

## Introduction

This notice of procedural safeguards provides parents of children referred for special education, surrogate parents, and adult students a full explanation of their educational rights. These procedural safeguards are applicable to all public agencies, including state residential education programs pursuant to chapter 28A.190, state schools for the deaf and blind established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates in state adult correctional facilities established and operated pursuant to chapter 28A.193 RCW that provide special education services as required by the Individuals with Disabilities Education Act (IDEA), Part B. Unless in an educational program for juvenile inmates, eligible special education students are between the age of three and twenty-one. Eligibility for juvenile inmates in state adult correctional facilities ends at age 18.

A notice of procedural safeguards must be given to you anytime you ask for a copy **and**:

- The first time your child is referred for a special education evaluation.
- Each time an individualized education program (IEP) meeting is scheduled for your child.
- Each time your child is reevaluated.
- If you request a due process hearing.
- If the school district takes disciplinary action that is a change in placement for your child.

The IDEA is a federal special education law that requires school districts to provide a free appropriate public education (FAPE) to eligible special education students. FAPE means special education and related services necessary for your child to benefit from his or her education. These services will be provided to your child in the least restrictive environment as described in an IEP.

Chapter 392-172 of the Washington Administrative Code (WAC) contains the policies and procedures, including sanctions, used by Washington State to ensure that its policies and procedures are followed and that the requirements of IDEA are met.

**For more information:** Your local school district is the first stop for more information. There are a number of people in the school district who can answer questions about your child's education. You may contact your child's general or special education teacher, the school principal, or the district's special education director.

## Parent Participation in Meetings

Your participation is valuable. You will be given opportunities to participate in any meetings about the identification, evaluation, educational placement of your child, and other matters relating to your child's free appropriate public education. This includes the right to participate in meetings to discuss the eligibility of your child and meetings when your child's IEP, including goals, is developed or revised and a placement decision is made.

A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed on your child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a plan or response to a parent proposal that will be discussed at a later meeting.

## Surrogate Parents

The school district must assign a person to act as a surrogate for a student when (1) no parent can be identified; (2) after reasonable efforts, the whereabouts of a parent cannot be discovered; or (3) the child is a ward of the state. Each school district has a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the student.

The person selected as a surrogate (1) may not have any interest that conflicts with the interests of the student he or she represents and (2) must have knowledge and skills that ensure adequate representation of the student.

A person assigned as a surrogate may not be an employee of the Office of Superintendent of Public Instruction (OSPI), the school district, or any other public agency that is involved in the education or care of the student. (A person who otherwise qualifies as a surrogate is not an employee of the district solely because he or she is paid by the district to serve as a surrogate.)

A person selected as a surrogate may be a foster parent willing to make educational decisions on behalf of the student or an employee of a nonpublic agency that only provides noneducational care for the student if the person meets the requirements stated above.

The surrogate parent may represent the student in all education matters relating to the identification, evaluation, and educational placement of the child and the provision of special education and related services to the student.

## Prior Written Notice

In addition to being a participant in decision making, you, as the parent, have the right to have the school district notify you in writing about important decisions that affect your child's special education a reasonable time before those decisions are put into place. These include decisions related to any proposal or refusal to initiate or change the identification, evaluation, placement, or provision of a free appropriate public education.

Prior written notice must include:

- What the district is proposing or refusing to do.
- Why the district is proposing or refusing to take action.
- A description of any other options considered and the reasons why those options were rejected.
- A description of each evaluation procedure, test, record, or report used as a basis for the action.
- A description of any other factors relevant to the action.
- A description of any evaluation procedures the school district proposes to conduct for the first evaluation and any reevaluations.
- A statement that parents of a special education student are protected by the procedural safeguards described in the Individuals with Disabilities Education Act and how you can get a copy of the description of the procedural safeguards if this notice is not an initial referral for evaluation.
- Sources for you to contact to get help in understanding these procedural safeguards.

Prior written notice must be provided in your native language or other mode of communication unless it is clearly not feasible to do so. The notice must be written in language understandable to the general public.

