Parent Advocacy Training Program

Program 1: Basic Advocacy Skills

Saturday, October 17, 2009
8:30 a.m. - 5 p.m.

Seattle University School of Law
Education Law Programs

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Washington PAVE

The Arc of King County
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As the senior partner of Sound Options, Greg coordinates the design, implementation and delivery of all services. His particular area of expertise is in assisting agencies, organizations and communities in designing and implementing systems for more effectively managing conflict, and facilitating productive and collaborative work environments. He is experienced in mediating highly contentious, multi-party community and institutional disputes.

Greg’s practice as a conflict resolution professional is driven by a core belief that everything of importance happens within the context of interpersonal relationships. He believes that one of his strengths is his ability to weave his experience into his consulting and teaching as he assists individuals and organizations in reducing the costs of conflict. His background in psychology led to an interest in mediation, and in the late 1980s he served as a founding member and the first Board President of the Kitsap County Dispute Resolution Center. During the last 10 years, he has been a senior consultant to the Consortium for Appropriate Dispute Resolution in Special Education (CADRE) and Board President for the Washington Mediation Association.

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Charlotte Cassady has specialized in representing parents seeking services from school districts for over a decade. She graduated from Tulane Law School with honors in 1989 and began practicing law in Seattle in 1990. Ms. Cassady developed an interest in special education and disability law while doing volunteer work with TeamChild, a nonprofit civil legal aid organization helping youth to secure their rights to education, health care and housing.
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Diagnosed with a learning disability in the fourth grade, Cindy brings her real life experience to the diagnostic and intervention process. She is both dyslexic and dysgraphic. During her first semester of college, she had a 1.2 GPA. She went on to four other schools before finally obtaining her Bachelor’s degree in Chemistry at the University of California Riverside. After several brief stints as a kayak instructor, teacher for a youth at risk program and accessory line manager for an outdoor equipment company, she returned to school to get her Master’s degree in Secondary Education. While she was supposed to focus on science curriculum, she felt herself drawn to find out more about dyslexia. She went on to Northwestern University where she obtained her Ph.D. in Learning Disabilities. There she pursued her passion for helping students understand how their brain’s work and how to take advantage of their strengths while minimizing their weaknesses. She has been in private practice in the Seattle area since 2001.

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Christy Ibrahim obtained her J.D. from the University of Washington in 1998 and has frequently advised families on special education issues. She has an older brother with Down Syndrome and a mother who is a fulltime advocate for parents of children with developmental disabilities. She teaches Disability Law at the University of Washington School of Law.

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Larry Jones became a lawyer because his daughter Wendy had severe intellectual disabilities. As a parent and lawyer, Larry has experienced the promise and the frustration of IEPs for 30 years. Larry has a Ph.D. in Ethics and Society from the Divinity School of the University of Chicago (1975) and a J.D. from the University of Washington (1989).
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Mr. Johnston has a B.A. and M.A. in Special Education from the University of Washington. He taught in Seattle Public Schools for more than 30 years, including Eckstein Middle School and Roosevelt High School. He established a program for students with learning disabilities at Eckstein and supervised a comprehensive program for students with disabilities at Roosevelt, where he worked with students with learning disabilities, behavior problems, hearing impairments, and children on the autism spectrum.

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Pam McPartland has worked for the Office of Public Instruction (OSPI) in the special education section since 1999. Her responsibilities include oversight of the dispute resolution processes available under IDEA: mediation, due process and citizen complaints.

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Karen worked for Preston Gates & Ellis in Seattle for approximately two years performing discovery for complex litigation cases after attending Smith College and Chicago-Kent College of Law. Upon leaving PG & E approximately ten years ago, she developed the Legal Advocacy Program for PROVAIL, a nonprofit disability services organization serving children and adults with disabilities where she served as Director of Legal Advocacy. She left PROVAIL to begin her own law practice focusing on her passion for representing families of children with disabilities in special education. During the last ten years, she has presented workshops on special education law for SEAAC, the International Dyslexia Association, and the Pacific Northwest Institute on Special Education and the Law, among many others.
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Ms. Pollock's practice focuses on special education advocacy and litigation, benefits advocacy and litigation, guardianship, estate planning, probate, and special needs trusts. Prior to working at the Dussault Law Group, Ms. Pollock was an attorney at the U.S. Department of Education’s Office of the General Counsel, where she worked on the regulations for the Individuals with Disabilities Education Act (IDEA), among other federal laws and policies.

While in law school, Ms. Pollock co-created a mentoring association between the U.W. Law School and First Place School, by partnering law students with at-risk and homeless children. Prior to law school, she taught in integrated classrooms at the Experimental Education Unit at the University of Washington, in addition to providing in-home therapy through the Washington State Division of Developmental Disabilities.

Ms. Pollock received her Bachelor of Arts (Child Development) from Tufts University (1997), and her Masters in Special Education (2001) and Juris Doctor (2004) from the University of Washington. She was admitted to practice in the State of Washington (2004).

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Margaret-Lee Thompson is a longtime leader of the King County Parent Coalition, a service of the Arc of King County. She is a leading advocate for children with special needs in Olympia.
### Session 1

#### Comparison of 504, IDEA & ADA

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Section 504 and IDEA: Basic Similarities and Differences

S. James Rosenfeld, Esq.

Although parents of children with disabilities are frequently more familiar with the Individuals with Disabilities Education Act (IDEA), they should also acquaint themselves with Section 504 of the Rehabilitation Act (hereinafter "Section 504"). Knowledge of both statutes, and particularly their implementing regulations, often is necessary to be sure of securing an appropriate education for children with disabilities. Indeed, for some children with disabilities, Section 504 may be more important -- the only legal mandate requiring education agencies to provide special education or related services to a child with a disability.

This article will familiarize parents with why and how Section 504 impacts the education of children with disabilities; illustrate some of the differences between Section 504 and IDEA; and provide a basic explanation of "how Section 504 works." It is vital to remember, however, that literally volumes have been written on these topics and, therefore, no one should rely solely on this article to undertake legal action. A suitable next step in the learning process might be review of RIGHTS OF PHYSICALLY HANDICAPPED PERSONS (Shepard's/McGraw-Hill, Colorado Springs, Colorado: 1984), a concise but very sophisticated explanation of this area by Laura F. Rothstein, Dean of the Brandeis School of Law of the University of Kentucky.

What Is the Purpose of Section 504?

Section 504 was enacted to "level the playing field" - to eliminate impediments to full participation by persons with disabilities. In legal terms, the statute was intended to prevent intentional or unintentional discrimination against persons with disabilities, persons who are believed to have disabilities, or family members of persons with disabilities.1

Though enacted more than 25 years ago, until recently Section 504 has been largely ignored by schools. Given the statute's tempestuous history, this is little short of shocking. Two years after Section 504 was enacted, advocates held highly publicized demonstrations on the doorstep of the then-U.S. Department of Health, Education and Welfare simply to get the Department to adopt implementing regulations. But since then, the statute, regulations and their mandate have been considered by many as the "black hole" of the education law universe.

What Is the Difference Between Section 504 and IDEA?

There are a number of differences between the two statutes, which have very different, but complementary, objectives. Perhaps the most important is, as has been stated, that Section 504 is intended to establish a "level playing field" - usually by eliminating barriers that exclude persons with disabilities - whereas IDEA is remedial - often requiring the provision of programs and services in addition to those available to persons without disabilities. Thus, Section 504 precludes hurdles to participation, whether physical - steps that prevent a person in a wheelchair from accessing a building - or programmatic - excluding a child with hepatitis from a classroom. By distinction, IDEA is similar to an "affirmative action" law: as some have asserted, school children with disabilities who fall within IDEA's coverage are sometimes granted "more" services or additional protections than children without disabilities.

The "more" and "additional" denote another important difference between Section 504 and IDEA. While IDEA requires "more" of schools for children of disabilities, it also provides schools with additional, if insignificant, funding. Section 504 requires that schools not discriminate, and in some cases undertake actions that require additional expenditures, but provides no additional financial support. For this reason,
schools often drag their feet in providing needed services to children under Section 504, and are less hesitant to openly discuss the limitations of funding. And the fact is that while their legal obligation may be no less, as a practical matter it is often extremely difficult to obtain the administrative and judicial support needed to secure compliance. The eligibility-based approach of IDEA makes students protected by Section 504 something of a square peg in a round hole. Often these students, because of their special needs, were put off by "regular" education, but they weren't encompassed by "special" education because they could not be counted for the funding that drives IDEA. Particularly these days, there is little incentive for schools to take responsibility for students who come with no funding.

A distinction (perhaps) without a difference between IDEA and Section 504 is that the former applies to education agencies who seek to obtain funds under that specific statute, while the latter applies to education agencies if even a single of their programs or activities receive financial assistance from any Federal source. For educational institutions, the term "program or activity" includes any of the operations of a State educational agency (SEA) and local educational agency (LEA) receiving federal funds regardless of whether the specific program or activity involved is a direct recipient of the federal funds. In fact, for a brief period following enactment of IDEA (then the Education of All Handicapped Children Act), the state of New Mexico did not seek funds under the statute, thereby avoiding its detailed reporting and procedural requirements. However, after a lawsuit by advocacy groups alleging that the State's education programs failed to comply with Section 504, the State concluded that since its service obligations under Section 504 were essentially identical to those under IDEA, there seemed little point to not seeking IDEA funding.

A fourth important difference between the two statutes is who is protected by them. The definition of a disability under Section 504 is much broader than the definition under the IDEA. As the illustration below is intended to show, all IDEA students are also covered by Section 504, but not all Section 504 students are eligible for services under IDEA.

As a practical matter, this means that not all children with disabilities are entitled to services under IDEA, only those who are "eligible" under the specified disability categories. Section 504 is less discriminatory: it protects all persons with a disability who

1. have a physical or mental impairment which substantially limits one or more major life activities;
2. have a record of such an impairment; or
3. are regarded as having such an impairment.

The Section 504 regulations further define a "physical or mental impairment" as any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following

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body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin or endocrine: or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

There is some legal gloss to this apparently straight-forward text. To fall within the protection of Section 504, a person's physical or mental impairment must have a substantial limitation (permanent or temporary) on one or more major life activities - functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working. Insofar as school children are concerned, the critical question is whether a student's impairment substantially limits the ability to learn. It is not true, as some school personnel responsible for administration of Section 504 have contended, that the impairment must be of a life activity other than or in addition to learning. In this regard, two points should be stressed. First, there is no quantifiable standard by which to apply the "substantially limits" test. Second, to determine whether a student's learning is substantially limited, schools need to consider more than the student's grades. Both academic and nonacademic activities need to be considered. For example, if a student with diabetes is barred by the school from participating in class trips because of the impairment, the student's learning is "limited."

Interpreting Section 504's coverage too narrowly has resulted in many districts being found out of compliance for failure to identify students protected solely by Section 504.

Following are examples of students who may be protected by Section 504, but who may not be eligible for services under the IDEA:

- students with communicable diseases (i.e., hepatitis);
- students with temporary disabilities arising from accidents who may need short term hospitalization or homebound recovery;
- students with allergies or asthma;
- students who are drug addicted or alcoholic, as long as they are not currently using illegal drugs
- students with environmental illnesses;
- students who are 22 or older depending on state law; parents with disabilities.

What is the Relationship Between Section 504 and the ADA?

The Americans With Disabilities Act (ADA), enacted in 1990, has deep roots in Section 504. In many ways, the ADA is Section 504 "writ large." The primary difference is that while Section 504 applies only to organizations that receive Federal funding, the ADA applies to a much broader universe. However, with respect to education, the ADA's objectives and language are very similar to Section 504, and for this reason both statutes are administered by the Office for Civil Rights and considered essentially identical.

The Section 504 Regulations

Section 504 has a specific set of regulations that apply to preschool, elementary and secondary programs that receive or benefit from federal financial assistance. These are found at Title 34 of the Code of Federal Regulations (CFR), Part 104. Although the ADA applies to public schools by virtue of Title II, the regulations have no specific provisions regarding education programs. Therefore, in interpreting the ADA, the OCR uses the standards under Section 504 except where Title II provides otherwise. In effect, virtually every violation of Section 504 is also a violation of the ADA as it applies to students; in fact, the OCR has stated that complaints alleging violations of one statute will automatically be investigated for violations of the other. A fairly detailed explanation of the areas considered and what OCR looks for in reviewing compliance with ADA and Section 504 can be obtained by reviewing the compliance manual issued by OCR.

Free Appropriate Public Education

Section 504 is broader than the Individuals With Disabilities Education Act (IDEA) not only with respect to the persons protected, but also in the scope of what is considered a "free appropriate public education"
(FAPE), a term used in the implementing regulations for both statutes. Thus, while IDEA defines FAPE to include the provision of special education and related services (34 C.F.R. Reg. 300.8), the Section 504 definition includes the provision of special or regular education and related services. 

A few points need to be highlighted. Since Section 504 is a non-discrimination law, any analysis of an appropriate education for a student with disabilities needs to include the educational opportunities provided to students who are not disabled. This is because an appropriate education is one that meets the needs of a student with disabilities as adequately as the needs of students without disabilities. Unlike IDEA - which focuses on the unique educational needs of the student - Section 504 looks at comparing the education of students with and without disabilities.

The United States Supreme Court underlined this point in the case Southeastern Community College v. Davis, 442 U.S. 397 (1979), when it held that an otherwise qualified individual with a disability under Section 504 is one who, with reasonable modifications, is able to meet all of the program's requirements in spite of his or her disability. The Court stated that Section 504 does not impose an affirmative action obligation upon entities covered since its intent is non-discrimination.

Subsequent court decisions have affirmed that a school's obligations under Section 504 are not limitless, but often require a balancing of competing factors. As the Second Circuit Court of Appeals stated in Rothschild v. Grottenthaler et. al., 907 F.2d 286 (2nd Cir. 1990), Section 504 "must be responsive to two powerful but countervailing considerations: the need to give effect to the statutory objectives and the desire to keep Section 504 within manageable bounds."

