

IDAHO SPECIAL EDUCATION MANUAL 2007

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Division of Student Achievement
and School Improvement
Idaho State Department of Education



Tom Luna
Superintendent of Public Instruction

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CONTENTS

INTRODUCTION LETTER

ACKNOWLEDGEMENTS	v
ACRONYMS AND ABBREVIATIONS	vi
GLOSSARY	x

LEGAL CITATIONS	xxxiv
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CHAPTER 1 OVERVIEW

Section 1. Child Find	3
Section 2. Procedural Safeguards	4
Section 3. Student Eligibility under the IDEA 2004.....	4
Section 4. Free Appropriate Public Education (FAPE)	4
Section 5. District Programs and Services	5
Section 6. Individualized Education Program (IEP).....	5
Section 7. Least Restrictive Environment (LRE)	6
Section 8. Summary of Activities that May Lead to Special Education Services	6
Chart Special Education Activities	11

CHAPTER 2 FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE)

Section 1. Definition of a Free Appropriate Public Education (FAPE).....	15
Section 2. Provision of FAPE	15
Section 3. FAPE Considerations.....	17

CHAPTER 3 CHILD FIND

Section 1. District Responsibility	21
Section 2. Locating Students.....	22
Section 3. Identification	22
Section 4. Referral to Consider a Special Education Evaluation.....	25

CHAPTER 4 EVALUATION AND ELIGIBILITY

Section 1. Evaluation Team	30
Section 2. Purpose of an Evaluation	30
Section 3. Written Notice and Consent for Assessment	32
Section 4. Information from Other Agencies or Districts.....	36
Section 5. Evaluation and Eligibility Determination Procedures	37
Section 6. Reevaluation and Continuing Eligibility	41
Section 7. State Eligibility Criteria	44
A. Autism.....	45
B. Cognitive Impairment	46
C. Deaf-Blindness.....	46
D. Deafness.....	47
E. Developmental Delay.....	47
F. Emotional Disturbance.....	49

G. Health Impairment	50
H. Hearing Impairment	51
I. Learning Disability	52
Ia. Specific Learning Disability	56i
J. Multiple Disabilities.....	56d
K. Orthopedic Impairment.....	57
L. Speech or Language Impairment: Language	58
M. Speech or Language Impairment: Speech.....	58
M1. Articulation/Phonology Disorder	59
M2. Fluency Disorder	60
M3. Voice Disorder	60
N. Traumatic Brain Injury	62
O. Visual Impairment Including Blindness	62
Documents:	
<i>Regressed Intelligence Quotient Scores.....</i>	<i>65</i>
<i>Fluency Communication Rating Scale.....</i>	<i>68</i>
<i>Voice Rating Scale</i>	<i>69</i>
<i>Documentation of Adverse Effects on Educational Performance for Students with Speech/Language Disorder.....</i>	<i>70</i>
 CHAPTER 5 INDIVIDUALIZED EDUCATION PROGRAMS	
Section 1. IEP Initiation.....	73
Section 2. IEP Development.....	80
Section 3. IEP Reviews.....	96
Section 4. IEPs for Transfer Students.....	97
Section 5. IEPs for Children from the Infant Toddler Program.....	98
Section 6. Students with Disabilities in Adult Prisons	101
 CHAPTER 6 LEAST RESTRICTIVE ENVIRONMENT	
Section 1. Least Restrictive Environment Considerations.....	104
Section 2. District Responsibility for Continuum of Settings and Services	105
Section 3. Federal Reporting of LRE.....	106
 CHAPTER 7 DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING	
Section 1. Discontinuation of Services	109
Section 2. Graduation.....	111
Section 3. Transcripts and Diplomas	113
Section 4. Grades, Class Ranking, and Honor Roll	113
 CHAPTER 8 CHARTER SCHOOLS	
Section 1. Definition and Parent/Student Rights	116
Section 2. Responsibility for Services	117
Section 3. Essential Components of a Special Education Program	118
Section 4. Charter Schools and Dual Enrollment	119
Section 5. Funding	119

Chapter 1 Overview

The education of students with disabilities is firmly rooted in the constitutional guarantees involved in the “protection of vulnerable minorities.” This relationship means that the provision of services to students with disabilities is a basic civil right protected by the Constitution. Three Federal laws have been passed to ensure these constitutional guarantees for individuals with disabilities:

- ▶ the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004)
- ▶ Section 504 of the Rehabilitation Act of 1973 (Section 504)
- ▶ the Americans with Disabilities Act of 1990 (ADA)

The reauthorization of the IDEA 2004 was aligned with the Elementary and Secondary Education Act of 2001—also known as the No Child Left Behind (NCLB) Act. The IDEA 2004 preserves the basic structure and civil rights of previous reauthorizations and emphasizes both *access* to education and *improved results* for students with disabilities based on data and public accountability.