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

### IN OTHER WORDS ...

It is important that you understand what decisions are made. You will receive a written document when the district is proposing or refusing to make a change in your child's educational program. Some examples of when you will receive prior written notice are the following:

- When your child is referred to a school team because of a suspected disability that adversely affects your child's ability to learn.
- When your child is evaluated for the first time or if the district is refusing to evaluate your child.
- When the district is considering changing your child's eligibility for special education from one disability category to another.
- When it is time for your child to be reevaluated or when the district is refusing your request for a reevaluation.
- After developing or changing an IEP for your child, but before the services to your child begin.

The notice should be provided in your native language or mode of communication unless it is clearly not feasible to do so. If it is clearly not feasible to provide the prior written notice in your native language, then the district must have the information translated orally. The use of another family member to translate may not always be appropriate.

## Parent Consent

Consent means that you, the parent, have been given and understand all information relevant to the activity for which consent is requested. This information must be provided in your native language or other mode of communication. You must agree in writing when your consent is needed. The consent also describes the activity and lists records, if any, that will be released and to whom those records will be released.

Your consent is voluntary and may be withdrawn at any time. However, your withdrawal does not negate an action that occurred after the consent was given and before consent was withdrawn.

Parental consent is not required before (1) reviewing existing information as part of an evaluation or reevaluation or (2) giving a test or evaluation that is administered to all children unless consent is required of all children before administering the test.

**The first evaluation.** The school district must have your informed written consent before it can evaluate your child. The school district must tell you the evaluation procedures to be used with your child along with any other information required by the prior written notice requirements. Consent for initial evaluation is not the same as consent for initial placement into a special education program.

**Reevaluations.** The school district must have your informed written consent before reevaluating your child. However, the school district may reevaluate your child without your written consent if the school district can demonstrate that it has taken reasonable measures to get your consent and you have not responded. If you refuse consent, you must clearly inform appropriate school staff of your refusal, preferably in writing.

An evaluation means the procedures used to decide (1) whether a student is a special education student (or continues to be a special education student and continues to need special education and any necessary related services), (2) whether the disability adversely affects educational performance, and (3) what kind of and how much special education and related services the child needs. Reevaluations are also used to determine the appropriateness of the services to your child.

**Initial placement in special education.** You must give your informed written consent before the school district can initially place your child in a special education program.

**Refusal.** You can refuse consent for an evaluation, a reevaluation, or the initial placement of your child in special education. However, if you refuse consent, the school district may seek permission to evaluate or reevaluate, or place your child through a due process hearing if it believes the activity is necessary for your child. The school district may not override your refusal to grant consent for initial special education services. You and the school district may agree to first try mediation to resolve your disagreements. A school district may not use your refusal to consent to a service or activity to deny your child any other service, benefit, or activity of the school district except as described above.

#### IN OTHER WORDS ...

If you consent to an evaluation and change your mind, you will need to tell school district personnel that you changed your mind before they complete the evaluation. Because the right to FAPE belongs to your child, if you refuse consent or withdraw consent, the district may request a due process hearing to override your refusal or withdrawal of consent.

Also, if you consent to have your child receive special education services and change your mind, you will need to let school personnel know that you changed your mind before the services begin. If you wait until after the services begin, your child will continue to receive special education services until, through a reevaluation, it is determined that your child no longer has a disability that requires special education services, your child receives a regular high school diploma, or your child has reached age 21.

### Transfer of Parental Rights at Age of Majority

When your child reaches the age of 18, he or she is considered to have reached the age of majority. This means that all rights under IDEA, as well as the protections under the Family Educational Rights and Privacy Act, transfer to him or her.

Your rights as a parent transfer to your child at age 18 even if he or she is incarcerated. Students who are determined "incapacitated as to person" under Washington State law will not have rights transferred to them. The appointed guardian will exercise the rights on his or her behalf.

When your child reaches the age of majority, the notices as explained under "Prior Written Notice" will be given to you as well as your child. A notice of the transfer or rights will be given to both you and your child. Also, beginning at least one year before your child turns 18, the IEP will include a statement that your child has been told about the transfer or rights.

#### IN OTHER WORDS ...

Any required notices about the transfer of rights will be given to both you and your child. When your child reaches age 18, your child will give consent for any reevaluations, can initiate a due process hearing, and will assume any of the other rights related to educational matters previously held by you.

