused the action.

Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; **and**
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your school district must ensure that:

1. The notice is translated for you 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 the requirements in paragraphs 1 and 2 have been met.

NATIVE LANGUAGE

34 CFR §300.29

Native language, when used regarding 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 school 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 complaint.

PARENTAL CONSENT - DEFINITION

34 CFR §300.9

Consent

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 that you may withdraw your consent at any time.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the school district is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

PARENTAL CONSENT

34 CFR §300.300

Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings ***Prior Written Notice*** and ***Parental Consent.***

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

Your school district may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

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 school district may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Special rules for initial evaluation of wards of the State

If a child is a ward of the State and is not living with his or her parent —

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

1. Despite reasonable efforts to do so, the school 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 to an individual other than the parent and that individual has provided consent for an initial evaluation.

Ward of the State, as used in IDEA, means a child who, as determined by the State where the child lives, is:

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

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a *parent* as used in IDEA.

Parental consent for services

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

The school district 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 or later revoke (cancel) your consent in writing, your school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

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 or later revoke (cancel) your consent in writing and the school district does not provide your child with the special education and related services for which it sought your consent, 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 individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district may not

continue to provide such services, but must provide you with prior written notice, as described under the heading ***Prior Written Notice***, before discontinuing those services.

Parent's Right to Object
Once you consent to the initial start of services, the school district is not required to obtain your consent to make changes to the IEP. However, if you do not want the school district to implement the changes to the IEP, you must submit your objections in writing. Your written objections must either be postmarked or hand-delivered to the school district within 10 days of receiving the written notice of the changes.
IDAPA 8.02.03.109.05a

Parental consent for reevaluations

Your school district must obtain your informed consent before it reevaluates your child, unless your school 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 your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

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, for a reevaluation, and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school 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 place of employment and the results of those visits.

Other consent requirements

Your consent is not required before your school district may:

1. Review existing data as part of your child's evaluation or a 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 parents of all children.

The school district must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE). Also, your school district may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

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 school district may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

INDEPENDENT EDUCATIONAL EVALUATIONS

34 CFR §300.502

General

As described below, 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 obtained by your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district's criteria that apply to independent educational evaluations.

Definitions

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

Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of the Act.

Right to evaluation at public expense

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

1. If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, <u>either</u>: (a) File a

due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.

2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

Parent-initiated evaluations

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

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by hearing officers

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

School district criteria

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

CONFIDENTIALITY OF INFORMATION

34 CFR §300.611

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 school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

PERSONALLY IDENTIFIABLE

34 CFR §300.32

Personally identifiable means information that includes:

(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

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State 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 participating agencies 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 children 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 activity to identify, locate, or evaluate children in need of special education and related services (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of these activities.

ACCESS RIGHTS

34 CFR §300.613

The participating agency must permit you 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 IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (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 participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

RECORD OF ACCESS

34 CFR §300.614

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of 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

34 CFR §300.615

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

List of Types and Locations of Information

34 CFR §300.616

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

34 CFR §300.617

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

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

Amendment of Records at Parent's Request

34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading ***Opportunity For a Hearing***.

Opportunity for a Hearing

34 CFR §300.619

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

Hearing Procedures

34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Result of Hearing

34 CFR §300.620

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency 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 in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

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

Consent For Disclosure of Personally Identifiable Information

34 CFR §300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information

is disclosed to parties other than officials of participating agencies. 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 IDEA.

Your consent, or consent of an eligible child 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 is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

SAFEGUARDS

34 CFR §300.623

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 IDEA and the Family Educational Rights and Privacy Act (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 OF INFORMATION

34 CFR §300.624

Your school district must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

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 COMPLAINT PROCEDURES

DIFFERENCES BETWEEN THE PROCEDURES FOR DUE PROCESS COMPLAINTS AND HEARINGS AND FOR STATE COMPLAINTS

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the State Educational Agency, or any other public agency. Only you or a school district may file a due process complaint 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. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The State Educational Agency must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading ***Model Forms***.

ADOPTION OF STATE COMPLAINT PROCEDURES

34 CFR §300.151

General

Each State Educational Agency must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the State Educational Agency;
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Remedies for denial of appropriate services

In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2. Appropriate future provision of services for all children with disabilities.

MINIMUM STATE COMPLAINT PROCEDURES

34 CFR §300.152

Time limit; minimum procedures

Each State Educational Agency must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for the State Educational Agency's final decision.

Time extension; final decision; implementation

The State Educational Agency's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) you and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
2. Include procedures for effective implementation of the State Educational Agency's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described under the heading ***Filing a Due Process Complaint***, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the school district), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

FILING A STATE COMPLAINT

34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
   (a) The name of the child and address of the residence of the child;
   (b) The name of the school the child is attending;
   (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
   (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
   (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures.***

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

DUE PROCESS COMPLAINT PROCEDURES

FILING A DUE PROCESS COMPLAINT

34 CFR §300.507

General

You or the school district may file a due process complaint 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 complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The school district withheld information from you that it was required to provide you under Part B of IDEA.

Information for parents

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district file a due process complaint.

DUE PROCESS COMPLAINT

34 CFR §300.508

General

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the State Educational Agency with a copy of the complaint.

Content of the complaint

The due process complaint must include:

1. The name of the child;
2. The address of the child’s residence;

3. The name of the child's school;
4. If the child 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 of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the school district) at the time.

Notice required before a hearing on a due process complaint

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney) files a due process complaint that includes the information listed above.

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

Complaint amendment

You or the school district may make changes to the complaint only if:

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

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

Local educational agency (LEA) or school district response to a due process complaint

If the school 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 complaint, the school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

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

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

Other party response to a due process complaint

Except as stated under the sub-heading immediately above, ***Local educational agency (LEA) or school district response to a due process complaint***, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

MODEL FORMS

34 CFR §300.509

The State Educational Agency must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, your State or the school district may not require the use of these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint.

MEDIATION

34 CFR §300.506

General

The school district must develop procedures that make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus,

mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint***.

Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school 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 of, and encourage the use of, the mediation process to you.

The State must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the costs of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); **and**
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

Impartiality of mediator

The mediator:

1. May not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

RESOLUTION PROCESS

34 CFR §300.510

Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

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

You and the school 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 complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

Resolution period

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, ***Hearing Decisions***, 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 school 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 the meeting is held.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school 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 place of employment and the results of those visits.

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

Adjustments to the 30-calendar-day resolution period

If you and the school 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 school 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 school district agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the mediation process during this continuation period, 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 school district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school district who has the authority to bind the school district; **and**
2. Enforceable in any 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 or by

the State Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement review period

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

HEARINGS ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR §300.511

General

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the State Educational Agency or the school 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 a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of 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 school district must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of due process hearing

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

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

HEARING RIGHTS

34 CFR §300.512

General

You have the right to represent yourself at a due process hearing (including a hearing relating to disciplinary procedures) or an appeal with a hearing to receive additional evidence, as described under the subheading, ***Appeal of decisions; impartial review***. In addition, any party to a hearing has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the hearing by an attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
6. 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 school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

A hearing officer 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 at the hearing;

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 the hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school 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

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Findings and decision provided to the advisory panel and general public

The State Educational Agency or the school district, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; **and**
2. Make those findings and decisions available to the public.

APPEALS

FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

34 CFR §300.514

Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions***.

TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

34 CFR §300.515

The State Educational Agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings **or**, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period,*** not later than 45 calendar days after the expiration of the adjusted 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.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the school district).

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

General

Any party (you or the school district) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) 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 (you or the school district) bringing the action shall have 42 calendar days from the date of the decision of the hearing officer to file a civil action.

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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 school 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.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

Jurisdiction of district courts

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.

Rule of construction

Nothing in Part B of 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 children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of 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 IDEA. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING

34 CFR §300.518

Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES,*** once a due process complaint 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 State or

school district agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint 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 complaint 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 the child has turned three, the school 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 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 school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

If a hearing officer in a due process hearing conducted by the State Educational Agency agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

ATTORNEYS' FEES

34 CFR §300.517

General

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 you, if you prevail (win).

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 State Educational Agency or school 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 IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school 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 (hearing).

Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. 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 is made 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 administrative hearing officer 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.
3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

   Fees also may not be awarded for a mediation as described under the heading ***Mediation***.

   A resolution meeting, as described under the heading ***Resolution Process***, 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 school district the appropriate information in the due process request notice as described under the heading ***Due Process Complaint***.