This manual provides detailed information regarding district responsibilities under the IDEA 2004 and the IDEA regulations of 2006, which took effect on October 13, 2006.

Section 1. Child Find

The district is responsible for establishing and implementing an ongoing Child Find system. Child Find activities are conducted (1) to create public awareness of special education programs, (2) to advise the public of the rights of students, and (3) to alert community residents of the need for identifying and serving students with disabilities from the age of 3 through the semester in which they turn 21.

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

See Chapter 3 for more information on Child Find.

Section 2. Procedural Safeguards

A parent and/or adult student has specific procedural safeguards assured by the IDEA 2004 and State law. The district provides a document titled *Procedural Safeguards Notice* to parent and/or adult students that contain a full explanation of special education rights.

See Chapter 11 for more information on procedural safeguards.

Section 3. Student Eligibility under the IDEA 2004

The existence of a disability or medical diagnosis does not, by itself, mean that a student is eligible under the IDEA 2004. To be eligible for services under the IDEA 2004, a student must have a disability that:

1. meets the state disability criteria;
2. adversely affects educational performance; and
3. results in the need for special education, that is, specially designed instruction.

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

See Chapter 4 for more information on eligibility and evaluation.

Section 4. Free Appropriate Public Education (FAPE)

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

See Chapter 2 for more information on FAPE.

Section 5. District Programs and Services

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

A. Educational Programs and Services

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

B. Physical Education

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

C. Nonacademic and Extracurricular Services and Activities

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

Section 6. Individualized Education Program (IEP)

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

See Chapter 5 for more information on IEP development.

Section 7. Least Restrictive Environment (LRE)

The IDEA 2004 states that, to the maximum extent appropriate, students with disabilities are to be educated with students who are not disabled. The IEP team should consider what constitutes LRE for the individual student. This includes considering that a continuum of alternative placements is available to meet the needs of children with disabilities and for special education and related services.

See Chapter 6 for more information on LRE.

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

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

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

A general education problem-solving team addresses student learning needs and ensures that referrals to consider special education are appropriate. The general education problem-solving process may include comprehensive early intervening services based on whole-school approaches such as: a three-tiered model using scientifically based reading (and other content area) programs, positive behavior supports, and a response-to-intervention system. Accommodations and instructional interventions shall be attempted during the problem-solving process. These accommodations and interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and shall be clearly documented.

If the student shows adequate progress with general education interventions and accommodations, a referral to consider a special education evaluation may be unnecessary. However, if general education interventions and accommodations need to be provided on an ongoing basis or if the student shows limited or no progress *and* the student's performance is significantly discrepant from peers, a referral to consider a special education evaluation may be warranted.

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

B. Referral to Consider a Special Education Evaluation

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

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

The evaluation team shall review existing data, including assessments and information provided by the parent and/or adult student, to determine the need for further assessment.

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

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

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

See Chapter 4 and Chapter 11 for more information.

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

After receiving consent, the evaluation team shall schedule assessments and ensure they are conducted. Next, the evaluation team reviews the assessment data, the response to general education interventions, and parent and/or adult student input and recommendations to determine whether the student is eligible for special education services. Then the evaluation team compiles an *Eligibility Report* using data collected from individual assessments and provides the parent and/or adult student with a copy of the report.

If the student is not eligible, the district shall provide written notice to the parent and/or adult student that the data does not indicate eligibility under the IDEA 2004. The district shall maintain documentation in permanent records. (A student ineligible under the IDEA 2004 may be considered to have a disability under Section 504.)

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

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

The time between receiving consent for assessment and implementing the IEP cannot exceed 60 calendar days, excluding periods when regular school is not in session for five or more consecutive school days. The parent and district may agree in writing to extend the 60-day period

for the purpose of initial assessment as long as Federal IDEA 2004 time requirements are met. See Chapter 4 for guidance on timeline exceptions.