### Independent Educational Evaluations

You have the right to an independent educational evaluation (IEE) of your child. An IEE is an evaluation by a qualified examiner who is not an employee of the school district responsible for your child. You may request an IEE at public expense if you disagree with an evaluation completed by the school district. 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. It is helpful if your request is in writing and before the IEE is obtained. The school district may ask for the reason why you object to its evaluation. However, the explanation may not be required and the school district may not unreasonably delay either providing the IEE at public expense or initiating due process hearing to defend its evaluation.

The school district must respond to your request not later than 15 calendar days after receiving your request. The response will tell you whether the district will honor your request. If the school district disagrees with your request, it must request a due process hearing. If the school district shows at a hearing that its evaluation is appropriate or that your independent educational evaluation did not meet agency criteria, the school district will not have to pay for an IEE you requested. However, you may still obtain an IEE at your own expense.

The results of IEEs must be considered by the school district when taking further action regarding your child, if they meet agency criteria. These evaluations may be considered as evidence in a due process hearing.

School districts must maintain a list of public and private agencies qualified to conduct independent educational evaluations. The list must include information about where an IEE can be obtained and the agency criteria applicable for IEEs. The school district cannot impose conditions or timelines related to obtaining the IEE except those related to location and qualifications of the examiner.

The information about where an IEE may be obtained and the agency criteria for IEE is available on request. Typically, requests for this information should be made to your school district's special education director.

An administrative law judge (ALJ) may also request an independent educational evaluation of your child at school district expense during due process hearing proceedings.

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same criteria that the school district uses when it initiates an evaluation to the extent those criteria are consistent with your right to an IEE.

### Children Enrolled in Private Schools by Their Parents

Some eligible special education students are enrolled in private schools by their parents. School districts are not required to pay for the cost of education, including special education and related services, at a private school or facility if the school district made a free appropriate public education available to the child and the parents chose, instead, to place the child in a private school or facility. However, the school district will include that child in the group of students who may participate as described in "Limitation on Services."

#### Limitation on Services

Eligible special education students who are enrolled by their parents in private schools may participate in publicly funded special education and related services. Federal law limits the amount that school districts must spend for these services.

Federal law permits special education and related services to be provided at the private school to the extent consistent with state law. Washington law prohibits the provision of services, materials, or equipment of any nature to or on the site of any private school or agency subject to religious control.

Disagreements between a parent and the school district about the availability of an appropriate program and the question of who pays for it may be settled in a due process hearing.

#### When Reimbursement May Be Required

A court or ALJ may require a school district to reimburse you for the cost of private school placement made without the consent of or referral by the school district only if:

- The child received special education and related services under the authority of a school district before enrolling in the private school.
- The court or ALJ finds that, at that time, the school district did not make a free appropriate public education available to the child in a timely manner; and
- The private placement is appropriate.

A parental placement may be found to be appropriate by a court or ALJ even if it does not meet the state standards that apply to education provided by the state and local school district.

#### When Reimbursement May Be Reduced or Denied

**Notice before removing child from public school.** The court or ALJ may reduce or deny reimbursement if you did not inform the school district that you were not accepting the placement proposed by the school district to provide FAPE and state your concerns and your intent to enroll your child in a private school at public expense.

You must give notice either:

- At the most recent IEP meeting that you attended before removing the child from public school or
- In writing to the school district at least ten business days, including any holidays that occur on a business day, before removing the child from public school.

A court or ALJ may not reduce or deny reimbursement if a parent does not give this notice because:

- The parent is illiterate and cannot write in English.
- Giving notice would likely result in physical or serious emotional harm to the child.
- The school prevented the parent from giving notice.
- The parent had not received a copy of a notice of procedural safeguards or otherwise been informed of the requirement to notify the district of the intent to enroll in a private school at public expense.

**Evaluation by school district.** The court or ALJ also may reduce or deny reimbursement if the parent does not make the child available for an evaluation by the school district, provided:

- The school district gave prior written notice of its intent to evaluate or reevaluate the child.
- The purpose of the evaluation as described in the prior written notice was appropriate and reasonable.
- The prior written notice was given before the child was removed from the public school.

**Unreasonableness.** Reimbursement may also be reduced or denied upon judicial finding that parents were unreasonable in their actions.

## Mediation

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

The school district may establish procedures to require parents who elect not to use the mediation process to meet, at a time and place convenient to parents, with a disinterested party (1) who is under contract with a parent training and information center or community resource center in the state or an appropriate alternative dispute resolution entity and (2) who would explain the benefits of the mediation process and encourage parents to use the process. Any costs associated with this meeting are paid by OSPI. The school district may not deny or delay a parent's right to a due process hearing if the parent fails to participate in this meeting.