However, the court may not reduce fees if the court finds that the State or school 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 CHILDREN WITH DISABILITIES

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 child with a disability who violates a school code of student conduct.

General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the 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 the heading ***Change of Placement Because of Disciplinary Removals*** for the definition).

Once a child 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 school 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 child's disability (see the subheading ***Manifestation determination***) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under ***Services***. The child's IEP Team determines the interim alternative educational setting for such services.

Services

The school district does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability

(see subheading, ***Manifestation determination***) or who is removed under special circumstances (see the subheading, ***Special circumstances***) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2. 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 child 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 child'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 child's IEP.

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

Manifestation determination

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Team (as determined by you and the school district) must review all relevant information in the student's file, including the child's 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, the child's disability; **or**
2. If the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If the school district, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school district, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

Determination that behavior was a manifestation of the child's disability

If the school district, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **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 school district must return your child to the placement from which your child 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

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:

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 the State Educational Agency or a school 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 the State Educational Agency or a school 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 the State Educational Agency or a school 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 has the meaning given the term ''serious bodily injury'' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Weapon has the meaning given the term ''dangerous weapon'' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Notification

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

CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

34 CFR §300.536

A removal of your child with a disability from your child'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. 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 the child's behavior in previous incidents that resulted in the series of removals; and
   c. Of such additional factors 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.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

DETERMINATION OF SETTING

34 CFR §300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional authority*** and ***Special circumstances***.

APPEAL

34 CFR §300.532

General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) 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 school district may file a due process complaint (see above) 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.

Authority of hearing officer

A hearing officer that meets the requirements described under the subheading ***Impartial hearing officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed if the hearing officer 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 your child's disability; **or**
2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated, if the school 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 school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints***, except as follows:

1. The State Educational Agency or school district must arrange for an expedited 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 you and the school 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 complaint. 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 complaint.
3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the school district may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading ***Appeal***).

PLACEMENT DURING APPEALS

34 CFR §300.533

When, as described above, you or the school district file a due process complaint related to disciplinary matters, your child must (unless you and the State Educational Agency or school 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 CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

34 CFR §300.534

General

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

Basis of knowledge for disciplinary matters

A school district will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
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 school district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district's director of special education or to other supervisory personnel of the school district.

Exception

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

1. You have not allowed an evaluation of your child or have refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, 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 children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child 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 a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by you, the school district must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

34 CFR §300.535

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child 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 child with a disability.

Transmittal of records

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

1. Must ensure that copies of the 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 the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

GENERAL

34 CFR §300.148

Part B of IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

Reimbursement for private school placement

If your child previously received special education and related services under the authority of 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 school district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer 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 the State Educational Agency and school 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 individualized education program (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 school 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 school district of that information;
2. If, prior to your removal of your child from the public school, the school 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 a hearing officer, 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.

Chapter 12
DISCIPLINE

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Chapter 12
Discipline

Schools are encouraged to address student misconduct through appropriate school-wide discipline policies, instructional services, and/or related services. If a student with a disability has behavior problems that interfere with his or her learning or the learning of others, an individualized education program (IEP) team shall consider the use of strategies, including positive behavioral supports and interventions, to address the behavior. If the IEP team determines that such services are needed, they must be included in the IEP and must be implemented.

Students with disabilities who are subject to disciplinary actions by a district are entitled to all of the due process rights afforded students without disabilities under Idaho Code 33-205 and state and local policies. In addition to these rights, the IDEA provides special education rights and additional discipline procedures to a student with a disability whom the district is removing from his or her current educational placement. These procedures come into play when the district is unable to work out an appropriate placement for the student with the parent/adult student. Further, these procedures do not prevent district personnel from maintaining a safe environment conducive to learning that is critical for all students.

Even though Idaho Code allows district personnel to "temporarily suspend" students for up to twenty (20) school days, all students with disabilities who have been suspended or expelled for more than ten (10) consecutive or cumulative school days in a school year retain the right to a free appropriate public education. (FAPE).

Section 1. General Discipline Provisions

The general requirements pertaining to the discipline procedures of special education students are as follows:

1. District personnel may remove a student from his or her current placement to an appropriate Interim Alternative Education Setting (IAES) or another setting for not more than ten (10) consecutive days to the extent those alternatives are applied to students without disabilities.

2. District personnel may suspend any student, including a special education student, for up to ten (10) cumulative school days in a school year if he or she violates the code of student conduct, and services may cease during this period. In accordance with Idaho Code (unless services are provided to students who are nondisabled who are so suspended):

    a. A school principal has the authority to order a temporary disciplinary suspension for up to five (5) school days.

b. The superintendent can extend the disciplinary suspension for an additional ten (10) school days.

c. Provided, that on a finding by the Board of Trustees that the student's immediate return to school would be detrimental to other students' health, welfare or safety, the Board of Trustees may extend the temporary suspension for an additional five (5) school days.

d. Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any student who has been suspended may be readmitted to the school by the superintendent or principal who suspended him or her upon such reasonable conditions as said superintendent or principal may prescribe.

3. A series of suspensions exceeding ten (10) days in a school year shall not constitute a pattern of removals resulting in a change of placement, without following the procedures discussed in this chapter.

4. Students who have not been determined eligible for special education may be entitled to an evaluation and other IDEA rights—including the right to FAPE during periods of disciplinary suspension that extend beyond ten (10) cumulative school days in a school year if:

   a. The district had basis of knowledge that the student met the IDEA eligibility prior to the behavior that precipitated the disciplinary suspension; and

   b. The parent/adult student asserts the right to FAPE.

Section 2. Actions Involving a Change of Placement for Disciplinary Reasons

A change of placement is a removal from the student's current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) cumulative school days in a school year. Factors such as the student's behavior is substantially similar to behavior in previous incidents that resulted in series of removals, the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern. Whether a pattern of removals constitutes a change of placement will be determined on a case-by-case basis by the district; the district's determination is subject to review through an expedited due process hearing and judicial proceedings. The district may consider any unique circumstances in determining whether to pursue a disciplinary change of placement.

The parent shall be provided with written notice on the date on which the decision is made to remove the student if it constitutes a change of placement. A copy of the IDEA's procedural safeguards shall be provided with the notice.

Even if the disciplinary action is to suspend or expel a student, FAPE [educational services] cannot cease for more than ten (10) cumulative school days in a school year.

A manifestation determination is required if the district is considering removing a student with a disability from his or her educational placement for disciplinary reasons which constitute a change of placement or placing a student in an IAES. A manifestation determination is defined as a review of the relationship between the student's disability and the behavior subject to disciplinary action. See Section 4 of this chapter for more information.

A. District Actions Resulting in a Change of Placement

District administrators change a student's placement by:

1. Unilaterally removing a special education student from his or her current placement for:

    a. more than ten (10) consecutive school days in a school year; or

    b. subjecting a special education student to a series of removals that constitute a pattern:

        1) because the series of removals total more than ten (10) school days in a school year;

        2) because the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and

        3) because of such additional factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

2. District personnel may remove a student to an IAES for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:

    a. carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State Education Agency (SEA) or a Local Education Agency (LEA); or

b. knowingly possesses or uses illegal drugs *or* sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

c. has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

B. Hearing Officer Actions Resulting in a Change of Placement

Through an expedited due process hearing, district administrators may ask a hearing officer to place a student with a disability in an appropriate IAES.

1. In requesting a hearing officer to place a student in an IAES, the district must:

    a. demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and

    b. indicate whether the request is for an *initial* period of not more than forty-five (45) school days or an *additional* period of not more than forty-five (45) school days.

2. In determining whether to grant a district's request to place a student in an IAES, the hearing officer must determine that the IAES proposed by district personnel in consultation with the student's special education teacher or the IEP team is appropriate.

C. Court Actions Resulting in a Change of Placement

District administrators may seek a court order (called a "Honig Injunction") to remove a special education student from school or the current placement at any time. Educational services [FAPE] shall not cease during an injunction.

Section 3. FAPE Considerations

Services shall not cease and the district shall always provide FAPE to the student with a disability:

1. after a student with a disability is removed for ten (10) school days in the same school year and subsequent days of removal; and

2. there is a disciplinary change of placement.

A. District Actions When There is Not a Change in Placement

1. Notify the parent/adult student of the disciplinary action to be taken on the date of the decision.

2. School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals.

3. Conduct as appropriate a functional behavioral assessment (FBA) and provide behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

B. District Actions When There is a Change of Placement

Whenever disciplinary action results in a change in placement, the district must:

1. notify the parent/adult student of the disciplinary action to be taken on the date of the decision and provide a copy of the *Procedural Safeguards Notice*;

2. hold an IEP team meeting to determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals; and

3. conduct a manifestation determination immediately, if possible, but not later than ten (10) school days after the date on which the decision to take the disciplinary action is made.