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

1. Conduct an IEP team meeting to develop an IEP within 30 calendar days of a determination that the student is eligible for special education and related services. For eligible students, the IEP can be developed at the same meeting at which eligibility is determined if all required IEP team members are present and agree to proceed.
2. After determining goals and services, determine the placement in the LRE in which the IEP can be implemented. For those goals that are aligned to the alternate standards, benchmarks/objectives shall be written.
3. Obtain documentation indicating participation in the IEP team meeting.
4. Obtain consent from the parent and/or adult student for initial placement in special education.
5. Provide copies of the IEP to the parent and/or adult student and other participants, as appropriate.
6. Provide written notice to the parent and/or adult student before implementing the IEP if the provision of FAPE or the educational placement is proposed to change.
7. Make arrangements for IEP services by informing staff of their specific responsibilities under the IEP.
8. Implement the IEP as soon as possible after it is developed.
9. Provide the parent and/or adult student with periodic reports of the student's progress towards IEP goals (such as quarterly or other periodic reports, concurrent with the issuance of report cards).

See Chapter 5 for more information on IEP development.

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

1. Send the parent and/or adult student a *Procedural Safeguards Notice* with an invitation to attend an IEP meeting (required at least once annually).
2. Convene an IEP team meeting under these circumstances:
 - a. when changes in the IEP are requested or if the student is not making progress; and
 - b. at least annually to review eligibility, develop a new IEP, and determine placement.

3. Provide a copy of the revised IEP to the parent and the adult student when an IEP is amended or rewritten and when the student is no longer eligible for special education services. In addition, written notice is required if the district is proposing to change or refusing to change the educational placement and/or provision of FAPE.
4. Under Idaho regulations, the parent and/or adult student has the right to file a written objection to changes proposed by the district. If, within 10 calendar days of receiving written notice from the district, the parent and/or adult student files a written objection to all or part of the proposed IEP or placement, the district shall not implement the changes to which the parent and/or adult student objects. See Chapter 11 for more information.

See Chapter 5 for more information on IEP reviews.

G. Reevaluation (completed by evaluation team)

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

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

1. Invite the parent and/or adult student to participate in the review of existing data and to determine what additional data, if any, is needed as part of the reevaluation. Unless the parent and/or adult student requests that the evaluation team members meet as a group in a formal meeting, data can be gathered from individual team members at various times using a variety of methods.
2. Obtain written consent from the parent and/or adult student if additional assessments shall be conducted. After gaining consent, ensure the completion of assessments and eligibility reports.
3. If the evaluation team determines that additional assessments are not needed, provide written notice to the parent and the adult student of this decision and of the parent and/or adult student's right to request assessments.
4. Prepare an *Eligibility Report* that details the eligibility requirements for the student, even when no new assessments are conducted. The report shall address each required eligibility component.

5. Provide the parent and/or adult student with a copy of the *Eligibility Report*.
6. Develop and implement an IEP, if the student continues to be eligible. If the student is not eligible, follow procedures to discontinue services.

See Chapter 4 for more information on reevaluation.

H. Discontinuation of Services

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

1. The evaluation team determines the student no longer meets eligibility requirements for special education services; or
2. The student meets the district and State requirements that apply to all students for receipt of a regular high school diploma; or
3. The student completes the semester in which he or she reaches the age of 21 years.
4. Parent/adult student revokes consent for special education services.

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

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

Chapter 2

Free Appropriate Public Education

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

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

The definition of FAPE under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) means special education and related services that:

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

Section 2. Provision of FAPE

A. District Obligation

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

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

1. The district shall provide FAPE to an individual who is at least 3 years old and who qualifies for special education services unless the parent and/or adult student has refused special education services.
2. The district shall offer FAPE to parentally placed private school students in accordance to statutory and regulatory language, which states that parentally placed private school students with disabilities do not have an individual right to some or all of the special education and related services that the student would receive if enrolled in a public school.
3. A free appropriate public education shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade.

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

B. Limit to District Obligation

1. The district is not obligated to provide some or all special education and related services, if it has been offered, but a parent elected to place the student in a private school or facility. However the district shall include that student in the population whose needs are addressed consistent with Child Find requirements. See Chapter 9 for more information.
2. Students who are home schooled and dually enrolled are considered private school students for the purposes of dual enrollment. The same procedures would be available to these students as parentally placed private school students who are dually enrolled.