Mediation is conducted by an individual who is qualified, impartial, and trained in effective mediation techniques. OSPI maintains a list of individuals who are qualified mediators and knowledgeable in the laws and regulations relating to the provision of special education and related services. The mediator is selected on a random basis. The mediator (1) is not an employee of a school district or state agency receiving IDEA that is providing direct services to a child who is the subject of the mediation process and (2) may not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator is not an employee of the school district or state agency because he or she is paid by the agency to serve as a mediator. The mediation sessions are scheduled in a timely manner at a location that is convenient to you and the school district.

When an agreement is reached, it must be documented in a written mediation agreement. Discussions during the mediation sessions are confidential and may not be used as evidence in any due process hearings or civil proceedings that follow. However, the mediation agreement may be used as evidence. You and others who participate in the mediation may be asked to sign a pledge of confidentiality at the beginning of the mediation session.

## Impartial Due Process Hearing

You or the school district may initiate a hearing regarding any action the school district proposes or refuses related to the identification, evaluation, and educational placement of your child or the provision of special education and related services to your child. OSPI is responsible for conducting due process hearings. When a due process hearing is requested, OSPI will inform you of the availability of mediation.

A notice (which remains confidential) requesting a hearing shall:

- Be in writing and include:
  - the name of the child,
  - the address of the residence of the child,
  - the name of the school the child is attending,
  - a description of the nature of the problem and the facts related to the problem, and
  - a proposed resolution of the problem to the extent known and available.
- Be mailed or provided directly to the  
Office of Superintendent of Public Instruction  
Legal Services  
PO Box 47200  
Olympia, WA 98504-7200.
- Explain the concerns of the parent in general or specific terms.

OSPI has developed a model form to assist you in filing a request for a due process hearing. The form may be requested from OSPI Legal Services or your school district's special education administrator. Your right to a due process hearing cannot be denied or delayed if your request does not include all of the information stated above.

The hearing itself will be conducted by a qualified person selected and appointed by the chief ALJ in the Washington State Office of Administrative Hearings pursuant to chapter 10.08 WAC. A person who otherwise qualifies to conduct a hearing is not an employee of OSPI solely because he or she is paid by the agency to serve as an ALJ. The hearing cannot be conducted (1) by a person who is an employee of a state agency or local school district that is involved in the education or care of the child or (2) by any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

The OSPI will inform you of any free or low-cost legal and other relevant services available in your area if you request the information or you or the public agency initiate a due process hearing.

Each school district has a list of the ALJs who serve as hearing officers. The list, available for your review, includes a statement of the qualifications of those persons.

The OSPI is responsible for ensuring that a final hearing decision is reached and mailed to the parties not later than 45 days after the receipt of a request for a hearing unless the ALJ grants a specific extension at the request of either party. There may not be an extension of the timeline in expedited hearings (see separate section on "Expedited Hearings"). Each will be conducted at a time and place that is reasonably convenient to you and your child.

## Due Process Hearing Rights

Any party to the hearing has the following due process hearing rights:

- Be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of special education students.
- Be advised and/or represented by an attorney.
- Present evidence and confront, cross-examine, and compel the attendance of witnesses.
- Prohibit the introduction at the hearing of any evidence that was not disclosed to that party at least five business days before the hearing (or two business days if the hearing is expedited).
- At least five business days before the hearing (for an expedited hearing, two business days), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluation that the party intends to use at the hearing.
- The ALJ may bar any party that fails to comply with introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- Obtain a written, or at the parents' option, electronic verbatim record of the hearing.
- Obtain a written, or at the parents' option, electronic findings of fact and decisions.
- After deleting any personally identifiable information, OSPI is required to transmit the findings and decisions to the Washington State Special Education Advisory Council and make them available to the public.

The record of the hearing, the findings of fact, and the decision are provided at no cost to the parents.

You have the right to have your child present and to open the hearing to the public.