Second, under IDEA all services included in a student's individualized education program (IEP) must be provided at no expense to the student or the parents. Under Section 504, however, while a school may not require parents of disabled students to pay the costs associated with necessary accommodations or services, fees charged to all parents of the general student population, e.g., athletic locker fees or library card charges, may also be collected from parents of students with disabilities. Again the analysis calls for a comparison.

**Evaluation Requirements**

Paralleling IDEA, Section 504 has specific procedural requirements for the identification, evaluation, placement and procedural safeguards of preschool, elementary and secondary students.

- **Child Find**

  Section 504 puts the responsibility for identifying and locating students with disabilities on the school. A school must annually undertake efforts to "identify and locate" every qualified individual with a disability residing in the school's jurisdiction who is not receiving a public education.

- **Evaluations**

  Public elementary and secondary schools are required to "establish standards and procedures" for the evaluation and placement of students who, because of disability, need or are believed to need special education or related services, before taking any action with respect to the initial placement in a regular or special education program and any subsequent significant change in placement.

  A common failing of school districts is to evaluate only those students who fall within the IDEA categories, or to have no separate written evaluation procedures. As previously noted, Section 504's definition is broader than the IDEA's. Therefore, a district's procedures and staff training should emphasize that a student may require an evaluation under Section 504 even if there is no reason to suspect that the student is in need of special education services under an IEP.
The evaluation procedures, like those under IDEA, must ensure that:

- tests and other evaluation materials have been validated;
- evaluations are administered by trained personnel;
- evaluations are tailored to assess specific areas of educational need;
- tests are selected and administered that accurately reflect the factors the test purports to measure.

Procedurally, when interpreting the evaluation data, schools should draw upon information from a variety of sources (i.e., tests, teacher recommendations, physical condition, social or cultural background, adaptive behavior). The school also must establish procedures to document that the evaluation information has been considered. The form of documentation is discretionary and could include such things as meeting notes or evaluation reports or summaries. This is the only place where the regulations specifically require documentation. However, as a practical matter, a school should be in a position to provide documentation if challenged to prove that it complied with requisite procedures. For example, parents must be provided with notice of the school's actions with regard to the evaluation of their child. See 34 C.F.R. Reg.104.36 and OCR Memorandum to Senior Staff (October 1988). Although the regulations do not require that the notice be in writing, best practice would dictate documentation of this notice requirement.

There are no timelines for evaluations under Section 504. The OCR interprets the regulations as requiring evaluations to be completed "within a reasonable period of time." What this means as a practical matter, unfortunately, is that a substantial amount of time can elapse between identification and completion of evaluation. Remember, however, that the IDEA regulations suffer from the same defect.

**Placement Decisions**

Again, the placement decision procedures under Section 504 are comparable to those under IDEA. The school must ensure that individuals who are knowledgeable about the student, the meaning of the evaluation data and the placement options are involved. The placement decision must also be made in conformity with the least restrictive environment provision. 34 C.F.R. Reg. 104.34. But unlike IDEA, Section 504 does not prescribe the membership of the team. It is up to the district to determine whether parents will be included as members of the team. When interpreting the Section 504 provision on "least restrictive environment," the courts have been guided by the interpretations of the LRE provision under the IDEA.

With respect to disciplinary considerations, it was OCR that originally adopted the position that an expulsion or suspension of a student for more than ten consecutive days constitutes a "significant change of placement" under Section 504, subsequently adopted by OSERS/OSEP in interpreting IDEA. In addition, before a student with a disability under Section 504 is suspended for more than ten days cumulatively in a school year, the school's placement team needs to determine whether the series of suspensions creates a pattern that constitutes a "significant change of placement." That determination must be made on a case-by-case basis, taking into account such factors as the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

In addition, the placement team needs to decide whether the misconduct is a manifestation of the student's disability. The team may need to supplement the evaluation data before making this decision. If the team decides that there is a connection, the student cannot be suspended for more than ten days or expelled. If the team concludes there is no connection, the student would be subject to the school's
regular disciplinary procedures. Note that this is a different result from that required by the OSEP until recently under IDEA.

The LRE provision in Section 504 also has been used by the courts to address the right of students who are HIV positive or have full-blown AIDS to be educated in school environments. To legally segregate a student with AIDS from other children in a classroom, it must be determined that more than a "remote theoretical possibility" of transmission of the virus exists. It must be found that there is a significant risk of transmission despite making "reasonable accommodations." Martinez v. School Board of Hillsborough County, Florida, 861 F.2d 1502 (11th Cir. 1988).

**Procedural Safeguards**

Section 504 requires recipients (every public elementary and secondary school) to provide a system of procedural safeguards, including:

- notice;
- opportunity for parents or guardians to examine relevant records;
- impartial hearing with an opportunity for participation by parents/guardians and representation by counsel;
- review procedures.

In this regard, the Section 504 regulations offer schools a choice: they can adopt a set of procedures specifically for Section 504 proceedings, or they can follow the procedural safeguards required by IDEA. This is a bit of a Hobson's Choice since the IDEA requirements are more extensive than those under Section 504, as will be discussed. Surprisingly, however, many schools have done neither.

- **Notice**

Section 504 requires that parents receive notice of actions regarding the identification, evaluation and placement of their children. The notice does not need to be in writing, although many districts do provide written notice so they can document the event if they are challenged.

- **Consent**

There is no consent requirement under Section 504. The IDEA requires that parents provide written consent prior to the initial evaluation and the initial placement of their child.

- **Impartial Hearing**

States differ on whether the IDEA hearing officers are authorized to hear and rule on Section 504 issues or claims. If they are not, then a school district must be prepared to provide an alternative hearing procedure. The regulations do not specify the timelines or impartiality requirements in conducting the impartial hearing, but the OCR applies a standard of "fundamental fairness" and will be guided by IDEA case law and other decisions.

A significant number of states, but not all, have authorized their IDEA hearing officers to hear Section 504 issues raised by the parties in a due process hearing. A policy reason for doing this has been the desire to avoid duplicate and simultaneous hearings under the IDEA and Section 504 based on the same fact situation.
Complaints, Compliance and Monitoring

- **Complaints of Violations**

As previously mentioned, a student or parent has the right to file a complaint if he or she believes discrimination has occurred. Initially, the complaint should be filed with the school's or school district's Section 504 compliance officer. However, it is not unusual for school district personnel to be unaware of who serves as the compliance officer, and sometimes for the good reason that there is none. That, in and of itself, is a violation of Section 504. Utilizing this complaint process does not limit access to other enforcement options, either at a later date or simultaneously. And there is no Section 504 requirement, comparable to the IDEA, requiring state education agencies to establish state complaint systems for allegations that school districts are not complying with Section 504 and ADA requirements.

A complaint may also be filed with the Office for Civil Rights itself (usually the regional office) which, in addition to technical assistance activities, conducts compliance reviews and complaint investigations. The scope of Section 504 complaints is very broad. It may be filed by any individual or organization and it may address individual student, class, or systemic issues. The complaint must be filed within 180 days of the alleged discriminatory action, although the Regional Director has the authority to waive the time limit in some circumstances.

The OCR will conduct an investigation of the complaint through data collection and written responses to questions, and may conduct an on site review. An informal process known as Early Complaint Resolution (ECR) is available in individual, but not class, complaints.

The OCR will issue a Letter of Finding, either with a "no violation" conclusion or identifying violations and specifying corrective actions. Failure to implement the requested corrective actions may lead to an administrative hearing, with the possibility that Federal education funds may be terminated.

The OCR has stated that its compliance monitoring generally will focus on whether a school district has followed the policy and procedural requirements of the law and regulations, rather than made the "correct" substantive decision in the specific case before it. In other words, the OCR does not see its role as second-guessing substantive decisions. As the comments to the regulations state:

> It is not the intention of the Department except in extraordinary circumstances to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning the identification and location, evaluation, and due process procedures).

- **Self-Evaluations**

School districts were supposed to have conducted a self-evaluation back in 1977. Most school districts either did not conduct the 1977 study or have not been able to locate it. The Americans with Disabilities Act, when enacted in 1990, also required local governmental agencies, including school districts, to conduct a self-evaluation of their services, policies and practices, and their effects for the purpose of determining if they discriminate against individuals with disabilities. If the district employs 50 or more employees, the self-evaluation should have been retained and made available for public inspection for at least three years following its completion. The number of education agencies that have complied with this newer provision is problematic.

- **Judicial Action**
In addition to the above enforcement options, a student or parent may initiate a court action alleging a violation of Section 504, independent of whatever action may be taken under IDEA.

The Rehabilitation Act specifically authorizes a court in its discretion to award reasonable attorney's fees to the prevailing party. In addition to injunctive relief, there are now grounds for the awarding of monetary damages and some recent litigation indicates that it may be possible to recover personal damages from educational personnel under Section 504 in the appropriate circumstances.

Conclusions

For those children with disabilities not covered by IDEA, the protections of Section 504 are critical. For those children with disabilities who are covered by IDEA, the protections of Section 504 may be more attractive because of their flexibility. On the other hand, Section 504 remains more of a mystery to parents precisely because its protections are not defined as specifically as those under IDEA. For this reason, if no other, parents should consult an attorney before taking any action premised on their rights under Section 504.

Footnotes

1. The text of the legal mandate is remarkably brief; Section 504, 29 U.S.C. §794, states:

   No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

2. A school district is not only prohibited from engaging in discriminatory conduct involving its own programs and activities, but is also prohibited from directly or through contractual, licensing or other arrangements, aiding or perpetuating discrimination against a qualified person with a disability by providing "significant assistance" to an agency, organization or person that discriminates. Among the factors that will be evaluated in determining whether a public school is providing significant assistance to a private group are:

   • direct financial support,
   • indirect financial support,
   • provision of tangible resources such as staff and materials,
   • intangible benefits such as the lending of recognition and approval,
   • the selectivity of the school's provision of privileges and resources, and
   • whether the relationship is occasional and temporary or permanent and long-term.

3. Patterned after Section 504, the applicable provision of the ADA similarly states in Title II, 42 U.S.C. §12132:

   Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subject to discrimination by any such entity.

4. Specifically, a free appropriate public education under Section 504 is defined as "the provision of regular or special education and related aids and services that ... are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and ... are based upon adherence to specified procedures." 34 C.F.R. Reg. 104.33(b)(1)
Advocacy for Parents through IDEA 2004

Annika Pollock
Dussault Law Group
(206) 324-4300

Core Principles of IDEA

- Zero Reject
- Comprehensive Evaluation
- Individualized Education
- Free Appropriate Public Education
- Least Restrictive Environment
- Parent Participation

Tools for Advocacy

- Parental Consent/Notice Requirements
- Eligibility Determination/Evaluations
- Independent Educational Evaluations
- Use of Outside Reports
- IEP Content & Development
- Private School Placements
- What to do when you disagree
Initial Evaluation

- Disability?
- When does the initial evaluation take place?
  - Parental Consent
- Required prior to special education & related services provision.
- Disability determined within 60 school days from receipt of parental consent to evaluation with limited exceptions

Independent Educational Evaluations

- Independent Educational Evaluation (IEE) at public expense
- If District evaluation is appropriate, then the IEE is not at public expense
- Hearing officer can request an IEE at public expense in a due process hearing

IEP Contents

- Present Levels of Performance
- Alternate Assessment (if used)
- Goals
- Behavioral Intervention Plans
- Provisions for periodic progress reports
- Statement of services
- Transition services when child reaches 16
Present Levels of Performance

- Present level of academic achievement
- Present level of functional performance
- Sets the benchmark on which to measure progress
- Increase emphasis on functional performance

Annual Goals

- Annual Goals must be measurable
- Academic Goals
- Addition of Functional Goals

IEP Development

- IEP team participants & attendance
- IEP meeting requirements
- Changing or amending IEPs
IEP Team Participants

IEP TEAM

IEP Team Attendance

- Team members can be excused if parents & District agree attendance is not necessary because members’ area of the curriculum or services will not be modified or discussed.
- Team members can also be excused even if their area of the curriculum or services will be modified or discussed when:
  - Parents & District consent to excusal
  - Member provides written input on IEP development prior to the meeting

IEP Team Meetings

- Goal is to develop and update IEPs
- Review evaluations and determine if additional evaluations may be necessary
- Meetings must be held annually to determine if goals are being achieved (can be more frequent)
- Parents can bring a “representative” to the meeting
Changing or Amending IEPs

- At IEP meeting
- Without convening a meeting
  - Amendments without a meeting must be made in writing with a revised copy of the IEP being provided to the parents at their request.

What Happens When you Disagree?

- Request an IEE
- Can File an OSPI Complaint
- Can File an OCR Complaint
- Can Request Mediation
- Can Request Facilitated IEP Meeting – Special Education Support Center
- Can Request Due Process Hearing
  - Resolution Session Must Be Offered (Informal)
  - Stay put – ALJ can order a child shall stay at the current placement during pendency of hearing.

http://idea.ed.gov

Building the Legacy: IDEA 2004
Disclaimer/Notice

- This training and written materials are designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the presenters are not engaged in rendering legal, financial or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

- Be advised that all written materials and power point slides are the intellectual property of the Dussault Law Group. These materials may not be distributed without the express written consent of the author.

Thank You!

Annika Pollock
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annikap@dussaultlaw.com
(206) 324-4300
Session 3

Special Education Mediation

Mediation services are offered by OSPI at no charge to parents or school districts. Mediation is available to help resolve problems that involve the initial identification of a student, evaluations of the student, the educational placement, and the educational services provided to a student (FAPE). An impartial mediator works with the parties to clarify issues, resolve conflicts and develop agreements between the parties, when an agreement is reached. Parents and school districts may invite any participants they believe will assist in the mediation. Mediation is a voluntary process for the parents and districts. Either the district or the parent may refuse to mediate, and there are occasions when parties are not able to reach an agreement. Mediation may not be used to delay or deny rights under IDEA or the right to proceed to a due process hearing. When parties reach an agreement, those agreements are in writing and are enforceable in state and federal courts.