C. When District Obligation to Provide FAPE Ends

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

1. the semester in which the student turns 21 years old;
2. when the student meets the district requirements that apply to all students for receipt of a regular high school diploma; a regular high school diploma does not include an alternative degree that is not fully aligned with the Idaho Content Standards, such as a certificate or a general educational development credential (GED); or
3. when the student no longer meets the eligibility criteria for special education services, as determined by the team after a reevaluation.

D. Temporary Suspension of FAPE

The district is not required to provide FAPE to an eligible student during the suspension of 10 cumulative school days or less during a school year; however, FAPE must be provided following this 10-day exception.

Chapter 3

CHILD FIND

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

Section 1. District Responsibility

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

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

1. enrolled in public school;
2. enrolled in charter and alternative schools;
3. enrolled in home school;
4. enrolled in private elementary and secondary schools (including religious schools) located in the district; including out-of-state parentally-placed private school children with disabilities;
5. not enrolled in elementary or secondary school, including children ages 3 through 5;
6. advancing from grade to grade;
7. highly mobile students (such as migrant and homeless as defined by the McKinney Vento Homeless Act [see Glossary]); and
8. wards of the state.

Section 2. Locating Students

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

A. Coordination

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

B. Public Awareness

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

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

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

Section 3. Identification

The identification component of Child Find includes screening, early intervening through a problem-solving process, and referral to consider a special education evaluation. The procedural rights under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) are afforded when the student is referred for a special education evaluation by the parent and/or adult student or the district.

A. Screening

Screening is an informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards or Idaho Early Learning Standards. A variety of methods may be used to screen students, including performance on statewide

assessments, curriculum-based measures, daily work in the classroom, teacher observations, hearing and vision screeners, developmental milestones, and/or kindergarten readiness measures.

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

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

B. General Education Intervention (Comprehensive Early Intervening Services)

Under the Local Education Agency (LEA) funding option, early intervening services are services for K-12 students who need additional academic and behavioral support to succeed in the *general education environment*. When a school's screening process reveals that a student or groups of students are at risk of not meeting the Idaho Content Standards, the general education problem-solving team shall consider the students' need for "supported" instructional interventions in order to help the students succeed. These interventions are referred to as early intervening services or general education interventions, accommodations, and strategies. It is important to remember that students who receive early intervening services are not currently identified as needing special education or related services and do not have a right to FAPE. Therefore, the IDEA 2004 procedural safeguards are not applicable at this time.

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

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

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

General Education Problem Solving

1. Establishing a Problem-Solving Team

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

When problem solving involves a child 3-5 years of age, the team should seek input from family members, child care programs, private preschools, or Head Start Programs, as appropriate. An early childhood problem-solving process needs to consider early childhood environments and the preschool student's need for supported instructional interventions in order for the student to participate in appropriate activities.

2. Referrals to the Problem-Solving Team

Referrals to the problem-solving team may come from a variety of sources including parents, students, other family members, public or private school personnel, agencies, screening programs, or as a result of annual public notice. Referrals may be made for a variety of reasons dealing with academic and behavioral concerns and may involve, but are not limited to, teaching strategies, material accommodations, social skills training, cooperative learning concepts, classroom organization, and scheduling.

3. Interventions

- a. Interventions in general education or an early childhood environment shall be attempted before a student is referred to an evaluation team, unless an evaluation is needed immediately.
- b. Interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and should be clearly documented.
- c. Documentation of the success or failure of accommodations and interventions shall be reviewed and discussed by the problem-solving team.

4. Problem-Solving Team Decisions Following General Education Intervention

Based on a review of data and information presented by the referring party and others, the team has several decision options. In the case of a preschool student, data and information shall be gathered and reviewed from such settings as child care programs, private preschools, Head Start Programs, or the home.

Chapter 4 EVALUATION AND ELIGIBILITY

Chapter Contents

Section 1.	Evaluation Team	30
Section 2.	Purpose of an Evaluation.....	30
Section 3.	Written Notice and Consent for Assessment.....	32
Section 4.	Information from Other Agencies or Districts	36
Section 5.	Evaluation and Eligibility Determination Procedures.....	37
Section 6.	Reevaluation and Continuing Eligibility.....	41
Section 7.	State Eligibility Criteria	44
	A. Autism.....	45
	B. Cognitive Impairment	46
	C. Deaf-Blindness	46
	D. Deafness	47
	E. Developmental Delay.....	47
	F. Emotional Disturbance.....	49
	G. Health Impairment	50
	H. Hearing Impairment	51
	I. Learning Disability	52
	Ia. Specific Learning Disability	56i
	J. Multiple Disabilities.....	56d
	K. Orthopedic Impairment	57
	L. Speech or Language Impairment: Language	58
	M. Speech or Language Impairment: Speech.....	58
	M1. Articulation/Phonology Disorder	59
	M2. Fluency Disorder	60
	M3. Voice Disorder	60
	N. Traumatic Brain Injury.....	62
	O. Visual Impairment Including Blindness	62