## Child's Status During Proceeding

Except as explained in the discipline section, during the pendency of any administrative or judicial proceeding regarding a complaint, unless you and the public agency agree otherwise, your child must remain in his or her present educational placement. If the hearing involves an application for initial admission to public school, and if you consent, your child must be placed in the public school program until the completion of all the proceedings. If the decision of the ALJ in a due process hearing agrees with you that a change of placement is appropriate, that placement must be treated as an agreement between the parties for where your child will be placed during any subsequent appeals.

The decision made in a due process hearing is final, unless a party to the hearing appeals the decision under the procedures described below under "Civil Action."

## Civil Action

Any party aggrieved by the findings and decision made in a due process hearing has the right to bring a civil action in state or federal court without regard to the amount in controversy within 30 calendar days of the date of the mailing of the final decision. In any appeal, the court will have the records of the hearing, will hear additional evidence, if requested, and based on a preponderance of the evidence, order what it considers to be appropriate relief.

Nothing in the IDEA limits the rights, procedures, and remedies available under the United States Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of special education students, except that before filing a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the due process hearing procedures described earlier must be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA.

## Award of Attorneys' Fees

In any action or proceeding brought under the IDEA, a federal or state court, in its discretion, may award reasonable attorneys' fees to the parents or guardians of a special education student who is the prevailing party. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA. However, funds under Part B of the IDEA may be used for conducting an action or proceeding under section 615 of the IDEA.

A court may award attorneys' fees consistent with the following:

**Determination of the amount of attorneys' fees.** Fees awarded 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 fees awarded.

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

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten calendar days before the proceeding begins.
2. The offer is not accepted within ten calendar days.
3. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded for an attorney attending any IEP team meeting unless the meeting was convened as a result of an administrative proceeding or judicial action. However, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

The court reduces, accordingly, the amount of the attorneys' fees awarded if the court finds that:

1. The parent, during the course of the action or proceeding unreasonably protracted the final resolution of the controversy.
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 comparable skill, reputation, and experience.
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding.
4. The attorney representing the parent did not provide to OSPI the appropriate information in the request notice for a due process hearing.

The one exception: if the court finds that the state or school district unreasonably protracted the final resolution of the action or proceeding or there was a violation of the IDEA.

## School Discipline and Placement in Interim Alternative Educational Setting

### Suspension and Expulsion Rules For All Students

When a school or district suspends or expels your child, it must make sure that the removal is consistent with state laws and regulations governing discipline for all students. Washington State discipline regulations are located at chapter 180-40 WAC. They address discipline, suspension, and expulsion for all public education students. Districts must have policies and procedures that describe various types of misconduct and address penalties imposed for the misconduct. Discipline must be consistent with the district policies and procedures. Except for emergencies, schools generally may not suspend or expel any student unless they have tried other forms of corrective action that would modify the student's behavior.

A *suspension* is a removal from a single subject, class period, or full schedule of classes for a **definite** period of time. **Removal for more than a single class period or subject area is a suspension.** An *expulsion* is a removal from any single subject, class period, or full schedule of classes for an **indefinite** period of time.

### Removals Under IDEA

#### General Disciplinary Removals

**No change of placement.** School authorities may remove your child from his or her current educational placement up to ten consecutive days or up to ten cumulative days if the same removal would apply to a student who is not eligible for special education services. Your child may also be removed from his or her educational placement for additional consecutive periods of up to ten days if the removals do not constitute a pattern of exclusion, which would result in a change of placement.

**Change of placement.** A change of placement occurs (1) any time the removal is for more than ten **consecutive** days in a school year or (2) when your child has a series of removals that **cumulate** to more than ten school days in a school year **and** the removals constitute a pattern of exclusion. Factors that are considered in determining a pattern of exclusion include the length of each removal, the total amount of time your child is removed, and the proximity of the removals to one another.

#### Removals for Drugs or Weapons

School personnel may remove your child from his or her current educational placements and place him or her in an interim alternative educational placement for the same amount of time that a student who is not eligible for special education services would be subject to discipline, but not for more than 45 days (1) if he or she possesses or carries a weapon to school or school function or (2) he or she knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

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 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.

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

#### Removals for Dangerous Behavior

Schools may ask an ALJ in an expedited due process hearing to remove your child from his or her current educational placement to an interim alternative placement for not more than 45 calendar days if the school believes your child is likely to harm himself or herself or others. This administrative hearing process may be repeated for additional 45 calendar day periods.