To request mediation, or obtain more information call: Sound Options Mediation and Training Group, L.L.C. at 1-800-692-2540 or (206) 842-2298 (Seattle). Washington State relay service numbers are 1-800-833-6388 (TDD) or 1-800-833-6384 (voice).

Sound Options - http://www.somtg.com

Citizen Complaints

Any individual or organization may file a citizen complaint if it believes a school district, another public agency serving special education students, a private agency under contract with a public agency to serve special education students, an educational service district, or the state has violated federal or state laws or regulations implementing IDEA. The complaint must be in writing and it must be signed.

The signed complaint must include the following information:

- A statement that a public agency has violated a requirement of Part B of IDEA, or corresponding state law or regulation; or, a statement that the school district is not implementing a mediation or resolution agreement.
- The name, address, and telephone number of the person filing the complaint.
- If the complaint involves a specific student, including students who are homeless, the name and contact information for the student.
- The name of the school district. If the complaint is about an agency other than the school district providing special education services, include the name and address of the other agency.
- A description of the problem with the facts supporting the allegations.
- A proposed resolution of the problem to the extent known.

When preparing a complaint it is helpful to include as much information as possible including significant dates and events that may be relevant to the allegations. Although
it is not required, a complaint form has been developed to assist individuals or
organizations in providing the information needed in order to accurately process
complaints. This form may be requested from OSPI, Special Education at (360) 725-
6075. It is also available on the special education web site at:

www.k12.wa.us/specialed/pubdocs/Citizen_Complaint_Request_Form.pdf or

www.k12.wa.us/SpecialEd/pubdocs/Citizen_Complaint_Request_Form.doc

The citizen complaint should be sent directly to:

Office of Superintendent of Public Instruction
Attn: Special Education
PO Box 47200
Olympia, WA 98504-7200

Signed, written complaints may also be faxed to OSPI, Special Education at (360) 586-
0247.

A copy of the complaint must be provided to the district or other agency.

After a complaint is received by OSPI, a copy of the complaint, along with any
accompanying documentation, is sent to the school district, and the district is asked to
respond to the allegations. A copy of the district’s response is sent to the complainant and
he or she is given an opportunity to reply to the district’s response. After investigation, a
written decision is issued within 60 days, unless an extension of time is warranted. If the
parent or district needs additional time to address issues raised in the complaint he or she
must request an extension and the reasons needed for the extension. If there are violations
of either state or federal special education law or regulations, the decision will address
measures that are designed to correct both student specific and district systemic violations.

OSPI only investigates allegations of violations under Part B of the IDEA that have
occurred in the past year.

OSPI only has authority to investigate issues arising from an allegation of a violation of
IDEA, or the regulations that implement IDEA, unless a different statute or regulation
requires parties to use a different dispute resolution provision. For example, if a parent is
requesting an order placing a student in a private school or residential facility because the
parent believes that the district is unable to provide a FAPE, federal special education law as
implemented by the state’s regulations require that this type of dispute be resolved through
a due process hearing.

OSPI also cannot investigate matters that are currently the subject of a due process
hearing, or matters that have been previously resolved in a due process administrative
hearing decision.
IEP Facilitation

IEP facilitators not part of the team may be utilized when there is a sense from any of the participants that the issues at an IEP meeting are being addressed unproductively, when an adversarial climate exists or when a meeting is expected to be particularly complex and controversial.

The State of Washington is pursuing three models for IEP Facilitation: facilitating a small number of IEP’s typically following a Complaint Investigation or DPH where the State wants to support the LEA and parents to move forward successfully; providing technical assistance (training and consultation) to ESD’s that have chosen to develop a local cadre of trained IEP facilitators; and the development of a cadre of IEP Facilitators under a pilot project designed to support effective collaboration between districts and families.

Settings & Use

Practice Setting(s): State-wide and pilot projects in local settings.

Has It Been Replicated?: Many other states. See “Facilitation” practices in the CADRE Continuum.

Resources Involved

Personnel: Under contract with the State to provide mediation services, the contractor also facilitates a small number of IEP’s when the State requests/offers facilitation services. The contractor provides technical assistance (training and consultation) to ESD’s who have chosen to develop a local cadre of trained IEP facilitators.

Cost

System(annual): The State pays for the direct provision for a limited number of facilitations. Local districts fund the delivery of facilitation services in the pilot project and the State pays for technical assistance.

Education, Training, Skills & Experience

The contractor works with the ESD to design and implement the resource and technical assistance for the first two years.
**Purpose:** The IEP is designed to clearly communicate to the parents, the student, and providers the type and amount of special education and any necessary related services or supports that will be made available to the student. The most recent evaluation report is used to develop the IEP. The IEP is individualized to reflect the unique needs of the student and how these needs will be addressed to permit the student to be included and progress in the general education curriculum.

**Individualized Education Program (With Secondary Transition)**

<table>
<thead>
<tr>
<th>Student name:</th>
<th>Student ID No.:</th>
<th>Date of IEP meeting:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birthdate:</td>
<td>Age:</td>
<td>Grade:</td>
</tr>
<tr>
<td>Adult student:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Eligibility category:</td>
<td></td>
<td>Date of most recent eval:</td>
</tr>
<tr>
<td>Race/Ethnicity:</td>
<td>Primary language:</td>
<td>Reevaluation due date:</td>
</tr>
<tr>
<td>District:</td>
<td>Resident School:</td>
<td>Serving School (if different):</td>
</tr>
<tr>
<td>Parent(s) name(s):</td>
<td>Primary language at home:</td>
<td></td>
</tr>
<tr>
<td>Parent interpreter needed:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Surrogate parent:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Title:</td>
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</tr>
</tbody>
</table>

**Present Levels of Academic Achievement and Functional Performance**

Present levels of academic achievement:

Present levels of functional performance *(i.e. – communication, motor, social, behavior, life/adaptive skills, etc.)*:

**Effect of the disability on involvement/progress in general education curriculum/appropriate activities** *(see Points to Consider)*:

**Points that must be considered in developing the IEP (refer to WAC 392-172A-03110):**

- Results of the most current evaluation, and the academic, developmental, and functional needs of the student.
- Positive behavioral supports and interventions, if the student’s behavior impedes the student’s learning or that of others.
- Language needs of students with limited English proficiency as they relate to the child’s IEP.
- Supports for blind/visually impaired students, including Braille instruction.
- Communication needs of the student, including the needs for deaf and hard of hearing students.
- Assistive technology devices and services.
- Supplementary aids/services, program modifications, and support for school personnel.
**PURPOSE:** The purpose of transition planning is to develop a coordinated set of activities designed within a results-oriented process that is focused on improving the academic achievement and functional performance of the student in order to facilitate the student’s movement from school to post-school activities, including postsecondary education/training, employment, and if appropriate, independent living skills.

## SECONDARY TRANSITION

<table>
<thead>
<tr>
<th>Student participated in IEP meeting?</th>
<th>If no, what steps were taken to ensure that the student’s preferences/interests were considered?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
<td></td>
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</tbody>
</table>

**AGE APPROPRIATE TRANSITION ASSESSMENTS** (include results of informal and/or formal assessments including student’s needs, strengths, preferences, and interests):

- [ ] surveys/questionnaires
- [ ] profiles/portfolios
- [ ] vocational assessment(s)
- [ ] other: ____________________________

**POINTS TO CONSIDER:**
- Secondary transition must be addressed in the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team, and updated annually.
- Measurable postsecondary goals, based upon age-appropriate transition assessment results, must be included in the areas of education/training, employment, and (if appropriate) independent living skills.
- Transition services should be based on the individual student’s needs, taking into account the student’s strengths, preferences, and interests, and may include instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and if appropriate, the acquisition of daily living skills and provision of a functional vocational evaluation.

## EDUCATION/TRAINING (Required to be addressed for all students)

<table>
<thead>
<tr>
<th>Measurable Postsecondary Goal(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(What the student will do after graduation from high school in the area of education/training)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transition Services (list Transition Services related to Education/Training, including IEP goal number(s) if applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transition Service</td>
</tr>
<tr>
<td>-------------------</td>
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</table>

*Seattle University School of Law

October 17, 2008

Page 27
**EMPLOYMENT** *(Required to be addressed for all students)*

**Measurable Postsecondary Goal(s)** *(What the student will do after graduation from high school in the area of employment)*

**Transition Services** *(list Transition Services related to Employment, including IEP goal number(s) if applicable)*

<table>
<thead>
<tr>
<th>Transition Service</th>
<th>Staff/Agency Responsible</th>
<th>IEP Goal #</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

**POINTS TO CONSIDER** *(continued):*

- Transition services may be special education, if provided as specially designed instruction or related services, if required to assist the student in benefiting from special education.
- Representatives of any agencies that are likely to be responsible for providing or paying for transition services to the student should be invited to the IEP meeting, with parent consent.

**INDEPENDENT LIVING SKILLS** *(Must be addressed if determined appropriate by the IEP Team)*

**Measurable Postsecondary Goal(s)** *(What the student will do after graduation from high school in the area of living skills)*

**Transition Services** *(list Transition Services related to Independent Living Skills, including IEP goal number(s) if applicable)*

<table>
<thead>
<tr>
<th>Transition Service</th>
<th>Staff/Agency Responsible</th>
<th>IEP Goal #</th>
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**POINTS TO CONSIDER** *(continued):*

- Independent living skills are “those skills or tasks that contribute to the successful independent functioning of an individual in adulthood” (Cronin, 1996) in the following domains: leisure/recreation, home maintenance and personal care, and community participation.

**COURSE(S) OF STUDY** *(list the course(s) of study needed to assist the student in reaching his/her postsecondary goals, unless already described above, or attach a list of courses)*

**POINTS TO CONSIDER** *(continued):*

- A course of study is “a multi-year description of coursework to achieve the student’s desired post-school goals, from the student’s current to anticipated exit year.” (NSTTAC, 2007).
**PURPOSE:** IEPs must include a statement of measurable annual goals, including academic and functional goals, designed to meet each of the student’s educational needs that result from the student’s disability to enable the student to be involved and make progress in the general education curriculum. In order to be measurable, the goal should include a baseline (“from”), a target (“to”), and a unit of measure. For students who will be assessed through the WAAS Portfolio this year, the IEP team should use the “Measurable Annual Goal(s) with Short-term Objectives/Benchmarks” page (see next page).

**MEASURABLE ANNUAL GOAL(S)**

<table>
<thead>
<tr>
<th>Goal #</th>
<th>Measurable Annual Goal</th>
<th>Method/Criteria for Evaluating Progress (if not addressed in a separate document)</th>
<th>Progress Notes (if not maintained separately)</th>
<th>POINTS TO CONSIDER:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>- Measurable annual goals stem from the recommendations for specially designed instruction in the evaluation report.</td>
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<td>- Measurable annual goals must relate to the general education curriculum or, for preschool students, participation in appropriate activities.</td>
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<td>- Measurable annual goals must also address other educational needs that result from the student’s disability.</td>
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<td>- The IEP must include a description of how the district will measure the student’s progress and when progress will be reported to parents (concurrent with the issuance of report cards).</td>
</tr>
</tbody>
</table>

*Copy additional pages as necessary*
**PURPOSE:** IEPs must include a statement of measurable annual goals, including academic and functional goals, designed to meet each of the student’s educational needs that result from the student’s disability to enable the student to be involved and make progress in the general education curriculum. For students who take alternate assessments aligned to alternate achievement standards (WAAS Portfolio), benchmarks or short-term objectives must also be included. In order to be measurable, the goal should include a baseline (“from”), a target (“to”), and a unit of measure.

### MEASURABLE ANNUAL GOAL(S) WITH SHORT-TERM OBJECTIVES/BENCHMARKS

<table>
<thead>
<tr>
<th>Goal #</th>
<th>Measurable Annual Goal</th>
<th>Method/Criteria for Evaluating Progress (if not addressed in a separate document)</th>
<th>Progress Notes (if not maintained separately)</th>
<th>POINTS TO CONSIDER:</th>
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<td>Date</td>
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</table>

**Benchmarks or Short-Term Objectives**

*Copy additional pages as necessary*
**PURPOSE:** The purpose of the report of student progress is to inform the parents and the student of the student’s progress toward meeting the measurable annual goal(s) and to specify how the parents will be informed.

**REPORT OF STUDENT PROGRESS:**

State how the student’s progress toward the annual goal(s) will be measured *(if not already addressed on measurable annual goal page(s))*:

State how the parents will be regularly informed of student’s progress toward meeting the annual goal(s) concurrent with the issuance of report cards (such as through the use of quarterly or other periodic reports):

**PARTICIPATION IN STATE AND DISTRICTWIDE ASSESSMENTS OF STUDENT ACHIEVEMENT**

<table>
<thead>
<tr>
<th>State Assessment – The student will participate in the following state assessment(s) this school year:</th>
<th>POINTS TO CONSIDER:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reading</strong></td>
<td><strong>Math</strong></td>
</tr>
<tr>
<td>(grades 3-8 and 10)</td>
<td>(grades 4, 7, 10)</td>
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</table>

**Graduation** – The following will be used for graduation purposes *(specify grade level or grade equivalent in the box)*:

- Developmentally-appropriate WASL *(WAAS-DAW)*
- Locally-determined Assessment *(LDA)*

**Districtwide Assessment** – The student will participate in the following districtwide assessment(s) this school year:

**Accommodations** – List any individual accommodations in the administration of the state or districtwide assessments necessary for the student to participate:

If the student: (a) will not participate in the grade-level WASL *(with or without accommodations)* or (b) is unable to participate in a regular districtwide assessment, explain why the student cannot participate in the regular assessment and why the selected assessment option is appropriate:

- The IEP team makes the determination of what type of assessment the student will take and what administrative modifications and individual accommodations are necessary.
- Accommodations provided on state and districtwide assessments should be those that are provided as part of the regular instructional program.
- Locally-determined assessments *(LDAs)* and WAAS-DAW are available to students after they have participated in the high school assessment process.
- Parents and students should be informed that WASL-Basic, LDAs, WAAS Portfolio, and WAAS-DAW lead to a Certificate of Individual Achievement *(CIA)*, rather than a Certificate of Academic Achievement *(CAA)*.
- For further information regarding the WASL, allowable accommodations, and graduation requirements, please refer to OSPI’s website *(www.k12.wa.us)*.
**PURPOSE:** The purpose of this page is to document the modifications and/or accommodations that the student requires, based on the student’s assessed needs, in order to advance appropriately toward attaining the identified annual goals, to be involved and make progress in the general education curriculum, and to be educated with non-disabled peers to the maximum extent appropriate.