C. FAPE Requirements in an IAES

If the student's placement will change to an IAES, the IEP team shall select an IAES that enables the student to:

1. continue to participate in the general education curriculum;

2. progress toward meeting the goals set out in his or her IEP; and

3. receive, as appropriate, an FBA and behavioral intervention services to address the behavior violation so that it does not recur.

D. Transportation

If the IEP team determines that special transportation is required as a related service it must be included in the IEP, all procedural safeguards under the IDEA shall be afforded to the student in matters concerning transportation. Whether a suspension from the bus counts as a suspension from school depends on whether bus transportation is identified on the IEP:

1. If bus transportation is on the IEP, a suspension from the bus would be treated as a suspension from school (unless the district provides transportation services in some other way, such as "transportation in lieu of") because transportation is necessary for the student to obtain access to the location where all other services will be delivered.

2. If bus transportation is not on the IEP, a suspension from the bus would not be counted as suspension from school. In these cases, the student and the parent would have the same obligation to get to and from school as a student without a disability who had been suspended from the bus.

If the student's behavior on the bus results in a suspension from the bus, the IEP team shall consider whether the behavior should be addressed in a Behavioral Intervention Plan (BIP).

Section 4. Procedures for a Manifestation Determination

A manifestation determination by the parent/adult student and relevant IEP team members (as determined by the district and parents/adult students) involves a review of the relationship between the student's disability and the behavior subject to disciplinary action.

A. Actions Involving a Manifestation Determination

When a disciplinary action results in a change of placement or placement in an IAES, the district will take the following actions:

1. The parent/adult student will be notified of the disciplinary action and provided with a copy of the *Procedural Safeguards Notice* not later than the date on which the decision to take disciplinary action is made.

2. A meeting will be held immediately, if possible, but no later than ten (10) school days after the date on which the decision to take disciplinary action is made. This meeting will include the district, the parent/adult student, and other relevant members of the IEP team (as determined by the parent and the district). The purpose of the meeting is to review all relevant information in the student's file including:

    a. the student's IEP;

b. any teacher observations; and

c. any relevant information provided by the parent/adult student.

3. Based on a review of the information, the district, parent, and relevant members IEP team as determined by the parent and the district, will determine if the conduct in question was:

   a. caused by or had a direct and substantial relationship to the student's disability; or

   b. the direct result of the district's failure to implement the IEP (if so, the deficiencies must be immediately remedied).

   If the district, parent, and relevant members IEP team find that either a or b above is true, the student's behavior will be determined to be a manifestation of his or her disability.

B. When Behavior Is a Manifestation of the Disability

If a student's behavior is determined to be a manifestation of his or her disability, the IEP team, (relevant members determined by the parent and the district), will:

1. conduct an FBA and implement a BIP for the student if the district had not conducted such an assessment prior to the behavior that resulted in a change in placement;

2. review the BIP if one had previously been developed and modify it as necessary to address the behavior;

3. return the student to the placement from which he or she was removed, unless the parent and district agree in writing to a change of placement as part of the modification of the BIP.

   If there were grounds to place a student in an IAES, the student may remain in the IAES even if there was a manifestation.

C. When Behavior Is Not a Manifestation of the Disability

If the IEP team, (relevant members determined by the parent and the district), determines that the student's behavior was not a manifestation of his or her disability, the same disciplinary procedures applicable to students without disabilities, including long-term suspension or expulsion, may be applied to the student with a disability. The district will forward special education and disciplinary records for consideration to the board of trustees, which makes the final decision regarding the disciplinary action.

Even if the disciplinary action is to suspend or expel, the following provisions shall be met:

1. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability to continue to participate in the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.

2. An IEP team shall convene to develop an IEP that specifies what special education and related services will be provided during the period of suspension or expulsion.

Section 5. Other Considerations

A. Request for an Expedited Hearing

An expedited hearing is a hearing that occurs within twenty (20) school days of the request with a decision rendered within ten (10) school days of the hearing.

1. The parent/adult student may request an expedited due process hearing if he or she:

    a. disagrees with the determination that the behavior was not a manifestation of the student's disability;

    b. disagrees with any decision of the IEP team regarding a change of placement during a disciplinary proceeding; or

    c. disagrees with the decision regarding the student's placement in an IAES.

2. The district may request an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.

3. When an appeal of a disciplinary action is requested (by the parent/adult student to challenge the action or by the district to seek removal to an interim setting), the student remains in the IAES pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first unless the parent/adult student and district agree otherwise.

4. Resolution meeting requirements apply but are shortened to fifteen (15) and seven (7) days. No challenge for sufficiency of request is available.

5. A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

See Chapter 13, Sections 4 and 5, for an explanation of regular and expedited due process hearing rights and procedures.

B. Protections for Students Not Yet Eligible for Special Education

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the district may assert the protections of the IDEA *if* the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.

1. Basis of knowledge

   With limited exceptions, which are described in item 2 below, the district will be deemed to have knowledge that an individual is a student with a disability if before the behavior that precipitated the disciplinary action occurred one or more of the following is true:

   a. The parent/adult student has expressed concern to supervisory or administrative district personnel or a teacher of the child that the student is in need of special education and related services. The concern must be expressed in writing unless the parent/adult student is unable to write or has a disability that prevents a written statement.

   b. The parent/adult student has requested that the student be evaluated for special education.

   c. The student's teacher or other district personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other district supervisory personnel in accordance with the district's established Child Find system or special education referral system.

2. No basis of knowledge

   The district will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

   a. An evaluation was conducted and a determination was made that the student did not have a disability.

   b. The parent/adult student did not give written consent for an evaluation.

   c. The parent/adult student refused special education services.

If the district did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

C. **Parent/Adult Student Request for Evaluation of a Disciplined Student**

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation will be conducted in an expedited manner. Pending the results of the evaluation, the student will remain in the educational placement determined by district officials, which can include suspension or expulsion without educational services.

1. If the student is subsequently determined eligible for special education, the district will:

    a. Convene an IEP team meeting to develop an IEP.

    b. Conduct a manifestation determination.

        1) If the behavior is caused by or had a substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the least restrictive environment (LRE).

        2) If the behavior is not caused by nor had a substantial relationship to the student's disability, the student is subject to the disciplinary placement that had been determined, but he or she is still entitled to receive FAPE, which is determined by the IEP team. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.

2. If the evaluation team determines that the student is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students.

D. Referrals to and Action by Law Enforcement and Judicial Authorities

1. The district may report a crime committed by a student with a disability to appropriate authorities. The IDEA does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.

2. If a student brings a firearm to school, law enforcement shall be contacted pursuant to the Gun-Free Schools Act.

3. If the district reports a crime, it will ensure that copies of the special education and disciplinary records of the student are given to the appropriate law enforcement authorities for their consideration, to the extent the release of records is permitted by the Family Educational Rights and Privacy Act (FERPA). Generally, the release of records requires consent, but exceptions are listed in Chapter 11, Section 5.

E. Transfer of Discipline Records

Idaho Code 33-209 requires that whenever a student transfers to a new school and a school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information will be included in the transfer of records to the new school. The transmission of the student's record shall include both the student's current IEP, including the FBA, BIP, and any current or previous disciplinary action taken. This information will be contained in a sealed envelope marked to indicate the confidential nature of the contents and addressed to the principal or other administrative officer of the school.

When the district initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities shall be given to authorized district personnel for their consideration in making the final determination regarding the disciplinary action.

Chapter 13
DISPUTE RESOLUTION

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Chapter 13
Dispute Resolution

On occasion, conflicts arise between school districts and families. Several mechanisms are available through the State Department of Education (SDE) to assist in resolving a dispute. The processes are facilitation, informal conflict resolution, mediation, state complaints, due process hearings, and expedited due process hearings. This chapter contains information on each of these processes. The information contained within this chapter is not intended to limit in any manner the procedural due process/dispute resolution rights provided by federal or state law.

Contact Information

In addition to providing general information and support concerning IDEA related issues, the SDE accepts requests for facilitation, informal conflict resolution, and mediation by telephone and e-mail. State complaints and due process hearings are accepted via fax, mail, personal delivery, or may be scanned and attached to an email. All state complaints and due process hearing requests must include a signature of the filing party.