The school must demonstrate, by substantial evidence, that maintaining the current placement of your child is substantially likely to result in injury to your child or to others. As used here, the term substantial evidence means beyond a preponderance of the evidence. The ALJ must consider the appropriateness of your child's placement prior to removal, consider whether the school has made reasonable efforts to minimize the risk of harm in your child's current placement, and determine whether the interim alternative educational setting will allow your child to progress in the general curriculum and make appropriate progress on the goals in the IEP.

In addition to the administrative hearing process for removing your child, school personnel may still request an injunction from the courts.

#### Providing Educational Services

**No change of placement.** A school does not have to provide educational services to your child for the first ten school days your child is removed in a school year if the school would not provide educational services to a student who is not eligible for special education services. After your child has been removed for ten days in a school year, the school must provide services that will allow your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in your child's IEP. School personnel need to consult with the special education teacher to make the decision regarding the level of services needed.

**Change of placement: interim alternative educational settings.** The IEP team determines the interim alternative educational setting when a student is removed from his or her placement because of drug or weapon violations. You, as a parent, are a member of that IEP team.

If the ALJ agrees that your child should be placed in an interim alternative educational setting because of dangerous behavior, the setting proposed by school personnel will be made in consultation with the special education teacher.

Any interim alternative educational setting selected because of drugs, weapons, or dangerous behavior must also enable your child to continue to progress in the general curriculum and receive services and modifications, including those in the current IEP, that will enable your child to meet the goals set out in that IEP. In addition, your child must receive services and modifications designed to address his or her behavior so the behavior will not recur.

**Change of placement: no manifestation of a disability.** If your child is removed from his or her placement for behavior that is not a manifestation of his or her disability, educational services must be provided to the student to the extent necessary to enable your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in your child's IEP. The IEP team determines what educational services are necessary under these circumstances.

**When the student is incarcerated.** An IEP team of a special education student convicted as an adult and receiving services under chapter 28A.193 RCW may modify the student's IEP if there is a demonstrated bona fide security or compelling penological interest that cannot otherwise be accommodated.

#### Functional Behavioral Assessments and Behavior Plans

Behavior is one of the special considerations IEP teams are required to consider when developing or reviewing your child's IEP. If the school did not already conduct a functional behavioral assessment and implement a behavior intervention plan for your child before the misconduct occurred, the IEP team must meet to develop an assessment plan. This meeting must be held no later than ten business days after either first removing your child for ten school days in a school year or no later than ten business days after beginning a removal that is considered a change of placement. As soon as practicable after developing the assessment plan and completing the assessments, the IEP team shall meet to develop appropriate behavior interventions and implement those interventions.

If your child already has a behavior intervention plan in his or her IEP, then the school must convene the IEP team to review the plan and its implementation and modify the plan and its implementation as necessary to address the behavior.

If your child has a behavioral intervention plan and there are any further removals in a school year that are not considered a change of placement, the IEP team members, including you as a parent, may individually review the behavior intervention plan to determine whether modifications are necessary. If one or more members believe changes are necessary, the team shall meet to modify the plan and its implementation.

#### Manifestation Determination

**Parent notice.** Any time a school removes your child for drugs, weapons, dangerous behavior, or for other removals that constitute a change of placement because of a violation of the code of conduct that applies to all children, the school must notify you not later than the date on which the decision to take the action is made and provide you with a copy of procedural safeguards.

**Review.** Immediately, if possible, but no later than ten **school** days after the decision to change your child's placement, the school must conduct a review of the relationship between your child's disability and the behavior subject to the disciplinary action. The review must be conducted by the IEP team and other qualified personnel in a meeting.

The review team must consider all relevant information, including (1) evaluation and diagnostic results and other information supplied by you, (2) observations of your child, and (3) the IEP and placement.

The review team must then determine whether, in light of the behavior subject to discipline, (1) the IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior strategies were provided consistent with your child's IEP and placement; (2) your child's disability did not impair the ability of your child to understand the impact and consequences of the behavior; and (3) your child's disability did not impair the ability of your child to control the behavior.

If the team determines that any of the standards were not met, then the behavior must be considered a manifestation of your child's disability. If the team finds deficiencies in the IEP, placement or in the implementation of the services, it must take immediate action to remedy the deficiencies.