## ACCOMMODATIONS, MODIFICATIONS, AND ASSISTIVE TECHNOLOGY

<table>
<thead>
<tr>
<th>Subject (codes below)</th>
<th>Accommodations/Modifications Needed</th>
<th>Subject (codes below)</th>
<th>Accommodations/Modifications Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Presentation</strong></td>
<td></td>
<td><strong>Setting</strong></td>
<td></td>
</tr>
<tr>
<td>Use large print/Braille/recorded books</td>
<td>Provide individualized/small group instruction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alter format of materials <em>(highlight, type, spacing, color-code etc.)</em></td>
<td>Read class materials orally</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low-vision devices <em>(magnifiers, Closed Circuit TV, etc.)</em></td>
<td>Provide study outlines/guides/graphic organizers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sign Language – ASL or SEE</td>
<td>Modify/repeat/model directions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shortened assignments</td>
<td>Take test in separate location</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preview test procedures</td>
<td>Preferential seating</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited multiple choice</td>
<td>Other:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rephase test questions and/or directions</td>
<td><strong>Response</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provide test/quiz study guide</td>
<td>Utilize oral responses to assignments/tests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provide extra credit options</td>
<td>Text-to-Speech <em>(Kurzweil, WYNN, Text Help, etc.)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simplify test wording</td>
<td>Allow dictation to a scribe</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Read class materials orally</td>
<td>Allow use of a calculator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assign peer tutor/note taker</td>
<td>Allow use of tape recorder</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other:</td>
<td>Spelling and grammar devices</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Timing/Scheduling</strong></td>
<td>Speech-to-text software</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prior notice of tests/quizzes</td>
<td>Hands-on assignments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extra time to complete assignments</td>
<td>Other:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Modify student’s schedule <em>(describe below)</em>:</td>
<td><strong>Other</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provide desktop list of tasks</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provide homework lists</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Behavior plan/contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provide daily assignment list</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Modified grading</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extra time on tests/quizzes</td>
<td><strong>Assistive Technology</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allow breaks <em>(during work, between tasks, during testing, etc.)</em></td>
<td>Describe:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. All subjects</td>
<td>e. Math</td>
<td>i. Health</td>
<td>m. Vocational</td>
</tr>
<tr>
<td>b. Reading</td>
<td>f. Science</td>
<td>j. Economics</td>
<td>n. Lunch/Recess</td>
</tr>
<tr>
<td>c. English</td>
<td>g. Social Studies</td>
<td>k. Physical Education</td>
<td>o. Library</td>
</tr>
<tr>
<td>d. Spelling</td>
<td>h. History</td>
<td>l. Music/Art</td>
<td>p. Extracurricular Activities</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>q. Other:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>r. Other:</td>
</tr>
</tbody>
</table>
**SUMMARY OF SERVICES MATRIX**

<table>
<thead>
<tr>
<th>Service</th>
<th>Initiation Date</th>
<th>Frequency (i.e. – minutes per week)</th>
<th>Location of Service (setting)</th>
<th>Duration</th>
<th>Staff Responsible for Delivering Service</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Special Education (specially designed instruction):</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>Related Services (i.e. – speech, motor, counseling, vision/hearing, transportation, interpreting services, orientation/mobility, parent training, etc.):</strong></td>
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<tr>
<td><strong>Supplementary Aids and Services (allows student to be educated with non-disabled peers to the maximum extent in general education or other educational setting):</strong></td>
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<tr>
<td><strong>Program Modifications or Support for School Personnel (i.e. – staff development/training, technical assistance, etc.):</strong></td>
<td></td>
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</tbody>
</table>

**POINTS TO CONSIDER:**

- If the position responsible for delivering the specially designed instruction is anyone other than a certificated special education teacher or related service provider, then the certificated special education teacher/related service provider must design and supervise the instruction, and monitor and evaluate the student’s progress.

- For definitions of special education, related services, and supplementary aids and services, refer to WAC 392-172A-01020 through -01200.

- When completing section B. at the bottom of this page, remember that job placements and community-based instruction are considered to be general education settings, unless only disabled individuals are present (such as in a sheltered workshop).

**Table Formulas:**

- **A.** = Total building instructional minutes per week (excluding lunch time)
- **B.** = Total minutes per week student is served in a special education setting
- **%** = % of time spent in general education setting (A minus B divided by A)
**PURPOSE:** The purpose of this page is to document the extent to which the student will be involved and progress in the general curriculum, participate in extracurricular and nonacademic activities and be educated and participate with other special education students and non-disabled students. Other education-related factors that may impact the student should also be considered.

**LEAST RESTRICTIVE ENVIRONMENT:**

<table>
<thead>
<tr>
<th>Students ages 6 and above (check one):</th>
<th>POINTS TO CONSIDER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ In general education setting <strong>80 to 100%</strong> of the time</td>
<td>• Children should be educated with non-disabled peers to the maximum extent appropriate.</td>
</tr>
<tr>
<td>☐ In general education setting <strong>40 to 79%</strong> of the time</td>
<td>• The IEP Team, including the parent(s), is responsible for determining the educational placement of the child.</td>
</tr>
<tr>
<td>☐ In general education setting <strong>0 to 39%</strong> of the time</td>
<td>• Refer to the percentage of time spent in a general education setting found at the bottom of the Summary of Services Matrix to complete this section.</td>
</tr>
<tr>
<td>☐ In separate day school (public or private)</td>
<td></td>
</tr>
<tr>
<td>☐ Residential facility (public or private)</td>
<td></td>
</tr>
<tr>
<td>☐ Correctional facility</td>
<td></td>
</tr>
<tr>
<td>☐ Homebound/hospital</td>
<td></td>
</tr>
<tr>
<td>☐ Home-school/parentally-placed private school</td>
<td></td>
</tr>
</tbody>
</table>

An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education class, and in nonacademic and extracurricular activities, including a description of any adaptations needed for participation in physical education:

**OTHER CONSIDERATIONS:**

<table>
<thead>
<tr>
<th>1. Does this student require special transportation?</th>
<th>☐ Yes ☐ No</th>
<th>If yes, describe (if not already addressed on the service matrix):</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Does this student require Extended School Year (ESY) services?</td>
<td>☐ Yes ☐ No</td>
<td>If ESY is determined by the IEP team to be necessary, complete and attach the ESY addendum.</td>
</tr>
<tr>
<td>Will be determined by the IEP team by: Date:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Does the student’s behavior negatively impact his/her learning or the learning of others?</td>
<td>☐ Yes ☐ No</td>
<td>If yes, consider the student’s need for positive behavioral supports/interventions, a Functional Behavioral Assessment, and/or a Behavioral Intervention Plan.</td>
</tr>
<tr>
<td>4. Does this student require the use of aversive interventions?</td>
<td>☐ Yes ☐ No</td>
<td>If yes, complete and attach the Aversive Intervention Plan addendum.</td>
</tr>
<tr>
<td>5. Are there any other factors not already addressed (such as medical concerns or other issues) or other adaptations needed?</td>
<td>☐ Yes ☐ No</td>
<td>If yes, describe:</td>
</tr>
</tbody>
</table>
PARTICIPANTS IN IEP MEETING (Signatures are used to document participation in the meeting and do not constitute agreement or disagreement):

<table>
<thead>
<tr>
<th>Parent/Guardian</th>
<th>District Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parent/Guardian</td>
<td>Name/Title</td>
</tr>
<tr>
<td>Student</td>
<td>Name/Title</td>
</tr>
<tr>
<td>Special Education Teacher</td>
<td>Name/Title</td>
</tr>
<tr>
<td>General Education Teacher</td>
<td>Name/Title</td>
</tr>
</tbody>
</table>

Other individuals who should be informed of his/her responsibilities in implementing the IEP (bus driver, librarian, etc.):

TRANSFER OF RIGHTS: Beginning at least one year before reaching age 18, the student has been informed that all rights will transfer to the student at age 18, unless there is a guardianship or other determination that the student cannot make educational decisions.

POINTS TO CONSIDER:
- IEP team membership is described in WAC 392-172A-03095.
- School district must give prior written notice when proposing or refusing to initiate or change the identification, evaluation, educational placement, or provision of FAPE.
- A required team member may be excused from attending an IEP meeting with the agreement/consent of the parent(s) and the district, depending upon whether that member’s area is being discussed or modified at the meeting. See WAC 392-172A-03095 (5) for additional related requirements.

REQUIRED FOR INITIAL PROVISION OF SERVICES ONLY: WRITTEN PARENTAL CONSENT FOR SERVICES
My rights and those of my child regarding procedural safeguards have been fully explained. I understand that my child requires special education and before initial provision of special education and related services may occur, I must give consent for services. I understand when I give consent, it is voluntary, and that while it can be revoked, revocation is not retroactive. This means that the revocation does not undo services that occurred after my consent was given and before my consent was revoked. If I refuse consent, I understand that the district may not request mediation to obtain my consent or ask for a due process hearing to override my consent. If I do not give consent for initial services, the district may not provide services until I provide written consent. I understand that if I refuse consent, the district will not be considered to be in violation of the requirement to make FAPE available to my child.

I give consent for my child to receive special education services.

Parent/Guardian Signature

Date

□ Yes □ No

POINTS TO CONSIDER:
- When the student reaches age 18 (or majority), the district must notify the parents and the student that rights have transferred to the student, and provide any notices required to the student and parents.
## 1. Present Levels of Academic Achievement and Functional Performance (PLAAFP)

§300.320 (a) (1) & WAC 392-172A-03090 (1) (a)

<table>
<thead>
<tr>
<th>Area of Service</th>
<th>MAG?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Written Language</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Math</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Behavior/Social</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Study Skills</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Life skills/adaptive</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*SLP</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*OT</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*PT</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*Vision</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*Other</td>
<td>Y</td>
<td>N</td>
</tr>
</tbody>
</table>

For students taking alternate assessments aligned to alternate achievement standards, does the IEP include a description of benchmarks or short term objectives?

## 2. Measurable Annual Goals

§300.320 (a) (2) & WAC 392-172A-03090 (1) (b)

<table>
<thead>
<tr>
<th>Area of Service</th>
<th>MAG?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Written Language</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Math</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Behavior/Social</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Study Skills</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Life skills/adaptive</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*SLP</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*OT</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*PT</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*Vision</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*Other</td>
<td>Y</td>
<td>N</td>
</tr>
</tbody>
</table>

## 3. Progress toward Meeting Goals

§300.320 (a) (3) & WAC 392-172A-03090 (1) (c)

<table>
<thead>
<tr>
<th>Area of Service</th>
<th>MAG?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Written Language</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Math</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Behavior/Social</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Study Skills</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Life skills/adaptive</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*SLP</td>
<td>Y</td>
<td>N</td>
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<td>*OT</td>
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<td>*PT</td>
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<td>N</td>
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<tr>
<td>*Vision</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*Other</td>
<td>Y</td>
<td>N</td>
</tr>
</tbody>
</table>

## 4. Least Restrictive Environment

§300.320 (a) (5) & WAC 392-172A-03090 (1) (e)

<table>
<thead>
<tr>
<th>Area of Service</th>
<th>MAG?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Written Language</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Math</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Behavior/Social</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Study Skills</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Life skills/adaptive</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*SLP</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*OT</td>
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<td>N</td>
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<tr>
<td>*PT</td>
<td>Y</td>
<td>N</td>
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<tr>
<td>*Vision</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>*Other</td>
<td>Y</td>
<td>N</td>
</tr>
</tbody>
</table>

*MAG needed only if service is provided as specially designed instruction.
5. Assessment
§300.320 (a) (6) & WAC 392-172A-03090 (1) (f)

| Y | N | NA | If the IEP team determines that an alternate assessment instead of a regular State or district-wide assessment of student achievement is appropriate, does the IEP indicate the assessment selected and an explanation of why the student cannot participate in regular assessment? If the IEP team determines that any accommodations are necessary for the student to participate in a State or district-wide assessment, are those accommodations stated in the IEP? |

6. Services Provided by IEP
§300.320 (a) (4) & WAC 392-172A-03090 (1) (d)

| Y | N | NA | Does the IEP contain a statement of (a) the special education and related services, (b) supplementary aids and services to be provided for the student and (c) a statement of program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the goals? |
| Y | N | NA | Does the IEP state a projected date for the beginning of services and modifications and frequency, location, and duration of those services? |
| Y | N | NA | If Extended School Year (ESY) services were provided, were those services identified by frequency, location and duration indicated on the IEP? |
| Y | N | NA | Are any required aversive interventions for the student indicated? |