Requests for dispute resolution should be directed to the Dispute Resolution Coordinator (DRC) at:

Special Education Dispute Resolution

Idaho State Dept. of Education
P.O. Box 83720
Boise, ID 83720-0027
(208) 332-6914
(800) 432-4601
TT: (800) 377-3529
Fax: (208) 334-2228

For further assistance in matters relating to dispute resolution, you may contact:

DisAbility Rights Idaho
Boise Office:
4477 Emerald St., Ste B-100
Boise, ID 83706-2066
(208) 336-5353
(208) 336-5396 (fax)
(800) 632-5125 (toll-free)
Web:disabilityrightsidaho.org

DisAbility Rights Idaho
Pocatello Office:
1246 Yellowstone Avenue, Suite A-3
Pocatello, ID 83201-4374
(208) 232-0922
(208) 232-0938 (fax)
(866) 309-1589 (toll-free)

Idaho Parents Unlimited (IPUL)
4619 Emerald, Ste. E
Boise, ID 83702
(208) 342-5884
(208) 342-1408 (fax)
(800) 242-IPUL (4785) (toll-free)
V/TT: 208-342-5884
Web: *ipulidaho.org*

Section 1. Facilitation

A. Definition of Facilitation

Facilitation is a voluntary process during which dispute resolution contracted individual or individuals facilitate an IEP team meeting or other IDEA-related meeting. The role of the facilitator is to help team members communicate more effectively and efficiently. Facilitation supports early dispute resolution by providing assistance to the team before a conflict develops into a formal dispute. A facilitator is trained to help teams focus on key issues and move toward productive outcomes. Because the facilitator is not a member of the team, he or she can act as a neutral and impartial third-party providing balance, offer an outsider's perspective on the process, and help parties to be heard and understood by the rest of the team. Note: A facilitator will not be responsible for creating or documenting agreements made by the team.

B. Facilitation Requests

A request for facilitation may be made by either a parent/adult student or a designated district representative, such as the director of special education. Facilitation may be requested for any IDEA-related meeting including: eligibility meetings; annual or amended IEP team meetings; due process hearing meetings such as resolution sessions or settlement meetings; as well as manifestation determination meetings.

Requests for facilitation should be made at least two weeks in advance to the meeting. Upon the request for facilitation, the Dispute Resolution Coordinator (DRC) will immediately contact the other party for approval. As facilitation is voluntary, both parties must agree to facilitation for the process to go forward. The DRC will contact both the parent/adult student and the district representative, notifying each who the facilitator will be. The facilitator will contact the parties to conduct pre-facilitation interviews to help build an agenda for the facilitation. Generally meetings are scheduled by the district who is responsible for sending out the *Invitation to Meeting*.

C. Facilitator Role

The role of the facilitator is to lead the meeting and guide parties through the process. The facilitator may work with parties to establish the agenda and identify issues important for parties to cover in the meeting. Facilitators may ask pertinent questions of parties providing occasional clarification or perspective, and work to ensure that participants are able to participate in a productive and balanced meeting. Facilitators are not to make decisions for teams, serve as definitive experts on IDEA processes or matters of law, record minutes for meetings, or finalize documents, although they may facilitate the crafting of language parties will include in a student's IEP.

Facilitators shall not be called to testify in due process hearings or civil proceedings regarding facilitated meetings they have conducted as dispute resolution contractors.

D. Dispute Resolution Facilitators

Facilitators are trained in effective conflict resolution processes, communication, negotiation, problem-solving, and in laws and regulations relating to the provision of special education and related services. While a facilitator in this context will not offer advice on a particular course of action, he or she is required to help parties explore the soundness of any assumptions or agreements. The DRC may appoint one or two individuals to serve as facilitator(s) of a meeting.

1. In all cases a facilitator shall not:

    a. be an employee of the district involved in the dispute;

    b. have children enrolled in the district involved in the dispute;

    c. have a personal or professional interest that may affect the ability to remain impartial or neutral; or

    d. be used if either party rejects the facilitator(s) based on a perceived inability to be neutral or impartial.

E. Facilitation Timelines

The DRC will appoint a facilitator within five (5) business days of an acceptance of a request. Every effort will be made to complete the process within twenty-one (21) calendar days.

Section 2. Informal Conflict Resolution

A. Definition of Informal Conflict Resolution

Informal conflict resolution is offered in an effort to improve relationships between parties and foster healthy communication. This informal conflict resolution may include topics outside of those set forth as appropriate for IDEA mediation, extending beyond the identification, evaluation, educational placement or the provision of FAPE. As with mediation, the process of informal conflict resolution is confidential and voluntary, and the third-party is a trained neutral and impartial third-party. Informal conflict resolution may be appropriate when parties face difficulties communicating productively or need to reach understanding on differing perspectives. Any agreements reached between parties are self-enforced.

B. Informal Conflict Resolution Requests

A request for informal conflict resolution may be made in person, writing or via telephone by either a parent/adult student or a district representative. The DRC will screen requests to determine the appropriateness of the process for each individual case. Informal conflict resolution can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state complaint involving an individual student, however cannot be used to delay the state complaint process or a due process hearing timelines.

Upon request for informal conflict resolution, the DRC or the assigned facilitator will contact all parties to schedule the meeting. Because informal conflict resolution is voluntary, both parties must verbally state their agreement to participate for the process to go forward. Informal conflict resolution can be conducted by dispute resolution contractors or dispute resolution staff as assigned by the DRC. Informal conflict resolution is offered at no charge to the district or to the parent/adult student.

C. Informal Conflict Resolution Procedures

1. No video or audio recording of the meeting proceedings will be made.

2. Because informal conflict resolution is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during the meeting is discouraged, and a school district may not have legal representation present if a parent/adult student does not.

3. The DR office will not retain any documentation or informal agreements created by the parties. No other records of the content of the meeting will be kept by the SDE.

4. Either party has the option to end the informal conflict resolution meeting at any time.

D. Informal Conflict Resolution Timelines

The DRC will appoint a facilitator within five (5) business days of an acceptance of a request. The meeting will be held in a location convenient to the parties involved, and every effort will be made to complete the process within twenty-one (21) calendar days.

E. Confidentiality

Discussions that occur during the informal conflict resolution process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding in any state or federal court. Facilitators shall not be called to testify in due process hearings or civil proceedings regarding facilitated meetings they have conducted as dispute resolution contractors. The facilitator may require a confidentiality agreement be signed by participants.

F. Nature of Agreements

An agreement reached by the parties through informal conflict resolution, whether memorialized in writing or agreed to verbally, are self-enforced and not enforceable by the SDE.

Section 3. Mediation

A. Definition of Mediation

Mediation is a confidential and voluntary process where a trained neutral and impartial third-party provides a structure for parents/adult students and district personnel to identify areas of agreement and work to resolve points of disagreement concerning the identification, evaluation, educational placement, or provision of FAPE. Mediation aims to build positive working relationships, encourage mutual understanding, and help the parties focus on their common interest—the student.

While discussions in mediation are confidential and parties are asked to sign a confidentiality agreement, written agreements produced in mediation are legally-binding and enforceable in state or federal court. With the agreement of all parties in the mediation, an IEP may be amended as part of a written agreement.

Mediation may be appropriate when parties are in disagreement and seem unable to move forward without outside assistance, or they, after making a good-faith effort, face an impasse in an attempt to resolve the disagreement. Mediation can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state complaint.

B. Mediation Requests

A request for mediation may be made in person, writing or via telephone by either a parent/adult student or a district representative at any point in a dispute. The DRC will screen all mediation requests to determine the appropriateness of the process for each individual case. Mediation is automatically offered when a state complaint involving an individual student or a request for a due process hearing has been filed. Mediation cannot be used to delay the state complaint process or a due process hearing timelines.

Upon request for mediation, the Dispute Resolution office will contact all parties to schedule the mediation. Because mediation is voluntary, both parties must verbally agree to mediate for the process to go forward. Mediators are selected by the DRC from a list of trained professionals. Mediation is provided at no charge to the district or to the parent/adult student.

C. Mediation Procedures

1. The mediation will be conducted in compliance with the IDEA.

2. No video or audio recording of the mediation proceedings will be made.

3. Each party is limited to no more than three participants who have the authority to make final resolution decisions. The mediator may increase this number at his or her discretion and with agreement of all parties.

4. The district shall have at least one representative present who has the authority to commit resources.

5. Because mediation is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during a mediation session is discouraged. A district may not have legal representation present if a parent/adult student does not.