If the team decides the behavior was not a manifestation of the disability, then your child may be disciplined consistent with discipline of students without disabilities except that educational services must continue and allow your child to progress in the general curriculum and to progress in meeting the goals of the IEP.

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

The meeting conducted for a manifestation review may occur at the same time the team reviews the behavior intervention plan.

## **Appeals**

**General.** You have the right to ask for a hearing if you disagree with any disciplinary placement decisions or if you disagree with a determination that your child's behavior was not a manifestation of your child's disability. The state will provide an expedited due process hearing for appeals of disciplinary actions. In reviewing a decision with respect to the manifestation determination, the ALJ determines whether the school district has demonstrated that your child's behavior was not a manifestation of his or her disability as described above. In reviewing a decision to place your child in an interim alternative educational setting for weapons or drugs, the ALJ applies the standards explained under "Removals for Dangerous Behavior."

If you are appealing the interim alternative educational setting or manifestation determination for drugs or weapons violations or dangerous behavior, your child remains in the interim alternative educational setting until the decision of the ALJ, appeal to court, or expiration of the 45-day time period, whichever occurs first unless the school and you agree otherwise. For all other hearings to challenge disciplinary decisions, your child remains in the current educational placement (placement prior to disciplinary action) during hearing proceedings unless the school and parents agree otherwise.

If a school proposes to change your child's placement after expiration of an interim alternative placement and a parent challenges the proposed change of placement, your child must remain in his or her placement prior to the interim alternative placement pending the due process hearing decision. If school personnel believe that returning your child to his or her prior current placement during the pendency of the due process proceedings is dangerous to your child or others, they may request an expedited due process hearing.

In determining whether your child may be placed in the interim alternative educational setting or in another appropriate placement ordered by the ALJ, the standards explained under "Removals for Dangerous Behavior" would be applied.

## **Protections for Students Not Yet Eligible for Special Education Services**

Parents may also challenge disciplinary actions for any violation of a rule or code of conduct of the school district, including drugs, weapons, or dangerous behavior, on behalf of their children who are not yet determined eligible for special education if the school had knowledge that the child had a disability. Schools are deemed to have had knowledge if (1) the parents told the school in writing (unless they do not know how to write or have a disability that prevents a written statement) that their child was in need of special education services, (2) the student's behavior or performance demonstrates a need for special education services, (3) the parent has requested an initial evaluation, or (4) the teacher of the student or other school personnel has expressed a concern about the student to special education personnel in accordance with the school's child find procedures or special education referral system.

If a school has already evaluated the student and determined that the student is not in need of special education services or determined that it does not need to evaluate the student and the school has given written notice to the parents as explained under the section "Prior Written Notice," the school will not be deemed to have knowledge.

If the school district does not have knowledge that a child is a child with a disability (as described above) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as applied to children without disabilities who engaged in comparable behaviors consistent with the following sentence: If a parent requests an evaluation during the disciplinary process, the school must evaluate the student in an "expedited" manner. The student remains in the placement chosen by school authorities, pending completion of the evaluation.

If the child is determined to be a special education student, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the school district shall provide special education and related services in accordance with the provisions of the IDEA.

## **Expedited Due Process Hearings**

Expedited due process hearings follow the same procedures as were explained in the sections "Impartial Due Process Hearings," "Due Process Hearing Rights", and "Civil Action," with the following exceptions:

- The written hearing decision must be mailed to the parties within 45 days of the receipt of the request for the expedited due process hearing without exceptions or extensions and regardless of who requested it.
- The time requirement for disclosure of evidence, including evaluations, is shortened to two business days.

## **Educational Records**

Educational 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 [FERPA]).

The requirements regarding confidentiality of information apply to "participating agencies," not just school districts. A participating agency is any agency or institution that collects, maintains, or uses personally identifiable information or from which information is obtained under Part B of IDEA and corresponding state law.

All participating agencies shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each participating agency has been designated to assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding confidentiality procedures in state law and 34 CFR Part 99 (FERPA).

All participating agencies must inform parents about their procedures that ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained because of Part B of IDEA requirements and corresponding state law. In addition, each participating agency will publicize any major child find activity.

Each participating agency maintains, 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.

## **Access**

Both the FERPA and the IDEA permit access to your child's educational records. Your school district has written policies about school records. This policy is published and available to parents on request.