Documents:

<i>Regressed Intelligence Quotient Scores</i>	<i>65</i>
<i>Fluency Communication Rating Scale.....</i>	<i>68</i>
<i>Voice Rating Scale</i>	<i>69</i>
<i>Documentation of Adverse Effects on Educational Performance for Students with Speech/Language Disorders.....</i>	<i>70</i>

Chapter 4

EVALUATION AND ELIGIBILITY

Chapter 3 discusses Child Find procedures used to locate and identify students with suspected disabilities. This chapter contains the requirements for the special education evaluation and eligibility process, from referral to consider special education through to the determination of eligibility. The Idaho State Department of Education has provided State Eligibility Criteria for special education services for eligibility consistent with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) for districts to use while determining eligibility.

Section 1. Evaluation Team

The evaluation team is a group of people outlined by IDEA 2004 with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the individualized education program (IEP) team (although not necessarily the same individuals) and other qualified professionals as needed to ensure that appropriate and informed decisions are made. The specific composition of the evaluation team reviewing existing data will vary depending upon the nature of the student's suspected disability and other relevant factors. The parent and/or adult student is a member of the evaluation team and shall be provided an opportunity to provide input and participate in making team decisions. The evaluation team may conduct its review without a meeting unless the parent and/or adult student requests that a meeting be held.

Additional Membership Requirements:

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

- The student's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; and
- At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

Section 2. Purpose of an Evaluation

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

A. Definitions

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

1. **Evaluation** refers to procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The screening of a student by a teacher or specialist to determine appropriate *instructional* strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.
2. **Assessment** is integral to the evaluation process and includes the formal or informal processes of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. A test is one method of obtaining credible information within the assessment process. Tests may be standardized or non-standardized, criterion-referenced (e.g. curriculum-based measures) or norm-referenced, and usually elicit responses from students to situations, questions, or problems to be solved. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal data.

B. Evaluation Components

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

This initial evaluation will consist of procedures to determine whether:

1. the student has a disability according to the established Idaho criteria;
2. the student’s condition adversely affects academic performance; and
3. the student needs special education, that is, specially designed instruction and related services;

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

1. the nature and extent of special education and related services needed by the student in order to participate and progress in the general education curriculum or curriculum aligned to the Idaho Content Standards or the Idaho Early Learning Standards; and
2. the least restrictive environment (LRE) for the student.

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

Section 3. Written Notice and Consent for Assessment

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

A. Written Notice Requirements

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

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

1. The notice is translated orally or by other means in the native language or other mode of communication;
2. The parent or adult student understands the content of the notice; and
3. There is written evidence that the above two requirements have been met.

The written notice shall *include* the following:

1. a description of the evaluation or reevaluation proposed or refused by the district;
2. an explanation of why the district proposes to evaluate or reevaluate the student;
3. a description of any other options the district considered and the reasons why those options were rejected;
4. a description of each assessment procedure, test, record, or report that the district used as a basis for the proposed or refused evaluation or reevaluation;
5. a description of any other factors relevant to the evaluation or reevaluation;
6. a statement that the parent or adult student has special education rights and how to obtain a copy of the *Procedural Safeguards Notice*; and

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

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

1. to conduct any assessments for initial evaluation or reevaluation
2. to explain refusal to initiate assessment
3. when the evaluation team determines that additional assessments are not required

See Chapter 11 for more information on written notice.

B. Consent Requirements

Definition of Consent

Consent means that the parent and/or adult student:

1. has been fully informed in his or her native language or other mode of communication of all information relevant to the assessment for which consent is sought;
2. understands and agrees in writing (as indicated by signature) to the activities described; and
3. understands that granting of consent is voluntary on the part of the parent. A parent or/adult student who has provided consent shall understand that granting consent is voluntary and may be revoked in writing at any time *before* the assessment. However, once the assessment has been completed, revocation of consent cannot be used to have the assessment disregarded.