6. The Dispute Resolution office will retain copies of the signed agreement, if an agreement is reached, and the confidentiality agreement. No other records of the mediation will be kept by the SDE. (See the *Confidentiality Agreement* form in the Documents section of this chapter).

7. The mediator will provide signed copies of the agreement, if an agreement is reached, to each party and the Dispute Resolution office. (See the *Mediation Agreement* form in the Documents section of this chapter).

8. The mediator, afforded mediator privilege under Idaho law, will be excluded from participation in subsequent actions specific to the case mediated including complaint investigations, due process hearings, and legal proceedings. The mediator may mediate again for the parties if assigned and parties approve or if the mediated agreement calls for the mediator's potential future participation with the parties.

9. A due process hearing requested prior to mediation may be canceled by the requesting party as a result of the mediation agreement. The requesting party will immediately provide the hearing officer with documentation of the voluntary withdrawal of the due process hearing request. The mediator will immediately inform the Dispute Resolution office of the decision to withdraw the due process hearing request.

10. If for any reason the mediation does not end in a written agreement, the mediator will provide each party and the Dispute Resolution Coordinator with a statement certifying that mediation occurred but no agreement was reached.

11. Either party has the option to end the mediation at any time.

D. Dispute Resolution Mediators

Dispute resolution mediators are trained in effective conflict resolution processes, communication, negotiation, problem-solving skills, and in laws and regulations relating to the provision of special education and related services. While a mediator will not offer advice on a particular course of action, a mediator is required to help parties explore the soundness of any agreement. Mediators are assigned on a rotational basis with consideration for geographical location.

1. In all cases a mediator shall not:
    a. be an employee of the SDE or district involved in the dispute;
    b. have children enrolled in the district involved in the dispute;
    c. have a personal or professional interest that may affect the ability to remain impartial or neutral; or
    d. be used if either party rejects the mediator based on a perceived inability to be neutral or impartial.
2. Additionally, if the parties have agreed to mediation following a due process hearing request, co-mediators may not be used.

E. Mediator Role

The mediator has the responsibility to contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation. The mediator also: establishes the ground rules for all parties to follow; guides the process; encourages open and honest communication; ensures that each party is heard; phrases information and summarizes issues; and facilitates the writing of the agreement.

F. Mediation Timelines

The DRC will appoint a mediator within three (3) business days of all parties agreeing to mediate. The mediation will be held in a location convenient to the parties involved, and every effort will be made to complete the process within twenty-one (21) calendar days.

G. Confidentiality

Discussions that occur during the mediation process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding. Parties in the mediation process will be afforded the opportunity to review the confidentiality agreement and will be required to sign it before mediation begins. (See the *Mediation Confidentiality Agreement* in the Documents section of this chapter).

H. Mediation Agreement

An agreement reached by the parties through mediation shall be set forth in writing and is enforceable in state and federal courts.

Section 4. State Complaints

A. Definition of State Complaint

State complaints can be filed by any individual or organization alleging any violation of the IDEA, including an alleged failure to comply with a previous due process hearing decision. State complaint procedures are outlined in IDEA regulations requiring, in part, a complaint must allege a violation that occurred no more than one year (365 days) prior to the date the complaint has been received. (See IDEA regulations 34 CFR§300.150 through 300.153).

The filing party must provide a written complaint that includes the name and contact information of the complainant, the name, address, and attending school of child (if applicable), description and facts of the alleged problem to the extent known and available to the complainant at the time, and a proposed resolution. The party filing the complaint must forward a copy of the complaint to the district at the same time the party files the complaint with the Dispute Resolution office. IDEA allows sixty (60) days to resolve the complaint with mediation, investigation and final report, or a pre-investigation corrective action plan (CAP).

The DRC determines whether the complainant's submission meets the IDEA requirements for a complaint. If the complaint is ruled insufficient, the complainant will be notified in writing. The DRC will determine if an onsite investigation is necessary and will assign a complaint investigator to engage in neutral fact-finding if the complaint is accepted. If investigated, a written decision will be provided to the complainant and the district addressing each allegation, findings of fact, conclusions, and any corrective actions ordered.

B. Filing a State Complaint

The state complaint will be accepted if received by mail, fax, hand delivery, or scanned and attached to an email with the complainant's signature included. Reasonable accommodations will

be provided to individuals who need assistance in filing complaints. A state complaint filed by a parent/adult student or public agency must be signed and must include all of the information indicated on the *Form for Filing a State Complaint* (located in the Document section of this chapter).

C. Methods of Resolving State Complaints

Mediation will be offered in a case regarding an individual student. If mediation is not accepted by the parties or fails to resolve the allegation(s) that gave rise to the complaint, then resolution of a state complaint may be achieved through one or more of the following processes:

1. **Verification of resolution**: Upon receipt of the allegations determined by the complaint investigator and the DRC, the district may submit information to document that one or more of the allegations of the complaint have been resolved. The Dispute Resolution office may also receive similar information from other sources.

2. **Corrective action plan (CAP)**: The district may propose a CAP to address the allegations in the complaint. The DRC may accept, reject, or negotiate the proposed CAP, or require other corrective actions or timelines to ensure the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, an investigation will be conducted on unresolved allegations.

3. **Investigation:** The SDE will appoint a complaint investigator to the case who will conduct a fact finding investigation which may include interviews and reviews of files, correspondence, and other information. An onsite investigation may occur as part of the investigation. The complaint investigator will submit his or her findings of fact, conclusions, and, in coordination with the SDE, identify appropriate corrective actions, if required.

D. State Complaint Procedures

Upon receipt of a written state administration complaint, the DRC will ensure the following procedures are followed:

1. Verify proper filing procedures were followed and determine if the complaint meets established criteria, including sufficient allegations of violation of IDEA and facts within five (5) business days. The complainant will be notified if a submission is insufficient to process as an complaint. The complainant will be given the opportunity to submit additional information about the allegations, whereas upon receipt of the additional information, the sixty (60) day timeline for completion will start.

2. The district (specifically the superintendent, the special education director, and the school board chair) will be notified by the DRC that the complaint has been received

and what, if any, allegations have been accepted for investigation within ten (10) business days of receiving the complaint. The school district is given an opportunity to respond to the complaint and may initiate within fourteen (14) days of receipt of the complaint a corrective action proposal (CAP) to resolve all or some of the allegations in the complaint, subject to DRC approval. At the complaint investigator's discretion, the timeline for a CAP may be extended, or the complaint investigation may progress until a CAP has been accepted by the Dispute Resolution office. The complaint investigator is responsible for managing the timelines of the investigation and may submit a final report at any point within the 60-day timeline.

3. Mediation can be requested by either party at any time and must be offered for complaints regarding an individual student. While parties are generally encouraged to resolve complaints collaboratively, choosing not to participate in mediation will not be considered relevant in an investigation. If parties opt for mediation, it will not delay the timelines required for resolving a complaint unless all parties agree.

4. Provide the parent/adult student a copy of the Procedural Safeguards Notice.

5. Complainants will be given an opportunity to provide additional information about the allegations, either orally or in writing.

6. All or any part of the written complaint will be set aside by the hearing officer, if the allegation is being addressed in a pending due process hearing or a hearing decision which has already been rendered. Any issue not a part of a due process action will be resolved following the state complaint procedures and timelines.

7. The Dispute Resolution office will investigate a complaint alleging that a final hearing officer decision is not being implemented by a public agency.

8. A final report of the investigation will be issued to the district superintendent, board chairperson, special education director, and complainant, that shall include but is not limited to the findings of fact, conclusions, and corrective action(s) for each allegation within sixty (60) calendar days of receipt of a sufficient complaint (see D.1). This time period may be extended, but only under exceptional circumstances, which shall be documented by the DRC, or if the complainant and public agency agree to extend the time to engage in mediation or other alternative dispute resolution procedures.

9. If a violation of the IDEA is verified by the complaint investigator, the report shall include corrective actions addressing, as appropriate:

a. how to remedy any denial of FAPE, which may include the award of compensatory services, monetary reimbursement or other corrective action as appropriate to the needs of the student;

b. the future provision of services to be considered by an IEP team for the student with a disability, when appropriate; and

c. the provisions of technical assistance, documentation of compliance, or written assurances, if needed.

10. The SDE will ensure the district takes corrective action if it is determined that the district was out of compliance through technical assistance activities, negotiations, and/or corrective actions no later than one year after the identification of non-compliance. A complaint investigation final report cannot amend a student's IEP.