You have the right to inspect and review all of your child's education records:

- Without unnecessary delay.
- Before any meeting about your child's IEP.
- Before any due process hearing related to your child and, in any case, within 45 calendar days of your request.

Check your school's policies to find out to whom requests to review your child's records should be made.

Your right to inspect and review education records under this section includes:

- Your right to a response from the school district to reasonable requests for explanations and interpretations of the records.
- Your right to have your representative inspect and review the records.
- Your right to request copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school district will presume that you have authority to inspect and review records relating to your child unless it has been advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

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

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

**Fees**

The school district may not charge a fee to search for or to retrieve information for parents. However, it may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

**Record of Access**

The school district must keep a record of the people accessing education records collected, maintained, or used (except access by parents and authorized employees of the participating public agency), including the name of the person, the date access was given, and the purpose for which the person is authorized to use the records.

**Amendment of Records at Parent Request**

If you believe that information collected in your child's education record is inaccurate, misleading, or violates the privacy or other rights of your child, you may ask the school district to amend the information.

Within a reasonable period of time after receiving your request, the school district must decide whether to amend the information. If the school district decides to refuse to amend the information as you requested, it must inform you of the refusal and of your right to a hearing as explained below.

When requested, the school district must provide you with an opportunity for a hearing to challenge information in your child's educational record. The hearing is conducted according to district procedures that are consistent with state regulations.

If, as a result of the hearing, the school district decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must amend the information accordingly and inform you of that action in writing.

If the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform you of the right to place a statement in the records it maintains on your child. The statement may comment on the information or give the reasons for disagreeing with the district's decision not to amend the record.

Any explanation placed in your child's educational record under this section must (1) be maintained by the school district as part of the records of your child as long as the record or contested portion is maintained by the school district and (2) if the record of the child or the contested portion is disclosed by the school district to any party, the explanation must also be disclosed to that party.

**Consent to Disclose Records**

Written consent is required by you in most cases, unless released is allowed under the rules implementing FERPA, or the information is used to meet a requirement under chapter 392-172 WAC.

Some examples of when parental consent is not required include:

- When the disclosure is to other school officials, including teachers, within the school district, whom the district has determined have legitimate educational interests.
- To officials of another school system or institution of postsecondary education where your child plans to enroll.
- When court order or subpoena requires the information.

Personally identifiable information is the following: the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

**Destruction of Information**

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Each school district must inform parents (and adult students) when personally identifiable information collected and maintained is no longer needed to provide educational services to the student. The information will be destroyed at the request of the parent.

However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

**IN OTHER WORDS ...**

The state has a requirement that educational records be kept for a certain number of years after the student leaves the school district. The length of time depends on the type of educational record. When that time period is up, the district must attempt to contact you in order to tell you it is planning to destroy your child's educational records. You may choose to have the records given to you or you may ask the district to destroy the records. If you ask the district to destroy the records, they must destroy them. However, districts may keep, forever, a permanent record of your child's name, last known address and telephone number, his or her grades, attendance record, classes attended, grade level completed and the year the grade level was completed.

**Transmittal of Disciplinary Records**

Washington law (RCW 28A.225.330) permits a school district where a student enrolls to ask the parent about whether the student has (1) any history of placement in special educational programs; (2) any past, current, or pending disciplinary action; or (3) any history of violent behavior or behavior listed in RCW 13.04.155. In addition, the law allows the school enrolling the student to request the school the student previously attended to send the student's permanent record, including records of disciplinary action and academic performance which would include the student's IEP.

**Special Education Citizen Complaints**

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

The complaint must be signed and include the following information:

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

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

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

A written final decision is sent to the person filing the complaint. The final decision will address each allegation. For each allegation the final decision will state findings of fact, conclusions, and any reasonable corrective measures deemed necessary to resolve a complaint (see section 392-172-329 WAC).

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, OSPI must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described above. If an issue raised in a complaint has been previously decided in (not dismissed from) a due process hearing involving the same parties, (1) the hearing decision is binding and (2) OSPI must inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision must be resolved by OSPI.

Other sources of information about the complaint investigation process is available in written format in the Washington State special education regulations (chapter 392-172 WAC) from OSPI Special Education or in the OSPI Special Education publication *Family/Educator Guide*. Additional information about the complaint investigation process may be obtained in training sessions on legal issues and through direct inquiries to OSPI Special Education Operations.