7. Transition Activities
§300.320 (b) (1 & 2) & WAC 392-172A-03090 (1) (j)

| Y | N | NA | Complete this section for students who are or will be 16 or older during the period of this IEP. |
| Y | N | NA | a. Is there a measurable postsecondary goal(s) (post school outcomes) that covers: |
| Y | N | NA | • education/training, |
| Y | N | NA | • employment, and, |
| Y | N | NA | • as needed, independent living? |
| Y | N | NA | b. Is (are) there annual IEP goal(s) that will reasonably enable the child to meet the identified postsecondary goal(s) (post school outcomes)? |
| Y | N | NA | c. Are there transition services in the IEP that focus on improving the academic and functional achievement of the child to facilitate his/her movement from school to post-school outcomes? |
| Y | N | NA | d. For transition services that are likely to be provided or paid for by other agencies, is there evidence that representatives of the agency(ies) were appropriately invited to the IEP meeting? (REMINDER: Parent or adult student consent is required prior to agency participation.) |
| Y | N | NA | e. Is there evidence that the measurable post secondary goals were based upon age appropriate transition assessment? |
| Y | N | NA | f. Do the transition services include courses of study needed to assist student in reaching post secondary goal(s) (outcomes)? Please note: Course of study is a multi-year description of future coursework necessary to achieve the student’s desired post-school goals from student’s current to anticipated exit year. |

8. IEP Team
§300.321 & WAC 392-172A-03095; 03100 (2) (c)

| Y | N | NA | Did the IEP Team include the required IEP team membership? (ex. parent, general education teacher(s), special education provider(s), student (whenever appropriate), district representative, etc.) |
| Y | N | NA | If required personnel did not attend, is there written evidence of the parent’s agreement/consent to excuse the member? |
| Y | N | NA | Was the student invited to IEP Team meeting if post secondary goals and transition services were considered? |
| Y | N | NA | Does the IEP include a statement that the student has been informed of the student’s rights upon reaching the age of majority? |

TOTALS

| Yes | No | NA |

If the IEP Review Form has one (1) or more NO(s), then the IEP may not be properly formulated. The Special Education Evaluation and IEP Technical Assistance Module [http://www.k12.wa.us/SpecialEd/Module.aspx](http://www.k12.wa.us/SpecialEd/Module.aspx) can be used as a resource.
EDUCATION:

Wrightslaw - Articles and Reports (on-line)
Web: http://www.wrightslaw.com/advoc/articles/iep_guidance.html
Info: Articles and publications for order, to view on-line and download on special education related topics including: advocacy, assessments, ADD/ADHD, Autism, damages, discrimination, due process, early childhood, eligibility, free appropriate public education (FAPE), high stakes tests, IDEA, IEP, inclusion, least restrictive environment (LRE), mediation, confidentiality, private schools, placement, related services, retaliation, Section 504, the Americans with Disabilities Act (ADA), transition and other topics.

Transition Guide for Washington State (downloadable in PDF)
Info: Report on Washington transition services includes: Transition-What the Law Says; Post-School Outcomes and Performance Indicators; Gathering Information; Curricular Options for Successful Transition; IEP's for Secondary Students; Transition Partnerships with Families; and Transition Planning and Interagency Cooperation; Transition Service Needs, Self-Determination, Functional Evaluations; and form templates. Revised 2007

OSPI Special Education Publications and Related Resources (Washington State)
Office of the Superintendent of Public Instruction
Special Education, Old Capitol Building
PO Box 47200 Olympia, WA 98504-7200
Phone: (360) 725-6075 Fax: (360) 586-0247 TTY: (360) 586-0126
E-mail: speced@ospi.wednet.edu Web: http://www.k12.wa.us/specialed/
Info: On-line, downloadable and publications and reports by request on a variety of special education and inclusion topics, including: Special Education and the Law, Dispute Resolution Mechanisms in Special Education: Mediation, Citizen Complaints and Due Process, Attention Deficit Disorder, Discipline Procedures under IDEA, Evaluation and Assessment of Children Who Are Linguistically and Culturally Diverse, Procedural Safeguards, Family Educator Guide, State Forms for Special Education, and other topics. Some information available in languages other than English, including Cambodian, Korean, Russian, Spanish and Vietnamese. Videos available on request include "Special Education in Washington State: It's the Right Thing to Do!" and "Exploring ADHD as a Health Impairment". Phone or e-mail to request videos or printed materials.

Office of Special Education Programs Products and Publications
Office of Special Education and Rehabilitative Services, U.S. Department of Education
400 Maryland Ave., S.W. Washington, DC 20202
Phone: (202) 205-5507
Web: http://www.ed.gov/about/offices/list/osers/osep/products.html
Info: From the United States Department of Education, Office of Special Education Programs (OSEP). Publications for order or download on topics including: Children with ADD/ADHD Topic Brief; Discipline for Children with Disabilities; Assessments; Educating Children with Autism; Graduation with a Regular Diploma; A Guide to the Individualized Education Program; IDEA 97 General Overview Questions and Answers; Mediation; Use of Transportation in Part B; Private Schools; Positive Behavioral Interventions and Supports; Public Charter Schools; Social Skills; Technology for Students with Disabilities, the Washington Administrative Code (WAC) 392-172 and Federal IDEA, and other topics


These two sites of the National Information Center for Children and Youth with Disabilities provide substantial guidance regarding the legal requirements for developing a student's IEP. It is a verbatim reprinting of (a) federal regulations about IEPs, and (b) Appendix A (formerly Appendix C) to the IDEA 97, which is a series of questions and answers about federal regulations on the IEP.
Maria Flores – Office of the Education Ombudsman, Governor’s Office –
The Education Ombudsman is a neutral party that supports families and parents. Pamphlets on differing subjects. (How to be a good advocate; Parent-Teacher conflicts. etc.) This office is for ALL students, including those with Individual Education Plans (IEPs). [http://www.governor.wa.gov/oeo/](http://www.governor.wa.gov/oeo/)

Special Education Ombudsman
[http://www.k12.wa.us/SpecialEd/ombudsman.aspx](http://www.k12.wa.us/SpecialEd/ombudsman.aspx)
The purpose of the Ombudsman is to provide support to parents, guardians, educators, and students with disabilities. The Ombudsman provides information to help families and educators understand state and federal laws, rules, regulations, and to access training and support, technical information services, and mediation services, as appropriate.

Special Education Mediation – Sound Options - [http://www.somtg.com](http://www.somtg.com) To request mediation, or obtain more information call: Sound Options Mediation and Training Group, L.L.C. at 1-800-692-2540 or (206) 842-2298 (Seattle). Washington State relay service numbers are 1-800-833-6388 (TDD) or 1-800-833-6384 (voice).

ADVOCACY AND INFORMATION:

**The Arc of King County** – no cost Phone: (206) 364-6337 Fax: (206) 364-8140
- [Parent to Parent Support of King County](http://www.arcofkingcounty.org/our-services/parent-to-parent-support)
  - e-mail distribution lists for parents of King County School Districts.
  - Subscribe: Contact Cathy Murahashi, Coordinator, King County Parent to Parent Support. 425-643-4048
  - Margaret-Lee Thompson, 425-883-6721, mlthompson@arcofkingcounty.org
  - Monthly email or postal information on DD system and Legislature, etc.
  - Alerts. Active Advocacy.
- [Parent Trainings – take requests by parent groups, school groups in King Co.](http://www.arcofkingcounty.org/our-services/parent-training)
  - Joanne O’Neill, 425-746-2178, jponeill@arcofkingcounty.org
- [Individual Advocate – one to one assistance for families. No cost.](http://www.arcofkingcounty.org/our-services/individual-advocate)
  - Cathy Lacefield, 206-829-7047
- [Information and Referral – website](http://www.arcofkingcounty.org/our-services/information-and-referral)
  - Debi Arrants – 206-829-7016

**The Arc of WA State** – legislative advocacy [www.arcwa.org](http://www.arcwa.org)
- Updates and Alerts
- Bill and budget information
ARE YOU READY?

Revised October 5, 2009
Prepared by: Joanne O’Neill, The Arc – King County Parent Training, 425-746-2178, Fax 425-746-6093, jooneill@arcofkingcounty.org
Margaret-Lee Thompson, King Co. Parent Coalition for Developmental Disabilities, 425-883-6721, phone and fax, mlthompson@arcofkingcounty.org
Betsy McAlister, King Co. Parent Coalition, 425-882-2010, phone and fax, bmcalister@arcofkingcounty.org

Thanks to Stacy Gillett and Cindy Curran-Bamburg for information regarding exiting special education programs.

GOVERNMENT

Please note: When approaching any of the government agencies for services (e.g. DDD, DVR, SSI,) we have found that bringing medical records of disability, school testing, evaluations, etc. will greatly speed up your application process.

1. Is your son/daughter enrolled with the Division of Developmental Disabilities (DDD)? IMPORTANT: IF YOUR SON/DAUGHTER IS FOUND ELIGIBLE FOR DDD SERVICES, THEY ARE ENTITLED TO HAVE THE SERVICES OF A CASE MANAGER.
   Call 206-568-5700 or 1-800-314-3296 and ask for the Intake Case Manager
   DDD Regional office: (Seattle): 206-568-5700 or 1-800-314-3296
   • Family and Community Team, Supervisor - 206-568-5699
   • Adult Family Home and Adult Waiver Team, Supervisor - 206-568-5663
   • Children’s Team, Supervisor - 206-568-5641
   • Children’s Team, Supervisor – Waiver – 206-568-5650
   • DDD Region IV Field Services Administrator – 206-568-5721
   DDD South King Office:
   DDD South King County Office, 253-372-5770, 1-800-974-4428
   • DDD South King Supervisor – Non Waiver - 253-372-5773
   • DDD South King Supervisor – Waiver – 253-372-5764

2. Are you signed up for Social Security Benefits (SSI, SSDI OR SSDAC)? IMPORTANT: This is easier to obtain BEFORE your son/daughter has an extensive work history. It is also easier to obtain SSI as soon after age 18 as possible. If your s/d is working, call Scott Leonard 206-263-9049 to understand the rules.
   Eligibility: 18 years, assets of less than $2000 and disability status (for under age 18, family income usually determines eligibility).
   King County DDD with the Arc of King County hold a two-part training on SSA benefits twice a year.
   Call 206-364-4645 ext. 8006 for the dates.

3. Do you know about Medical Coupons: Categorically - Needy Program (CNP)? As of 11/09 this will be a card rather than a coupon.
   Age: 18 on SSI, or low income (under age 18)
   Do you know about Medicaid buy in? If your s/d is over 18 and is working this is possible. Call Scott Leonard at 206-263-9049.
Once you are eligible for SSI, then contact local Community Services Office (phone book: Blue pages; Washington State of, Social and Health Services Department of, Community Services Office. Assigned by zip code of where the individual resides.) or online at: https://fortress.wa.gov/dshs/f2ws03esaapps/onlinecso/findservice.asp

4. Do you know about Medicaid Personal Care?
(Federal/state program which allows people to have care providers for their personal care needs. Parent can be the paid provider if person is over age 18.) If a parent is the caregiver you will need to take a one time, 6 hour training and a half hour optional union presentation. There is no continuing education requirement.
Contact 1-888-754-8798, The Arc of Washington to enroll in training. Three-hour safety training is required and can be done by mail. The training requirement will increase to 12 hours on Jan 1, 1011.
Eligibility: Must be on SSI with Medicaid Coupons. Medical Coupon must say “CNP” on lower right side of coupon. CNP is categorically needy program.
Contact your DDD case manager.
Regional office: 206-568-5700, 1-800-314-3296
South King office: 253-372-5770 or 1-800-974-4428

5. If you have questions about SSI, Medicaid or other public benefits, you can call The Arc of King Co. Information and Referral (I & R) and ask for an advocate at 206-364-8384 or 1-877-964-0600 or Scott Leonard at 206-263-9049. Free service.

MEDIACAID WAIVER

Did you know that DDD has four waivers? The four waivers – Basic, Basic Plus, Core and Community Protection provide an array of services. If you do not know if your son/daughter is on the waiver call your case manager. If they are not on the Home and Community based (HCBS) waiver you may want to ask to have them placed on the DATA BASE for one of the waivers (waiting list). Before you ask for them to go on the waiver you should know what services the waiver can supply. You can find this information on the DSHS website: http://www1.dshs.wa.gov/ddd/waivers.shtml

DDD will need to determine if your son/daughter would qualify for services in an ICFMR (Institution). Federal Medicaid money comes into our state to nursing homes or institutions. The waiver means you choose to have services in the community and not in an institution. Your case manager will need to administer the DDD assessment to determine if you meet the waiver eligibility criteria first. If they qualify for an ICFMR they then can go on the database (like a waiting list) for a waiver. You will need to make this request each year.

SCHOOL

1. Do you know the federal rules for Transition (age 16 to adult system)?
   These services are to begin no later than the first IEP to be in effect when the student turns 16 years old. Once a student reaches age 21, the school district should provide a summary of your student’s performance and recommendations on meeting post secondary goals. Call the Superintendent of Public Instruction for more info. 360-725-6000

2. Do you know that a school district must pay for a special needs student education until:
   • The student "ages out" of eligibility - that means the student has completed the school year in which he/she turns 21 years of age.
   OR
   • The student meets all of the requirements for high school graduation (that includes completing earned credits, pass state exam or alternative assessment, complete
culminating exhibition and High School-and-Beyond Plan). School districts have the authority to establish requirements beyond those of the State Board of Education. (In the case of a student receiving special education services, this means the student must also meet those requirements in order to graduate).

For students with disabilities, the district has an additional obligation to develop a Transition Plan, and that plan must describe the district’s commitments to provide those services as well.

There is no requirement that the student successfully complete all of their IEP goals and objectives.

It is important to distinguish between "graduation" and "exit from special education". Students with disabilities who are eligible to receive services from 18-21 years of age are allowed to participate in all of their cohort graduation activities and ceremonies without losing eligibility for special education and related services. Participating in graduation activities is often referred to as "graduating from high school". This rite of passage is now protected and legally distinguished from a legal exit from service.

The 2007 state legislative session passed a law, Kevin’s Law, that allows all students with Developmental Disabilities to walk in the graduation ceremonies at age 18, then continue with their special education transition program until age 21.

A school district can send a Written Notice that they are exiting your child from special education. This notice must include the reasons why the student is no longer eligible for special education and related services. In theory, the district should have conducted an evaluation of some kind to determine that something has changed - in the STUDENT - that changes eligibility.