11. The Dispute Resolution office ensures noncompliance has been corrected and verifies through review of documentation or interviews, or both, the corrective actions were implemented no later than one year (365 days) after the determination of noncompliance. If necessary, the SDE must use appropriate enforcement mechanisms such as the provision of technical assistance, conditions on funding, a corrective action, an improvement plan, and/or withholding funds, in whole or in part.

Section 5. Due Process Hearings

A. Definition

A due process hearing request involves an allegation or a series of allegations by either a parent/adult student or the district on issues relating to the identification, evaluation, educational placement, and the provision of FAPE.

The due process hearing is overseen by a hearing officer appointed by the DRC. At the due process hearing, the parent/adult student presents evidence, cross examines witnesses, and presents the case to an impartial hearing officer. The hearing officer renders a decision on the merits of the issues relating to the due process hearing.

The due process hearing request must allege a violation occurred not more than two (2) years before the date the parent/adult student or public agency knew or should have known about the alleged action that forms the basis of the due process hearing request, subject to the exceptions described later in this section. Mediation is offered in an effort to resolve issues and parties may request mediation at any time. If mediation is rejected by either party, the due process hearing timelines will remain in effect.

B. Due Process Hearings and Expedited Due Process Hearings

Idaho's due process system has two settings for due process hearings: a regular due process hearing and an expedited due process hearing.

1. A regular due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of FAPE.

2. An expedited due process hearing is an administrative hearing to resolve disputes concerning discipline and/or placement related to discipline.

C. Filing a Due Process Hearing

Due process hearing requests must include a complete and signed copy of the *Due Process Hearing Request Form* (located in the Documents section at the end of this chapter) or a signed document providing all of the general information, issue(s), and resolution(s) information required in the *Due Process Hearing Request Form*. Reasonable accommodations will be provided to individuals who need assistance in filing a written request.

A parent/adult student or public agency (or their attorney authorized to practice law in the state of Idaho) filing a due process hearing request must provide the due process hearing complaint to the other party and to the Dispute Resolution office. The request shall be mailed, faxed, hand delivered, or scanned and attached to an email with a signature of the filing party. All applicable timelines will start when the request has been received by the non-requesting party and the SDE.

1. Due Process Hearing Request from Parent/Adult Student: A due process hearing may be requested on behalf of a student by a parent, adult student, or by an attorney, properly licensed in Idaho, representing the student.

    a. A due process hearing shall be initiated within two (2) years of the date the parent/adult student knew or should have known of the issues giving rise to the allegation(s). The two-year timeline will not apply if the parent/adult student was prevented from requesting a hearing due to specific misrepresentations or the withholding of information by the public agency required to be provided by the IDEA.

    b. A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of FAPE if the district proposes to initiate or change any of these matters, or if the district refuses the parent's/adult student's request to initiate or change any of these matters.

2. Due Process Hearing Request by a District: If the district initiates a hearing request, the district must inform the parent/adult student and the SDE. A district may initiate a due process hearing within two years of the dispute in an attempt to accomplish one or more of the following:

    a. override a parent's/adult student's refusal of consent for an initial evaluation or re-evaluation, or release of information;

    b. override a parent's/adult student's written objection to an IEP program change, an educational placement change, or disciplinary actions when there is an imminent threat to safety;

    c. the placement of a student in an Interim Alternate Education Setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others;

    d. a determination whether an evaluation conducted by the district was appropriate or whether an evaluation obtained by a parent/adult student meets the criteria for a publicly funded Independent Educational Evaluation (IEE);

    e. resolution if a parent/adult student disagrees with an IEP or placement change by the district, where the parent/adult student filed a written objection to the IEP or to all or parts of the proposed change in writing within ten (10) calendar days of receiving written notice of the proposed change, thereby stopping the implementation of the proposed change. If resolution through additional IEP meetings or mediation fails to resolve the disagreement, the district may request a due process hearing to obtain a hearing officer's decision regarding the proposed change. (Note: the written objection cannot be used to prevent the public agency from placing a student in an Interim Alternative Educational Setting (IAES) in accordance with the IDEA); or

    f. a determination if a proposed IEP is appropriate even if the parent/adult student has not filed a formal objection.

D. Hearing Officer Appointment

1. The hearing officer shall be appointed within ten (10) calendar days of the SDE receiving the due process hearing request or within five (5) business days of an expedited hearing. Hearing officers are selected from a list of specially trained and impartial professionals. A list of qualifications for each hearing officer is kept by the DRC.

2. The hearing officer must not be a member of the district school board, an employee of the school district, or an employee of the SDE.

3. The hearing officer must not have a personal or professional interest that conflicts with the objectivity required of a hearing officer.

4. The hearing officer must be specially trained in conducting due process hearings, possess knowledge and understanding of the provisions of Idaho law, the IDEA, and judicial interpretations, and ability to conduct hearing and render and write decisions with appropriate, standard legal practice.

5. The district will pay for all actual expenses incurred by the hearing officer and for the cost of a verbatim transcript of the hearing. The hearing officer will be compensated at rates set by the SDE.

E. Due Process Hearing Policies

After a due process request is filed by the parent/adult student or the district, the following procedures will be followed.

1. The Dispute Resolution office offers mediation as a voluntary option to both parties. Parties may request mediation at any time. Choosing mediation shall not alter or delay the timeline of the due process hearing.

2. The receiving party may challenge the sufficiency of the due process hearing request within fifteen (15) days of the receipt of the hearing request by filing a written sufficiency objection with the hearing officer. Challenges to the sufficiency of the due process hearing complaint must be in writing and provided to all parties. The hearing officer shall render a decision regarding the sufficiency of the allegation(s) within five (5) calendar days and immediately notify the parties of the decision in writing.

    a. If the complaint is found not to be sufficient, the party may amend its due process complaint if the other party consents in writing to the amendment and has the opportunity to resolve the complaint through a resolution meeting, or the hearing officer grants permission to amend no later than five (5) days before the due process hearing begins.

    b. Timelines for amended due process hearings begin again on the filing date of the amended request.

3. If the district has not previously sent written notice (as outlined in IDEA) regarding the subject matter in the parent's/adult student's complaint, the district must, within ten (10) calendar days of receiving the request, send the response to the parent/adult

student a letter explaining the reasons behind their actions, options considered, evaluations conducted, and other factors relevant to the district's response, in accordance with IDEA prior written notice requirements.

4. The district shall inform a parent/adult student of any free or low-cost legal or other relevant services available to him or her and provide a copy of the Procedural Safeguards if a due process hearing is requested or if the parent/adult student requests such information.

5. Within fifteen (15) days of receiving the parent's/adult student's due process hearing request, the district convenes a pre-hearing resolution session, unless both parties agree in writing to waive the resolution meeting, both parties agree to go to mediation, or the district initiates the hearing.

    a. A resolution meeting includes parent/adult student, a representative of the district who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties.

    b. The district's attorney shall not attend the resolution session unless the parent/adult student will be accompanied by an attorney.

    c. The DRC will provide a contractor specially trained in facilitating a resolution session or a contracted mediator, if requested. Either process requires approval by both parties.

    d. The purpose of the meeting is for the parent/adult student to discuss the 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.

        1) If a resolution is reached regarding the issues raised in the request for a due process hearing, the district representative and the parent/adult student will sign a settlement agreement, a legally binding document enforceable in state and federal court. The parties will immediately forward to the hearing officer signed documentation of the voluntary withdrawal of the due process hearing complaint by the requesting party.

        2) Either party may void this agreement within three (3) business days of signing the agreement.

    e. A due process hearing will be scheduled if no resolution is reached within thirty (30) calendar days of receiving the request for a due process hearing.

f. If the district is unable to obtain the participation of the parent/adult student after reasonable efforts have been made and documented, at the conclusion of the thirty (30) calendar day resolution period the district may request that the hearing officer dismiss the parent's/adult student's due process hearing request.

g. A parent/adult student may request an immediate due process hearing from the hearing officer if the district has not scheduled or participated in a resolution session within fifteen (15) days of the request.

h. The district must report to the DRC and to the hearing officer when the resolution meeting is to be held, or provide documentation indicating it was waived by both parties, or provided documentation of attempts to reach the other party, within fifteen (15) days of SDE receiving the due process hearing request.

6. The forty-five (45) day timeline for the due process hearing request starts the day after one of the following events:

   a. both parties agree in writing to waive the resolution meeting;

   b. after either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible;

   c. both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later, the parent/adult student or public agency withdraws from the mediation process; or

   d. the district files a hearing request.

All of the above events must be documented, with dates of determination, and provided to the DRC and the assigned hearing officer immediately.