Consent for initial evaluation

1. Informed written consent shall be obtained from the parent/adult student before the district conducts assessments as a part of an initial evaluation of the student to determine if he or she qualifies as a child with a disability;
2. Parental consent for initial evaluation should not be construed as consent for initial provision of special education and related services;
3. The school district shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child has a disability and to identify the educational needs of the child. If a parent refuses consent, the district does not violate its obligation to provide FAPE if it declines to pursue the evaluation.

4. If the child is a ward of the State and is not residing with the child's parent, the district is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility if,
 - a. despite reasonable efforts to do so, the district cannot locate the parent;
 - b. the rights of the parents of the child have been terminated in accordance with Idaho law; or
 - c. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Idaho law and consent for initial evaluation has been given by an individual appointed by the judge to represent the child

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Consent and/or Written Notice for Reevaluation

1. Written consent shall be sought for reevaluation that requires new assessments. Reevaluation consisting of review of existing data requires written notice.
2. Informed parental consent need not be obtained if the public agency can demonstrate through documentation that it made reasonable efforts to obtain consent and the child's parent has failed to respond.

C. When Consent Is Not Required

Parental consent is *not* required for:

1. the review of existing data as part of an evaluation or reevaluation;
2. the administration of a test or other assessment that is administered to all students, unless consent is required of parents of all students;
3. teacher or related service provider observations, ongoing classroom evaluations, or criterion-referenced tests that are used to determine the student's progress toward achieving goals on the IEP; and
4. screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.

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

1. The parent and/or adult student can refuse consent for general areas of assessment, for specific procedures, or for assessment altogether.
2. For an initial evaluation, if consent is refused or the parent and/or adult student fails to respond, the student cannot be assessed. However, the district may request SDE mediation or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates that assessment is appropriate and there is no appeal, then the student may be assessed. However, the district does not violate its obligations to provide FAPE if it declines to pursue the evaluation. *The district shall not initiate initial provision of services without written consent from the parent and shall not pursue due process for initial provision of services.*
3. If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the district may not use SDE mediation or due process procedures in order to gain consent and the district is not required to consider the child eligible for services.

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

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

E. Timeline

The time between receiving written consent for initial assessment and implementing the IEP cannot exceed 60 calendar days, excluding periods when regular school is not in session for five or more consecutive school days. The time between eligibility determination and implementation of the IEP cannot exceed 30 days.

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

1. The child enrolls in a school in another school district after the 60-day timeline began and prior to the determination by the child's eligibility in the previous school district. If the new school district is making sufficient progress in determining eligibility, the parent and district may agree to a different timeline.
2. The parent repeatedly fails or refuses to produce the student for an evaluation after the district has made reasonable efforts to schedule an evaluation.

Section 4. Information from Other Agencies or Districts

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

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

1. request information from other districts that the student has attended; or
2. send information to other districts in which the student intends to enroll.

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

Section 5. Evaluation and Eligibility Determination Procedures

A. Areas to Assess

The student shall be assessed in all areas related to the suspected disability, which includes functional, developmental, and academic skills needed to participate and progress in the general education curriculum. If needed, qualified personnel shall conduct an individual assessment of assistive technology needs, including a functional evaluation in the individual's customary environment. The evaluation of each student with a disability shall be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student may be classified. If secondary transition services are needed, appropriate transition assessments shall be conducted.

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

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

B. Determination of Needed Initial or Reevaluation Data

As part of an initial evaluation or reevaluation, the evaluation team will review existing evaluation data depending on the student's suspected disability and other relevant factors including:

1. assessments and information provided by the parent and/or adult student concerning the student;
2. current classroom-based assessments and observations, and/or data regarding the student's response to scientific research-based interventions;
3. observations by teachers and related service providers; and
4. results from statewide and district wide testing.

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

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

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

D. Eligibility Determination

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

Special Rule for Eligibility Determination

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

1. lack of appropriate instruction in reading, including the essential components of reading instruction as defined by the Elementary and Secondary Education Act—phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies,
2. lack of appropriate instruction in math, or
3. Limited English Proficiency.

Related Services:

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

E. The Eligibility Report

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

The *Eligibility Report* shall include:

1. names and positions of all evaluation team members;

2. all data on the student as required in the State Eligibility Criteria for the area of suspected disability.
3. confirmation and supporting data that the disability is not due to lack of appropriate instruction in reading, including the essential components of reading —phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies or math;
4. confirmation and supporting data that the disability is not due to Limited English Proficiency;
5. information about how the student's disability adversely affects his or her educational performance;
6. information regarding the student's need for specially designed instruction (special education and related services);
7. the date of the eligibility determination; and
8. the name and position of all those administering assessments.
9. In the case of Learning Disability eligibility determination, certification in writing that the report reflects each member's conclusions (agreement), and in the case of team member disagreement with the conclusions, a written statement shall be attached to the eligibility report presenting the dissenting team member's conclusions.