It is best for if you can work out a good transition program through the age of 21 with your school district since DDD will not pay for job support until the person is 21. This is even more important as funding for long-term job support from the county/state DDD is becoming much more difficult to obtain. We strongly recommend that individuals remain in the school system until age 21, because school is an entitlement. Adult day services are not an entitlement.

We are fortunate in King County to have a new program called the School to Work Project. In this project, students have a goal to graduate with a job in place. This occurs with the working cooperation of the school staff, county personnel and employment specialists. Contact Kelley Faulkner 206-263-9044 at King County DDD for more information.

3. Has your school held: A meeting for parents with adult employment vendors? A training about transition and the move to adult services? Are they a part of the School to Work Project? Have the participated in one of the King County DDD Transition Fairs?

You may contact The Arc of King Co., Parent Training concerning a Transition training. 425-746-2178 or 206-364-4645 ext. 8006. This is a free service.

4. Does your school offer job sampling and job training for a minimum of three years before graduation?

5. Has your son/daughter’s teacher given your son/daughter a functional vocational evaluation?

6. Has your school helped you to put together a resume’ for your son/daughter to be used for employment vendors and/or the Division of Vocational Rehabilitation (DVR)?
7. Here is a simple and effective resume’ that **you** could prepare to give to employment vendors:
   - What does my son/daughter like to do?
   - What does my son/daughter do well?
   - What does not work well for my son/daughter?
You might want to add job experiences if your school has not done a resume’. You could also list leisure activities. Collect any letters of recommendation from volunteer and work experiences. This is best done before the person leaves the work/volunteer setting.

8. Has your school told you what the graduates who have developmental disabilities from your district are doing as adults? Ask your son or daughter’s teacher.

If the answer to any of the above questions 1 – 8 is “NO”, then:
   - Ask your high school transition teacher.
   - Contact school administrator of Special Education.
   - Talk to an advocate at The Arc of King Co., 206-364-8384 or 1-877-964-0600; or call Washington PAVE, 1-800-5-PARENT

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**AFTER SCHOOL YEARS**

If your son or daughter has already exited from high school, you can call the DVR. (See Employment category for more information.)

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**EMPLOYMENT OR DAY SERVICES**

**EMPLOYMENT OR DAY SERVICES FOR YOUR ADULT SON/DAUGHTER ARE NOT AN ENTITLEMENT.**

1. History: Did you know that very few high school graduates received employment or day program services in the 1980’s?

Did you know that there have been state funds for many high school graduates to receive employment or day services for the classes of 1989 – 2008, with the exception of the 2003 and 2009 graduates? Did you know that these funds are presently in jeopardy?

Did you know that these funds came from the Legislature because of the advocacy work of parents, county DD Boards, and employment providers?

Did you know that parents must fight for these employment funds each Legislative session?

For more information on any of the above, call Margaret-Lee Thompson, Coordinator of King County Parent Coalition for Developmental Disabilities 425-883-6721 or mlthompson@arcofkingcounty.org

2. Does someone on the DDD case management team know your hopes and needs for adult day services? For example, job, volunteer work, sheltered work, etc. Call your case manager or make sure you give the information to them during the assessment process.

3. What level of assistance does your son/daughter need in order to work?
   - a little - see Division of Vocational Rehabilitation only (see #54 below)
   - periodic help - job coach with supported employment (call your case resource manager)
   - substantial help – call your case resource manager
     - supported employment
     - group supported employment, crews, enclaves
     - sheltered work
• total - sheltered work (call your case resource manager)
Regional office, 206-568-5700 or 1-800-314-3296
South King office, 253-372-5770 or 1-800-974-4428

If you are unsure about the level of assistance needed, talk to former and current teachers and others who know your son/daughter. You may also call The Arc of King Co. to have help in problem solving. Ask for an advocate: 206-364-8384 or 1-877-964-0600. Free service.

4. Do you know what the Division of Vocational Rehabilitation (DVR) is?
DVR assists people with disabilities to prepare for, obtain and retain employment. Programs are custom-designed for each individual.
When your son/daughter turns 18, you can call DVR yourself.

To find your local DVR office, look in the blue pages in the phone book under Washington State of, Social and Health Services Department of, Vocational Rehabilitation or http://www1.dshs.wa.gov/DVR/

Do you know whom the DVR counselor is who is assigned to your son/daughter’s high school? If you don’t know who the DVR counselor is, ask your high school or transition teacher or go to the following site http://www.dshs.wa.gov/dvr/QuickLinks/SchoolTransition/Transition.aspx

5. Do you know what the King County Developmental Disabilities Division is and their role in adult services? King Co. DDD (KCDDD) is a part of our County government and is separate from the State Region IV Division of Developmental Disabilities (DDD).

King Co. DDD holds the contracts for employment and community access (a program to get out and about in the community for people who cannot work). See Working Age Adult Policy (#9 below.) King Co. DDD contracts with different specialists (providers, vendors) who give service directly to your son/daughter as an adult. Call 206-263-9061 and ask for a list of providers/vendors of employment and day program services. You should contact agencies. You can also find this information and other important details of employment on the website http://www.kingcounty.gov/healthservices/DDD.aspx

Did you know that King Co. DDD has a citizen Advisory Board that holds meetings on the even months? Parents and people with disabilities are welcome to attend.
9:30 am 1st Wednesday on even months, 1700 East Cherry St in Seattle, Call 206-263-9061.
(Region IV DDD office building, second floor large conference room).

Did you know that King Co. DDD has Committees to address the employment and pathway to employment needs of the adults with developmental disabilities in King Co.? Parents and people with disabilities are welcome to attend.
  • Employment Committee Call 206-263-9041 for time and place.
  • Legislative Committee - meets, as needed, 206-263-9061. Interested persons are welcome.

6. Do you know what a PASS is?
PASS = Plan to Achieve Self Support (a Social Security Work Incentive program).
PASS can help people keep their SSI dollars when they start earning money.
Your employment provider/vendor should be the one to help you with PASS.
This is becoming an increasingly important source of funding. King County DDD has two specialists that will help you create and manage a PASS Plan free of charge.
You can call: Scott Leonard at 206-263-9049 or Kelley Faulkner at 206-263-9044

7. Do you know about ENSO? ENSO offers Person-Centered Employment Planning or Group Employment Planning, Personal Agent Services and Personal Individualized Employment Support
Services. These services can be funded by DVR, King Co. DDD, DDD (state), SSA (PASS, IRWE) and private pay. Call your case manager or ENSO at 206-829-2001 ext. 12.

8. Do you know about WISE (Washington Imitative for Supported Employment)? WISE is available to provide consultation to teachers particularly for students with higher support needs who desire employment. If approved by King County DDD, WISE staff is available to do Person Centered Plans (call MarshaThrelkeld at 206-343-081 ext 103 and Self Employment Business Plans call Jim Corey 206-343-0881 ext 109.

9. There is a new statewide policy called WORKING AGE ADULT POLICY. This policy supports gainful employment in integrated settings as the goal for all adults age 21 to 62. (Community access will be obtained by an exception to policy.) The Working Age Adult Policy makes an assumption that adults with developmental disabilities can work or “be on a pathway to employment”. This policy should now help individuals achieve the goal of employment. This policy was in full implementation statewide by 7/1/06. (If your son/daughter’s disabilities are significant enough that you believe he/she will not be able to work, contact your case manager.)

RESIDENTIAL

Please note: RESIDENTIAL SERVICES ARE NOT AN ENTITLEMENT.

1. Did you know that except for the Adult Family Homes (see #7 below) and Medicaid Personal Care (see #4 under GOVERNMENT) that residential services are almost impossible to access in our State? Need must be of crisis level for person or family unless the person is on the Core Waiver. Occasionally the legislature funds Special groups i.e. senior families, people in trouble with the law, etc.

2. Did you know that DDD-Region IV is in charge of residential programs?

3. Have you talked to case management and told them of your hopes and needs for residential supports? (If your son/daughter is on the waiver this should be recorded on the Plan of Care, POC). Call your case resource manager (CRM).

4. If you need residential services for your son/daughter, it is important that you tell your case resource manager (CRM) that you want this service. If your son/daughter is on the waiver this should be noted in the POC. IMPORTANT: Ask to have some written confirmation of this request.

5. What are your plans for your son/daughter’s place of residence?
   • Planning to live in parent’s home for long term.
   • Planning to live in parent’s home until employment or day program is stable. See Case Management for Medicaid Personal Care (see #4 GOVERNMENT).
   • Would like son/daughter to move soon; family interested in being in charge of the residential setting.
     • Call the Advocate, The Arc - King County –206-364-8384 or 1-877-964-0600.
     • Sherry McNary, WISE, My Home My Life-206 343-0882 ext. 121
     • Kathy Sellars (parent) - 206-522-3099 Home phone
     • Call King County DDD and ask for Housing Advocacy and Section VIII information. Karl Tegenfeldt, 206-263-9048
     • Would like son/daughter to move soon; want state to be in charge. (See #1 - Residential, above). Call Case Management:
       Regional office: 206-568-5699 (supervisor) or call your case resource manager directly.
6. Do you want to know the various residential options, which the state (Region IV, DDD) administrates? Remember, for entrance, need must be of crisis level. Call case management for information or a referral:

   Regional office: 206-568-7000 or 1-800-314-3296
   South King office: 253-372-5770 or 1-800-974-4428

For information you may also call The Arc of King Co. I&R: 206-364-8384 or 1-877-964-0600 and ask for an advocate.

- Representative payee - for very capable individuals in need of only financial assistance
- Supported Living – moderate to close supervision
- Group Home - highly structured
- ICF-MR - group living and institutional living, under strict federal guidelines, usually with nursing help.

7. Other Programs

   - Adult Family Home - administered by Aging and Disability Services Administration (ADSA). This is the residential service that is “open” to new applicants. Your s/d needs to have a CNP Medical Coupon and will need to pay the participation for the AFH placement.
     Make contact through DDD case resource manager to start the process.
     Regional office: 206-568-5663 (Adult Family Home Team Supervisor)
     South King office: 253-372-5770 or 1-800-974-4428
     You may also call The Arc of King Co. advocate and ask for background information. (See #5)

   - Support services privately purchased by family.
   - Protective payee (financial assistance)
   - Instructional training
     Call case management for names of people who assist by private pay.
     You may also contact The Arc of King Co. I &R and ask for an advocate 206-364-8384 or 1-877-964-0600.

8. If you want more information on any of these out of home living arrangements for your son/daughter, you can call The Arc of King Co. Information and Referral and ask for an advocate 206-364-8384 or 1-877-964-0600.

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**ADVOCACY and SUPPORT GROUPS**

1. Are you connected with a parent support group?

   **Generic:**
   - The Arc of King County; 206-364-6337 or 1-877-964-0600. [www.arcofkingcounty.org](http://www.arcofkingcounty.org)
   - The Arc of Washington State, legislative advocacy, 1-888-754-8798, [www.arcwa.org](http://www.arcwa.org)
   - My Home My Life, housing/residential solutions, Sherry McNary, 206-343-0882 ext 121, [mailto:Sherry@theinitiative.ws](mailto:Sherry@theinitiative.ws)
   - Senior Family Caregivers – Call Hye Kyong Jeong, The Arc of King Co. 206-957-7080, [mailto:HJeong@arcofkingcounty.org](mailto:HJeong@arcofkingcounty.org)
   - Washington State Fathers Network, Kindering Center, Bellevue; Greg Schell Executive Director, 425-653-4286, [greg.schell@kindering.org](mailto:greg.schell@kindering.org), [www.fathersnetwork.org](http://www.fathersnetwork.org)

   **Disability groups:**
   - Provail (formerly United Cerebral Palsy) 206-826-1040, Amal Grabinski, [www.provail.org](http://www.provail.org)
   - Cerebral Palsy, parent resource, Call Nancy Eliasen 206-323-7224 (adults)
- Autism Society of Washington: 1-888-ASW-4YOU, www.autismsocietyofwa.org List serve once a week; conferences, workshops, support group information. Can email questions to info@autismsocietyofwa.org
- Down Syndrome Community - call Louise Avery 206-285-6128, mailto:LoAvery@comcast.net
- Deaf/Blind – For support, information, or referral for parents and friends for deaf blindness call Donna Ruble - 206-706-7621 or Maria Corsini– 206-242-8450

Others:
There are a number of other groups in various communities. Please call Betsy McAlister, King County Parent Coalition for DD, 425-882-2010 or bmcalister@arcofkingcounty.org

2. Do you ever have a need of an advocate for one-on-one problem solving? Call The Arc of King Co. for this free service. 206-364-8384 or 1-877-964-0600

3. Do you want to be a part of changing the future for people with developmental disabilities? Contact King Co. Parent Coalition for Developmental Disabilities, Margaret-Lee Thompson, 425-883-6721, mltthompson@arcofkingcounty.org or Betsy McAlister, 425-882-2010, bmcalister@arcofkingcounty.org (networking with other parents, addressing issues, advocacy, involvement with elected officials and legislation).

4. Are you interested in being a parent helper? The Parent to Parent program uses parents to help mentor younger parents whose children have the same disability. The Arc of King Co. Please contact Cathy Murahashi, 206-829-7039, cmurahashi@arcofkingcounty.org

RESPITE

1. Do you know what respite or Family Support means?

Respite is an occasional break from care giving. Individual and Family Services is a program of DDD that provides families a small amount of flexible funding for respite, and other services families may need, such as excess medical costs, diapers, therapies, equipment, and needed structural modifications. Family Support services can be used by children and adults who live in their family home. There is currently a significant waiting list. Some families may receive their Family Support services through an SSP (a state program of Social Security) cash payment. If your family has an emergency situation, such as a family caregiver having surgery, there is a small amount of one-time-only funding available for emergency respite from DDD. For these emergency situations there is no waiting list.