F. The Due Process Hearing

1. Hearing Preparation

   a. A parent/adult student will be allowed to inspect and review reports, files, and records pertaining to the student prior to a resolution session or due process hearing. A district may charge a fee for copies of records if the fee does not effectively prevent a parent/adult student from exercising his or her right to

inspect and review those records. The district may not charge a fee to search for or retrieve records.

b. Not less than five (5) business days prior to a due process hearing, each party will disclose to all other parties: evaluations completed by that date; recommendations based on those evaluations intended to be used at the hearings; copies of exhibits to be introduced; and a list of witnesses each party intends to call at the hearing.

c. The hearing officer will provide notification as to the time and place of the due process hearing to the parent/adult student, district officials, and the SDE. The hearing shall be conducted at a time and place reasonably convenient to the parent/adult student.

d. Parties shall cooperate with the hearing officer in any business or communication and the planning for a location, date and time for the hearing.

2. The Due Process Hearing

a. The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions. Due process hearings shall be conducted pursuant to the *Idaho Rules of Administrative Procedure of the Attorney General* (IDAPA), IDEA requirements, and this Manual. In case of any conflict between IDAPA and the IDEA, the IDEA shall supersede. IDAPA rules shall supersede this Manual.

b. A parent/adult student and district personnel may be accompanied and advised by legal counsel properly licensed in Idaho.

c. A parent/adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.

d. Each party has the right to present evidence, to compel the attendance of witnesses and the production of documents, and to confront and cross examine witnesses.

e. New issues (issues not in the original due process request) may not be raised at the hearing unless agreed to by the other party.

f. Any party may prohibit the introduction of any evidence at the hearing that was disclosed less than five (5) business days before the hearing.

g. During the hearing the district will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the DRC for resolution.

h. A record of the hearing will be made. The record will be a written verbatim transcript. The parent/adult student may choose an electronic verbatim record. The district will pay the transcript costs, and a copy of the transcript will remain with the SDE. The parent/adult student and district personnel have the right to obtain a copy of the record upon formal request.

3. Decision of the Hearing Officer

a. The decision of the hearing officer will be based solely on presentations made at the due process hearing.

b. The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received FAPE.

1) In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if there is evidence that the procedural inadequacies:

i. impeded the student's right to FAPE;

ii. significantly impeded a parent's/adult student's opportunity to participate in the decision-making process; or

iii. caused a deprivation of educational benefit.

2) If a hearing officer finds that there is a procedural deficiency that did not deny FAPE, he or she may order the district to comply with the procedural requirements.

c. The hearing officer's decision will include findings of fact and conclusions of law. In addition, the decision shall include an order of relief, if appropriate.

d. The hearing officer's written decision shall be mailed within forty-five (45) calendar days from the date both parties agreed in writing to waive the resolution meeting, or both parties agreed to go to mediation, or the date the district initiated the hearing. The hearing officer may grant an extension of the forty-five (45) day period upon the request of a party. The hearing officer shall issue a written decision in response to each request.

e. The findings of fact and decision shall be sent to the parent/adult student at no cost. Copies will also be mailed to the district superintendent, the DRC, and representatives of the district.

f. A hearing officer's decision will be enforceable in state and federal court. It will be implemented not later than fourteen (14) calendar days from the date of issuance unless:

1) the decision specifies a different implementation date; or

2) either party appeals the decision by initiating civil action in state or federal district court within applicable appeal periods.

g. Nothing in this section can be interpreted to prevent a parent/adult student from filing a separate due process hearing request on an issue separate from the request already filed. The SDE may consolidate multiple hearing requests involving the same IEP.

h. Stay Put

1) During the pendency of any due process hearing, the student shall remain, or "stay put," in his or her current educational placement unless the district and parent/adult student agree otherwise.

2) The stay put placement continues during any subsequent appeals unless a hearing officer agrees with a parent/adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer's decision becomes the stay-put placement.

3) If the dispute involves an application for initial admission to public school in Idaho, the student, with the written consent of his or her parent, shall be placed in the public school program until the proceedings are completed.

4) "Stay put" does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B services in Idaho. Following the development of an IEP or an individual family service plan (IFSP), if an educational placement dispute arises involving a student transitioning from Part C to Part B, the student cannot "stay put" in Part C.

i. With written consent of the parent, the student shall be placed in the public school until completion of all the hearing proceedings.

ii. If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.

iii. If the student is eligible for special education and related services, and the parent consents, then the district shall provide those special education and related services which are not in dispute.

Section 6. Expedited Due Process Hearings

A. Definition

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline occurring within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing.

B. Filing an Expedited Hearing Request

Parties filing expedited due process hearing requests must include a complete and signed copy of the *Expedited Due Process Hearing Request Form* (located in Documents section of this chapter) or a signed document providing, in the same order, all of the general information, issue(s), and resolution(s) information required in the *Expedited Due Process Hearing Request Form*. Reasonable accommodations will be provided to individuals who need assistance in filing a written request.

1. A district may request an expedited hearing if the district believes maintaining the current placement or returning the student to the prior placement is substantially likely to result in injury to the student or others.

2. A parent/adult student may request an expedited hearing if:

    a. he or she disagrees with a determination that the student's behavior was not a manifestation of the disability; or

    b. he or she disagrees with the district's discipline decision, which resulted in a change of placement.

A parent/adult student or district filing an expedited due process hearing request must provide, in a confidential manner, the due process complaint and request for hearing to the other party. The

request shall be mailed, faxed, or hand delivered (electronic copies are not accepted). The party filing an expedited due process hearing must be able to show proof of receipt of the expedited due process hearing request by the other party. Additionally, when the request is provided to the non-requesting party, the party filing the request shall simultaneously send a written copy to the DRC by mail, fax, hand delivery, or scanned and attached to an email with a signature of the filing party. All applicable timelines for expedited due process hearing will start when the request has been received by the non-requesting party.

C. The Expedited Hearing Process and Decision

An expedited hearing will be conducted in a fair and impartial manner. Guidelines and proceedings will be the same as those in a regular due process hearing, except for the following changes:

1. The DRC will appoint a hearing officer within five (5) business days of a request.

2. A resolution session shall occur within seven (7) days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation.

3. A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the expedited due process hearing request.

4. There is no process for challenging the sufficiency of the due process hearing request in an expedited case.

5. Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least five (5) business days before the hearing.

6. The hearing shall occur within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing and no extensions may be granted by the hearing officer.

7. A written decision will be mailed to both parties by the Dispute Resolution office.

8. A party may appeal the decision in an expedited due process hearing in the same way as allowed for decisions in other original due process hearings.

D. Placement During an Expedited Hearing

When a hearing has been requested by either the parent/adult student or the district regarding placement decisions, the student shall "stay put" during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

1. the student will remain in the IAES until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first; and/or

2. upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if district personnel maintain that it is dangerous for the student to return to that placement, the district may request an expedited hearing to continue the IAES for up to an additional forty-five (45) school days. This procedure may be repeated as necessary.

If the hearing officer findings are in favor of the parent/adult student, the change of placement cannot occur. The IEP team will need to determine the extent of services appropriate to meet the student's individual needs, as well as address the student's behavior. If the hearing officer finds for the district, the district may use the same disciplinary procedures, including expulsion, available for any other student, except that FAPE must be provided according to the requirements in Chapter 12, Section 3.

If an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot remain in Part C services when he or she is over the age of three (3). If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the school district shall provide those special education and related services that are not in dispute between the parent and district until completion of all the hearing proceedings. If the parent does not give written consent for the special education or related services, the student will not receive services until completion of the hearing proceedings.

Section 7. Appeals and Civil Action

An appeal to state court shall be filed within twenty-eight (28) days from the date of issuance of the hearing officer's decision; an appeal to federal district court shall be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision.

A party must exhaust administrative remedies before initiating a civil action under IDEA unless otherwise determined by the court. However, nothing in the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other federal laws protecting the rights of children with disabilities.

Section 8. Attorney Fees

A district court will have jurisdiction in the awarding, determination, or prohibition of attorney fees. The court may:

1. award reasonable attorney fees as part of the costs to the prevailing party; and

2. determine the amount of attorney fees, using prevailing rates in the community in which the action occurred, for the kind and quality of services provided. No bonus or multiplier may be used in calculating the amount of fees awarded.

Funds under Part B of the IDEA cannot be used by the district to pay any attorney fees or costs of a party related to an action or proceeding, such as deposition, expert witnesses, settlements, and other related costs. However, Part B funds may be used to pay hearing officer fees or the costs of a meeting room to conduct the hearing.