2. Do you know how to apply for respite care / Individual and Family Services from DDD? To apply, contact case management and ask to be placed on the Family Support waiting list. To make sure you are added to the waiting list, ask for something in writing. If you are unsure whether you are on a waiting list, ask your case resource manager about the availability of these services and confirm your status. Services sometimes become available with little notice.

   Call Case Management:
   Regional office: 206-568-5700 or 1-800-314-3296
   South King office: 253-372-5770, 1-800-974-4428

3. Do you know about Medicaid Personal Care? (See #4 - GOVERNMENT)

TRANSPORTATION

1. Call METRO for a reduced fee pass for bus travel and/or an Access pass (206-263-3113). (Access provides van service for people who cannot ride a METRO bus.)
2. Did you know that Metro has a Travel Training program? This is a free program to assist people to learn to ride buses. **Laidlaw Transit Instruction 206-749-4242**

**LEGAL**

1. Have you looked into Guardianship or other legal protection?
   Call The Arc of King County for a list of attorneys and written information. 1-877-964-0600 or 206-364-8384. In addition, the web site for guardianship documents is [http://www.kingcounty.gov/kcscc/guardianship.htm](http://www.kingcounty.gov/kcscc/guardianship.htm)
   Many families choose to renew their guardianship on their own. There is a Guardianship facilitator who can be reached by calling Family Law Facilitator Office 206-296-9092 for Seattle cases and 206-205-2526 for the Kent Regional Justice Center. These facilitators can assist people who are not represented by an attorney.

2. Do you have a will and a Special Needs Trust?
   - Call The Arc of King County for assistance and written information. 1-877-964-0600 or 206-364-8384
   - Call The Arc of Washington for the DD Endowment Trust (also know as the Life Opportunities Trust). This is a program where either a family member or a person with DD can procure a trust. The 25% match from the state is on hold until further funding is available. Patti Bell 1-888-754-8798 ext. 103. [http://www.arcwa.org/endowment_trust.htm](http://www.arcwa.org/endowment_trust.htm)

**WEBSITES**

The Arc of King County for information about resources, training, parent support, etc. [www.arcofkingcounty.org](http://www.arcofkingcounty.org)

The Arc of Washington for information about legislative advocacy. [www.arcwa.org](http://www.arcwa.org)

King County DDD for information about county programs and services [http://www.kingcounty.gov/healthservices/DDD.aspx](http://www.kingcounty.gov/healthservices/DDD.aspx)


University of Montana’s Rural Institute on Disabilities Transition Project transition information. [http://www.ruralinstitute.umt.edu/transition](http://www.ruralinstitute.umt.edu/transition)
Selected Provisions of WAC

Chapter 392-172A WAC
Rules for the provision of special education

WAC Sections

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DEFINITIONS

392-172A-01035 Child with a disability or student eligible for special education.

(1)(a) Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: Mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in subsection (1)(a) of this section, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student’s eligibility for special education and related services.

(c) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory
experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," for students three through eight may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and
related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

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

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01035, filed 6/29/07, effective 7/30/07.]

392-172A-01080
Free appropriate public education.
Free appropriate public education or FAPE means special education and related services that:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the OSPI, and the act;

(3) Include an appropriate preschool, elementary school, or secondary school education in the state; and

(4) Are provided in conformity with an individualized education program (IEP) that meets the requirements of WAC 392-172A-03090 through 392-172A-03135.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01080, filed 6/29/07, effective 7/30/07.]

392-172A-01100
Individualized education program.
Individualized education program or IEP means a written statement of an educational program for a student eligible for special education that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 392-172A-03135.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01100, filed 6/29/07, effective 7/30/07.]

392-172A-01105
Individualized education program team.
Individualized education program team or IEP team means a group of individuals described in WAC 392-172A-03095, responsible for developing, reviewing, or revising an IEP.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01105, filed 6/29/07, effective 7/30/07.]
392-172A-01125
Parent.
(1) Parent means:

(a) A biological or adoptive parent of a child;

(b) A foster parent;

(c) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the student, but not the state, if the student is a ward of the state;

(d) An individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the student lives, or an individual who is legally responsible for the student's welfare; or

(e) A surrogate parent who has been appointed in accordance with WAC 392-172A-05130.

(2)(a) Except as provided in (b) of this subsection, if the biological or adoptive parent is attempting to act as the parent under this chapter, and when more than one party meets the qualifications to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the student.

(b) If a judicial decree or order identifies a specific person or persons under subsection (1)(a) through (d) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this section.

(3) The use of the term, "parent," includes adult students whose rights have transferred to them pursuant to WAC 392-172A-05135.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01125, filed 6/29/07, effective 7/30/07.]

392-172A-01155
Related services.
(1) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(2) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. Nothing in this subsection:

(a) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP team to be necessary for the student to receive FAPE;

(b) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(c) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(3) Individual related services terms used in this definition are defined as follows:

(a) Audiology includes:
(i) Identification of students with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of students, parents, and teachers regarding hearing loss; and

(vi) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(b) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(c) Early identification and assessment of disabilities in students means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(d) Interpreting services includes:

(i) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for students who are deaf or hard of hearing; and

(ii) Special interpreting services for students who are deaf-blind.

(e) Medical services means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

(f) Occupational therapy means services provided by a qualified occupational therapist and includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing through early intervention, initial or further impairment or loss of function.

(g) Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and can include teaching the student:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(i) Physical therapy means services provided by a qualified physical therapist.
(j) Psychological services includes:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(k) Recreation includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sec. 701 et seq.

(m) School health services and school nurse services means health services that are designed to enable a student eligible for special education to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(n) Social work services in schools includes:

(i) Preparing a social or developmental history on a student eligible for special education;

(ii) Group and individual counseling with the student and family;

(iii) Working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(o) Speech-language pathology services includes:

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(p) Transportation includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student eligible for special education.


392-172A-01175
Special education.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(2) Special education includes:

(a) The provision of speech-language pathology, occupational therapy, audiology, and physical therapy service as defined in WAC 392-172A-01155 when it meets the criteria in WAC 392-172A-01035 (1)(c);

(b) Travel training; and

(c) Vocational education.

(3) The terms in this section are defined as follows:

(a) At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

(b) Physical education means the development of:

(i) Physical and motor fitness;

(ii) Fundamental motor skills and patterns; and

(iii) Skills in aquatics, dance, and individual and group games and sports including intramural and lifetime sports; and

(iv) Includes special physical education, adapted physical education, movement education, and motor development.

(c) Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction:

(i) To address the unique needs of the student that result from the student's disability; and

(ii) To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.
(d) Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other eligible students who require this instruction, to enable them to:

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(e) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

[Statutory Authority: RCW 28A.155.090 and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-01175, filed 6/29/07, effective 7/30/07.]

INDIVIDUALIZED EDUCATION PROGRAMS

392-172A-03090

Definition of individualized education program.

(1) The term IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

(i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b)(i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;
(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and districtwide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) Aversive interventions, if any, required for the student.

(i) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

(j) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services including courses of study needed to assist the student in reaching those goals.

(k) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

[Statutory Authority: RCW 28A.155.090, 7 and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03090, filed 6/29/07, effective 7/30/07.]
general education environment;

(c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(d) A representative of the public agency who:

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the school district.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(g) Whenever appropriate, the student.

(2) (a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

(b) If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.

(4) A school district may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the district representative, if the criteria in subsection (1)(d) of this section are satisfied.

(5) (a) A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

(6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives as specified by the state lead agency for Part C to assist with the smooth transition of services.

A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

   (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

   (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

   (a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

   (b) Identify any other agency that will be invited to send a representative.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

   (a) Detailed records of telephone calls made or attempted and the results of those calls;

   (b) Copies of correspondence sent to the parents and any responses received; and

   (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous school in which the student was enrolled, pursuant to RCW 28A.225.335 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03105, filed 6/29/07, effective 7/30/07.]

392-172A-03110 Development, review, and revision of IEP.

(1) In developing each student's IEP, the IEP team must consider:

(a) The strengths of the student;

(b) The concerns of the parents for enhancing the education of their student;
(c) The results of the initial or most recent evaluation of the student; and
(d) The academic, developmental, and functional needs of the student.

(2)(a) When considering special factors unique to a student, the IEP team must:

(i) Consider the use of positive behavioral interventions and supports, and other strategies, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and

(ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;

(iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

(iv) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(v) Consider whether the student needs assistive technology devices and services.

(b) A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:

(i) Appropriate positive behavioral interventions and supports and other strategies for the student; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.

(c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).

(d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or
(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section. In the case of a student whose behavior continues to impede the progress of the student or others despite the use of positive behavioral support strategies: Consider the need for aversive interventions only as a last resort, if positive behavior supports have been used in accordance with the student's IEP, the use of positive behavior supports has been documented to be ineffective, and the IEP team, consistent with WAC 392-172A-03120 through 392-172A-03135 determines that an aversive intervention plan is necessary for the student.

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education participate in district or statewide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03110, filed 6/29/07, effective 7/30/07.]

392-172A-03115
Educational placements.

Consistent with WAC 392-172A-05000 (3)(a), each school district must ensure that the parents of each student eligible for special education are members of any group that makes decisions on the educational placement of the student.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-03115, filed 6/29/07, effective 7/30/07.]
SAFEGUARDS

392-172A-05000
Opportunity to examine records — Parent participation in meetings.

(1) The parents of a student eligible for special education must be afforded an opportunity to inspect and review all education records. Inspection and review of education records is provided consistent with WAC 392-172A-05180 through 392-172A-05245.

(2)(a) The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student.

(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(3)(a) Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

(4) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05000, filed 6/29/07, effective 7/30/07.]

392-172A-05005
Independent educational evaluation.

(1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation,
information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

[Statutory Authority: RCW 28A.155.090 and 42 U.S.C. 1400 et seq. 07-14-078, § 392-172A-05005, filed 6/29/07, effective 7/30/07.]
Prior notice and contents.

(1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

(2) The notice required under this section must include:

(a) A description of the action proposed or refused by the agency;

(b) An explanation of why the agency proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;

(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and

(g) A description of other factors that are relevant to the agency's proposal or refusal.

(3)(a) The notice required under subsections (1) and (2) of this section must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05010, filed 6/29/07, effective 7/30/07.]

Procedural safeguards notice.

(1) School districts must provide a copy of the procedural safeguards that are available to the parents of a student eligible for special education one time a school year, and:
(a) Upon initial referral or parent request for evaluation;
(b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;
(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and
(d) Upon request by a parent.

(2) A school district may place a current copy of the procedural safeguards notice on its internet web site if a web site exists.

(3) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this chapter that relate to:

(a) Independent educational evaluations;
(b) Prior written notice;
(c) Parental consent;
(d) Access to education records;
(e) An opportunity to present and resolve complaints through the due process hearing request and state complaint procedures, including:
   (i) The time period in which to file a state complaint and due process hearing request;
   (ii) The opportunity for the school district to resolve the due process hearing request; and
   (iii) The difference between the due process hearing request and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decision timelines, and relevant procedures;
(f) The availability of mediation;
(g) The student's placement during the pendency of any due process hearing;
(h) Procedures for students who are subject to placement in an interim alternative educational setting;
(i) Requirements for unilateral placement by parents of students in private schools at public expense;
(j) Hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;
(k) Civil actions, including the time period in which to file those actions; and
(l) Attorneys' fees.

(4)(a) The procedural safeguards notice must be:
   (i) Written in language understandable to the general public; and
   (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
   (b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:
      (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
      (ii) That the parent understands the content of the notice; and
(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05015, filed 6/29/07, effective 7/30/07.]

392-172A-05020
Electronic mail.
A parent of a student eligible for special education may elect to receive prior written notices, procedure safeguards notices and notices relating to due process hearing requests by an electronic mail communication, if the school district makes that option available.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05020, filed 6/29/07, effective 7/30/07.]

392-172A-05025
Procedures for filing a complaint.

(1) An organization or individual, including an organization or individual from another state, may file with the OSPI, special education section, a written, signed complaint that the OSPI, or a subgrantee of the OSPI, including but not limited to an ESD, school district, or other subgrantee is violating or has violated Part B of the Individuals with Disabilities Education Act or regulations implementing the act.

(2)(a) A written complaint filed with OSPI will include:

(i)(A) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or

(B) A statement that the school district is not implementing a mediation agreement or a resolution agreement;

(ii) The facts on which the statement is based;

(iii) The signature and contact information, including an address of the complainant; and

(iv) The name and address of the school district, or other agency subject to the complaint.

(b) If the allegations are with respect to a specific student the information must also include:

(i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student;

(ii) The name of the school the student attends and the name of the school district;

(iii) A description of the nature of the problem of the student, including the facts relating to the problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complainant must send a copy of the complaint to the agency serving the student at the same time the complainant files the complaint with OSPI. Complaints under this chapter are filed with the director of special education, OSPI.

(d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(e) The OSPI has developed a form for use by persons or organizations filing a complaint. Use of the form is not
required, but the complaint must contain the elements addressed in (a) and (b) of this subsection.

[Statutory Authority: RCW 28A.155.090 and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05025, filed 6/29/07, effective 7/30/07.]

392-172A-05030
Investigation of the complaint and decision.

(1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC 392-172A-05015.

(2) The school district or other agency shall respond in writing to the OSPI, and include documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint.

(3) The response to the OSPI shall clearly state whether:

(a) The allegations contained in the complaint are denied and the basis for such denial; or

(b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(4) The OSPI shall provide the complainant a copy of the response to the complaint and provide the complainant an opportunity to reply to the response.

(5) The OSPI will also provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, open a new complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the public agency has or is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for the decision. The decision will be issued within sixty days of receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a local school district or other public agency is not achieved pursuant to subsection (8) of this section, the superintendent of public instruction shall initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

[Statutory Authority: RCW 28A.155.090 and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05030, filed 6/29/07, effective 7/30/07.]
392-172A-05035
Citizen complaints and due process hearings.