A. Prohibition of Attorney Fees

1. Attorney fees may not be awarded:

    a. for legal representation at an IEP meeting, including a resolution session, unless such a meeting is convened as a result of a due process hearing or a judicial action; or

    b. for mediation that is conducted prior to a request for a due process hearing.

2. Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent/adult student if:

    a. the district makes an offer at least ten (10) calendar days before a due process hearing or a civil proceeding begins;

    b. the offer is not accepted by the parent/adult student within ten (10) calendar days after it is made; and

    c. a court or due process hearing officer finds that the relief obtained by the parent/adult student is not more favorable to the parent/adult student than the offer of settlement.

B. Exception to the Prohibition of Attorney Fees

An award of attorney fees and related costs may be made to a parent/adult student who is a prevailing party and who was substantially justified in rejecting the district's settlement offer.

C. Reduction in the Amount of Attorney Fees

A court may reduce an award for attorney fees under any of the following circumstances:

1. during the course of the action or proceeding, the parent/adult student or his or her attorney unreasonably extended the final resolution;

2. the amount of the award unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience;

3. the time spent and legal services rendered were excessive considering the nature of the action;

4. the attorney representing the parent/adult student did not provide the information required in a due process hearing request; and/or

5. a party represented him or herself, or his or her child.

D. Exception to the Reduction of Attorney Fees

The amount of attorney fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.

E. Special Provisions Regarding Attorney Fees

1. A district or SDE that prevails may seek attorney fees from a court against the parent's/adult student's attorney if the action is deemed frivolous, unreasonable, without foundation or prolongs the litigation.

2. A district or SDE that prevails may seek attorney fees from a court against the parent's/adult student's attorney or the parent/adult student if the hearing request was presented for improper purposes such as to harass the district, cause unnecessary delay or needlessly increase the cost of litigation.

Documents

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Documents

MEDIATION AGREEMENT

Student's Name _____ Date of Birth _____ Sex _____

Parent's Name _____

Address _____
Street City Zip

Phone (Home) _____(Work) _____ (Cell) _____

School District or Agency _____

Address: _____
Street City Zip

Mediator _____ Date(s) of Mediation(s) _____

Is this Mediation related to a filed complaint? Yes No Complaint # _____

Participants (List name and title or relationship to student)

_____
_____
_____
_____
_____
_____
_____

TERMS OF AGREEMENT

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(USE ADDITIONAL PAGES AS NEEDED)

If applicable, we agree that this Mediation Agreement will serve to amend the existing Individualized Education Program. Yes _____ _____ *Initials* No _____ _____ *Initials*

We, the undersigned, understand that this mediation is legally binding and enforceable in court. We enter into this agreement willingly and informed of our rights and responsibilities with regards to entering this agreement.

_____ _____

Parent/Adult Student Signature(s) Local District or Agency Signature(s)

_____ _____

Date: Date:

MEDIATION CONFIDENTIALITY AGREEMENT

Mediation is a voluntary, no cost, confidential service provided by the State Department of Education (SDE). Maintaining confidentiality is critical to the integrity of the process. Confidentiality encourages free, open communication, toward a collaborative settlement.

The parties involved in this mediation proceeding on this _____ of _____ , 20___, agree to the following:

1. This confidentiality agreement must be signed by all parties before mediation services are provided.
2. Discussions that occur during the mediation process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding.
3. All parties agree not to call the mediator (or an SDE observer of this mediation) as a witness or depose the mediator (or SDE observer) in any subsequent due process hearing or legal proceeding.
4. The mediator will collect personal notes to be destroyed at the conclusion of the mediation session.
5. This mediation session will not be recorded.
6. The only record to be retained will be the written agreement and this signed confidentiality agreement. If parties come to agreement, a copy of the written agreement will be given to both parties and filed with the SDE by the mediator. If for any reason the mediation fails to produce a written agreement, the mediator will inform the SDE that no agreement was reached.
7. All parties understand that the mediator is responsible for collecting the signed confidentiality pledge and the signed written agreement if one was created.

Signatures:

Name	Role	Date
Name	Role	Date
Name	Role	Date
Name	Role	Date
Name	Role	Date
Name	Role	Date
Name	Role	Date

FORM FOR FILING A STATE COMPLAINT

Please submit any request for a state complaint to the Dispute Resolution Coordinator, State Department of Education, P.O. Box 83720, Boise, ID 83720-0027. The alleged violations may not be older than one year from the date the complaint is received by the SDE. (You may use this form or submit a letter that includes the information below.)

A. General Information: (type or print)

Date: _____Name of Individual Filing the Complaint: _____

Address: _____

City: _____ Zip: _____ Email:_____

Telephone: (Hm)_____ (Wk) _____(Cell)_____

Relationship to Student: _____

Name of District /Agency Complaint Is Against: _____

Student Information:

Student Name: _____

Address: _____

City: _____ Zip: _____

Telephone: _____

District Information:

District Contact: _____

Address: _____

City: _____ Zip: _____

Telephone: _____

School Student Attends: _____

Student's Date of Birth: _____

(If complaint involves more than one student, please complete the student and district information for each student.)

In the case of a homeless child or youth, provide available contact information:

_____

B. Allegation(s): Describe the specific issue(s) that relate to potential violations of Part B of the IDEA. Provide supporting facts and information for each allegation. (Attach additional pages if needed.)

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C. Resolution: Please provide your suggestions for solving the problem. (Attach additional pages if needed.)

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_____ _____ _____

Signature of Complainant **Title or Relationship to Student** **Date**

DUE PROCESS HEARING REQUEST FORM

Please submit any request for a due process hearing to your district superintendent and to the Dispute Resolution Coordinator, State Department of Education, P.O. Box 83720, Boise, ID 83720-0027. (You may use this form or submit a letter that includes the information below.)

A. General Information: (type or print)

Date of Written Request: _____ Date Received (completed by SDE): _____

Name of Individual Requesting Hearing: _____

Address: _____

City: _____ Zip: _____ Day Phone: _____

Parent/Guardian of Student: _____

Address: _____

City: _____ Zip: _____ Email: _____

Telephone: (Hm) _____ (Wk) _____(Cell)_____

Name of District/Agency Hearing Request Is Against: _____

Student Information:

Student Name: _____

Address: _____

City: _____ Zip: _____

Telephone: _____

District Information:

District Contact: _____

Address: _____

City: _____ Zip: _____

Telephone: _____

School Student Attends: _____

Student's Date of Birth: _____

(Complete if the information is available):
Student's Attorney: _____

(Complete if the information is available):
District's Attorney: _____

B. Issue(s): Describe your specific problem that relates to any matter of identification, evaluation, educational placement, or provision of a free appropriate public education. Summarize the facts and information as a basis for each allegation. (Attach additional pages if needed.)

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C. Resolution: Please provide your suggestions for solving the problem. (Attach additional pages if needed.)

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Signature of Individual Requesting Hearing **Title or Relationship to Student** **Date**

EXPEDITED DUE PROCESS HEARING REQUEST FORM

Please submit any request for an expedited due process hearing to your district superintendent and to the Dispute Resolution Coordinator, State Department of Education, P.O. Box 83720, Boise, ID 83720-0027. (You may use this form or submit a letter that includes the information below.)

A. General Information: (type or print)

Date of Written Request:_____Date Received (completed by SDE):_____

Name of Individual Requesting Hearing: _____

Address: _____

City:_____ Zip:_____Email: _____

Telephone: (Hm)_____ (Wk)_____(Cell)_____

Parent/Guardian of Student:_____

Address: _____City: _____

Zip:_____Telephone: (Hm)_____(Wk) _____(Cell)_____

Name of District/Agency Hearing Request Is Against: _____

Student Information:

Student Name:_____

Address:_____

City:_____ Zip:_____

Date of Birth:_____

School Student Attends: _____

Student's Grade:_____

District Information:

District Contact:_____

Address:_____

City:_____Zip:_____

Telephone:_____

(Complete if the information is available)
Student's Attorney: _____

(Complete if the information is available)
District's Attorney: _____

B. Issue(s): Describe your specific problem that relates to any matter of identification, evaluation, educational placement, or provision of a free appropriate public education. Summarize the facts and information as a basis for each allegation. (Attach additional pages if needed.)

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C. Resolution: Please provide your suggestions for solving the problem. (Attach additional pages if needed.)

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_____ _____ _____

Signature of Individual Requesting Hearing **Title or Relationship to Student** **Date**