(1) If a written complaint is received that is also the subject of a due process hearing under this chapter or contains multiple issues, of which one or more are part of that hearing, the OSPI must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding; and

(b) The OSPI must inform the complainant to that effect.

(3) A complaint alleging a school district’s failure to implement a due process decision must be resolved by the OSPI.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05035, filed 6/29/07, effective 7/30/07.]

392-172A-05040
Complaints against OSPI.

(1) Upon receipt of a complaint against the OSPI alleging a violation under this section, the superintendent will designate an investigator within ten days to investigate the complaint.

(2) Investigation by the OSPI may include on-site investigations, interviews, and other documentation as appropriate.

(3) Upon completion of the investigation, the investigator shall provide the superintendent of public instruction with a written report on the results of the investigation and shall issue a written decision including findings of facts, conclusions and the reasons for the decision. The decision will be provided to the complainant as soon as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(4) If corrective actions are required, the decision will include the corrective measures deemed necessary to correct any violation. Any such corrective measures deemed necessary shall be instituted as soon as possible, but no later than the date for the corrective action, addressed in the decision.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05040, filed 6/29/07, effective 7/30/07.]

392-172A-05045
Informing citizens about complaint procedures.

The OSPI shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Widely disseminating copies of the state’s procedures to parents and other interested individuals, including protection and advocacy agencies, parent training and information centers, independent living centers, and other appropriate entities;

(2) Posting information about the complaint procedures on the web site;
(3) Conducting in-service training sessions on the complaint process through educational service districts; and

(4) Including information about the complaint procedures at statewide conferences.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05045, filed 6/29/07, effective 7/30/07.]

392-172A-05060

Mediation purpose — Availability.

(1) The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator.

(2) Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter.

(4) Mediation services are provided by the OSPI at no cost to either party, including the costs of meetings described in WAC 392-172A-05075. To access the statewide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case.

(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05060, filed 6/29/07, effective 7/30/07.]

392-172A-05065

Qualifications and selection of mediators.

(1) Mediation shall be conducted by qualified and impartial mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) An individual who serves as a mediator:

(a) May not be an employee of any school district or other public or private agency that is providing education or related services to a student who is the subject of the mediation process; and

(b) Shall not have a personal or professional conflict of interest; and

(c) A person who otherwise qualifies as a mediator is not an employee of a school district or other public agency solely because he or she is paid by the agency to serve as a mediator.

(3)(a) The OSPI, through its contracted administrative agents, shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(b) Mediators will be selected on a random, rotational or other impartial basis.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05065, filed 6/29/07, effective 7/30/07.]
Resolution of a dispute through mediation.

(1) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(2) A written, signed mediation agreement is enforceable in a state court of competent jurisdiction or in a district court of the United States.

(3) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal or state court.

[Statutory Authority: RCW 28A.155.090 and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05070, filed 6/29/07, effective 7/30/07.]

Meeting to encourage mediation.

(1) A school district may establish procedures to offer parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(a) Who is under contract with appropriate alternative dispute resolution entity or a parent training and information center; and

(b) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A school district or other public agency may not deny or delay a parent's right to a due process hearing under this chapter if the parent fails to participate in the meeting described in this section.

(3) A school district shall submit its procedures for implementing this section to the OSPI for review and approval, including projected costs for carrying out the process.


Right to a due process hearing.

(1) A parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation or educational placement, or the provision of FAPE to a student.

(2) The due process hearing request must allege a violation that occurred not more than two years before the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

(3)(a) Information about any free or low-cost legal and other relevant services available in the area is maintained
on OSPI's web site and is provided by the office of administrative hearings to parents whenever a due process hearing request is filed by either the parent or the school district; and

(b) Districts must provide this information to parents whenever a parent requests the information.

[Statutory Authority: RCW 28A.155.090 and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05080, filed 6/29/07, effective 7/30/07.]

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**392-172A-05085**  
**Due process hearing request filing and response.**

(1)(a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must file the request, which must remain confidential, directly with the other party; and

(b) The party filing the due process hearing request must also mail or provide a copy of the due process hearing request directly to OSPI, Administrative Resources Section, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504.

(c) When a parent is filing a due process hearing request, the party to be served is the superintendent of the school district, or public agency responsible for the student.

(2) The due process hearing request required in subsection (1) of this section must include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student is attending, and the name of the district or public agency that is responsible for the student's special education program in the school;

(d) In the case of a homeless child or youth, available contact information for the student in addition to the information in (c) of this subsection;

(e) A description of the nature of the problem of the student related to the proposed or refused initiation or change, including facts relating to the problem; and

(f) A proposed resolution of the problem to the extent known and available to the party at the time.

(3) OSPI has developed a due process hearing request form to assist parents and school districts filing a due process hearing. Parents and school districts are not required to use this form, and may use the form, or another form or other document, so long as the form or document that is used, meets the requirements in subsection (2) of this section.

(4) A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (2) of this section.

(5)(a) The due process hearing request will be deemed sufficient unless the party receiving the due process hearing request notifies the administrative law judge and the other party in writing, within fifteen days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements in subsection (2) of this section.

(b) Within five days of notification that a due process hearing request is not sufficient, the administrative law judge must make a determination on the face of the due process hearing request of whether the request meets the requirements of subsection (2) of this section, and must immediately notify the parties in writing of that determination.

(6) A party may amend its due process hearing request only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution meeting held pursuant to the procedures in WAC 392-172A-05090; or
(b) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend not later than five days before the due process hearing begins.

If a party is allowed to amend the due process hearing request under (a) or (b) of this subsection, the timelines for the resolution meeting in WAC 392-172A-05090 (2)(a) and the time period to resolve in WAC 392-172A-05090 (2)(b) begin again with the filing of the amended due process hearing request.

(7)(a) If the school district has not sent a prior written notice under WAC 392-172A-05010 to the parent regarding the subject matter contained in a parent's due process hearing request, the school must send the parent a response, within ten days of receiving the due process hearing request, that includes:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;

(ii) A description of other options that the IEP team or evaluation group considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the district's proposed or refused action.

(b) A response by a school district under subsections (7) and (8) of this section shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.

(8) Except as provided in subsection (7)(a) of this section, the party receiving a due process hearing request must send the party a response that specifically addresses the issues raised in the due process hearing request within ten days of receiving the due process hearing request.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05085, filed 6/29/07, effective 7/30/07.]

392-172A-05090 Resolution process.

(1)(a) Within fifteen days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the receipt of the due process hearing request, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-
begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-05090, the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting specified in subsection (1) of this section within fifteen days of receiving notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant this section, a party may void the agreement within three business days of the agreement's execution.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05090, filed 6/29/07, effective 7/30/07.]

392-172A-05095
Administrative law judges.

(1) A due process hearing is conducted for OSPI by the office of administrative hearings.

(2) Administrative law judges that conduct the hearings:

(a) Must not be:

(i) An employee of OSPI or the school district that is involved in the education or care of the student; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(b) Must possess knowledge of, and the ability to understand, the provisions of the act, federal and state regulations pertaining to the act, and legal interpretations of the act by federal and state courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(3) An administrative law judge who otherwise qualifies to conduct a hearing under subsection (2) of this section is
(4) OSPI maintains a list of the persons who serve as administrative law judges which includes a statement of the qualifications of each of those persons.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. § 392-172A-05095, filed 6/29/07, effective 7/30/07.]

392-172A-05100
Hearing rights.

These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 and 392-172A-05165.

(1) Any party to a due process hearing has the right to:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160;

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165, each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party’s evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) A parent may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section.

(6) To the extent not modified by the hearing procedures addressed in this section and the timelines and procedures for civil actions addressed in WAC 392-172A-05115 the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. § 392-172A-05100, filed 6/29/07, effective 7/30/07.]
392-172A-05105
Hearing decisions.

(1) An administrative law judge's determination of whether a student received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, an administrative law judge may find that a student did not receive a FAPE only if the procedural inadequacies:

(a) Impeded the student's right to a FAPE;

(b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(c) Caused a deprivation of educational benefit.

(3) Nothing in subsections (1) and (2) of this section shall be construed to preclude an administrative law judge from ordering a school district to comply with the procedural requirements contained in this chapter.

(4) The state deletes personally identifiable information contained in due process hearing decisions, transmits those decisions to the state advisory panel and makes decisions available to the public.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05105, filed 6/29/07, effective 7/30/07.]

392-172A-05110
Timelines and convenience of hearings.

(1) Not later than forty-five days after the expiration of the thirty day resolution period, or the adjusted time periods described in WAC 392-172A-05090(3):

(a) A final decision shall be reached in the hearing; and

(b) A copy of the decision shall be mailed to each of the parties.

(2) An administrative law judge may grant specific extensions of time beyond the period in subsection (1) of this section at the request of either party.

(3) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved.

[Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05110, filed 6/29/07, effective 7/30/07.]

392-172A-05115
Civil action.

(1) Any party aggrieved by the findings and decision made under WAC 392-172A-05105 through 392-172A-05165 has the right to bring a civil action with respect to the due process hearing request. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(2) The party bringing the action shall have ninety days from the date of the decision of the administrative law judge to file a civil action in federal or state court.

(3) In any action brought under subsection (1) of this section, the court:

(a) Receives the records of the administrative proceedings;
(b) Hears additional evidence at the request of a party; and

(c) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(4) The district courts of the United States have jurisdiction of actions brought under section 615 of the act without regard to the amount in controversy.

(5) Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the act, the due process procedures under WAC 392-172A-05085 and 392-172A-05165 must be exhausted to the same extent as would be required had the action been brought under section 615 of the act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05115, filed 6/29/07, effective 7/30/07.]

392-172A-05120

Attorneys’ fees.

(1) In any action or proceeding brought under 20 U.S.C. Sec. 1415 of the act, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs to:

(a) The prevailing party who is the parent of a student eligible or referred for special education;

(b) To a prevailing party who is a school district, or OSPI, against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing school district or OSPI against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2)(a) Funds under Part B of the act may not be used to pay attorneys’ fees or costs of a party related to any action or proceeding under section 20 U.S.C. Sec. 1415 and 34 CFR Secs. 300.500 through 300.599.

(b) Subsection (2)(a) of this section does not preclude a school district or OSPI from using funds under Part B of the act for conducting an action or proceeding under 20 U.S.C. Sec. 1415.

(3)(a) Fees awarded under subsection (1) of this section must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(b) Attorneys’ fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. Sec. 1415 for services performed after a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys’ fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(i) A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or
An administrative hearing or judicial action for purposes of this section.

(4) Notwithstanding subsection (3)(b) of this section an award of attorneys’ fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(5) Except as provided in subsection (5) of this section, the court will reduce, accordingly, the amount of the attorneys’ fees awarded under this section if the court finds that:

(a) The parent, or the parent’s attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorneys’ fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with WAC 392-172A-06085(2).

(6) The provisions of subsection (4) of this section do not apply in any action or proceeding if the court finds that the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation under the provisions of 20 U.S.C. Sec. 1415.


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**392-172A-05125**

**Student's status during proceedings.**

(1) Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise.

(2) If the hearing request involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the hearing request involves an application for initial Part B services for a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the student is found eligible for special education and related services and the parent consents to the initial provision of special education and related services, then the school district must provide those special education and related services that are not in dispute between the parent and the school district.

(4) If the administrative law judge agrees with the student's parents that a change of placement is appropriate through the final decision or during the pendency of the due process hearing, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. 07-14-078, § 392-172A-05125, filed 6/29/07, effective 7/30/07.]
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<td>8:00 - 8:30 a.m.</td>
<td>Check in; continental breakfast</td>
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<tr>
<td><strong>Session 1</strong></td>
<td><strong>8:30 - 9:30 a.m.</strong></td>
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<td>Basic Explanations and Comparisons of IDEA, §504 and Other Relevant Statutes</td>
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<td><strong>Similarities and differences in objectives, protections and administration</strong></td>
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<td>Speaker: <strong>Charlotte Cassady</strong>, Charlotte Cassady Law Offices, Seattle</td>
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<td><strong>Session 2</strong></td>
<td><strong>9:30 - 11 a.m.</strong> (break at approximately 10:15 am)</td>
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<td>Effective Advocacy Skills: Advocacy for Parents Through IDEA</td>
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<td><strong>The advocacy tools you need to be the best advocate for your child.</strong></td>
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<td>Speaker: <strong>Annika Pollock</strong>, Dussault Law Group, Seattle</td>
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<td><strong>Session 3</strong></td>
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<td>Complaints (OSPI); Alternative Dispute Resolution Options; Mediation; Due Process</td>
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<td><strong>Similarities and differences in objectives, protections and administration</strong></td>
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<td>Speakers: <strong>Greg Abell</strong>, Senior Partner, Sound Options Group LLC, Bainbridge Island; <strong>Pamela McPartland</strong>, Program Supervisor, Office of the Superintendent of Public Instruction, Olympia; <strong>Patricia Steinberg</strong>, Disabilities Coordinator, Washington Education Association, Federal Way</td>
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<td>Noon - 1:15 p.m.</td>
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<td><strong>Session 4</strong></td>
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<td>How to Communicate with School Administration and Personnel</td>
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<td><strong>Knowing your school and school personnel to maximize your effectiveness</strong></td>
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<td>Speaker: <strong>Hal Johnston</strong>, former Director of Special Education, Roosevelt High School</td>
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<td><strong>Session 5</strong></td>
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<td><strong>Process; components; critical points; preparation; meetings; information</strong></td>
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<td>Speakers: <strong>Larry A. Jones</strong>, <strong>Christine Thompson Ibrahim</strong>, Law Office of Larry A. Jones, Seattle; <strong>Margaret-Lee Thompson</strong>, The Arc of King County</td>
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<td>Speakers: <strong>Cindy Dupuy</strong>, Ph.D., Explanations LLC; <strong>Karen L. Mitterer</strong>, Esq., Kirkland</td>
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