Section 6. Reevaluation and Continuing Eligibility

A. Reevaluation Requirements

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

A Reevaluation:

1. shall occur at least once every 3 years unless the parent and/or adult student and the district agree in writing that a 3-year reevaluation is not necessary. However, an updated Eligibility Report, documenting all eligibility criteria, shall be completed by the reevaluation due date to establish and document continuing eligibility;
2. a reevaluation is not required more than once per year unless the parent or/adult student and the district agree otherwise. If the parent makes a request within the year and the district does not agree, the district shall send written notice of refusal.

The district shall ensure a reevaluation is conducted if:

1. it is determined that the education or related service needs, including academic achievement and functional performance, of the student warrants a reevaluation; or
2. if the parent and/or adult student or the student's teacher requests a reevaluation.

B. Reevaluation Prior to Discontinuation

1. The district shall evaluate a student with a disability before determining that the student is no longer eligible for special education.
2. Reevaluation is not required in the following two circumstances:
 - a. before the termination of a child's eligibility due to graduation, if the student meets comparable academic requirements that are equally as rigorous as those required of non-disabled students and receives a regular diploma.
 - b. the student has reached the end of the semester in which he or she turns 21 years of age;

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

C. Informing the Parent and/or Adult Student

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

1. the reevaluation will be scheduled within the month, unless the district and parent and/or adult student agree it is unnecessary;
2. input will be sought from the parent and/or adult student; and
3. the reevaluation process may be accomplished without a meeting, although the parent and/or adult student has the option of requesting a meeting.

D. Nature and Extent of Reevaluation

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

1. No Additional Information Needed

- a. If the evaluation team decides that no additional assessments are needed to determine whether the student continues to be a student with a disability, the district shall provide written notice to the parent and/or adult student of his or her right to request further assessment to determine whether the student continues to have a disability for the purpose of services under the IDEA 2004.
- b. If the parent and/or adult student requests an additional assessment to determine whether the student continues to have a disability under the IDEA 2004, then the district shall conduct the assessment.
- c. If the parent and/or adult student requests an additional assessment for reasons other than eligibility, such as admission to college, then the district shall consider the request and provide written notice of its decision.

2. Additional Assessments Needed

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

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

E. Eligibility Report for Reevaluations

The evaluation team will consider evaluation findings and determine whether the student continues to have a disability.

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

Section 7. State Eligibility Criteria

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

All disabilities except Learning Disability (LD) and Developmental Delay (DD) are applicable for students 3 through 21 years of age. For Learning Disability, students must be legal kindergarten age through 21 years. Only students ages 3 through 9 can be identified in the Developmental Delay (DD) category. Use of the DD category is optional for the district. If the district elects to use the DD category, it will use the 3 through 9 age range and the criteria outlined in this chapter.

Three-Prong Test of Eligibility

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

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

1. the eligibility requirements established by the state for a specific disability are met;
2. the disability must have an adverse impact on the student's education, **and**
3. the student must need special education in order to benefit from his or her education.

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

Experiences Adverse Effect on Educational Performance: The term "adverse effect on educational performance" is broad in scope. An adverse effect is a harmful or unfavorable influence. Educational performance includes both academic areas (reading, math, communication, etc.) and nonacademic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.). Consideration of all facets of the student's condition that adversely affect educational performance involves determining

any harmful or unfavorable influences that the disability has on the student's academic or daily life activities.

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

A. Autism

Definition: Autism is a developmental disability, generally evident before age 3, significantly affecting verbal and nonverbal communication and social interaction, and adversely affecting educational performance. A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Characteristics vary from mild to severe as well as in the number of symptoms present. Diagnoses may include, but are not limited to, the following autism spectrum disorders: Childhood Disintegrative Disorder, Autistic Disorder, Asperger's Syndrome, or Pervasive Developmental Disorder: Not Otherwise Specified (PDD:NOS).

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

1. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2. The student has a developmental disability, generally evident before age 3, that significantly affects verbal and nonverbal communication and social interaction.
3. The student is diagnosed as having a disorder in the autism spectrum by a school psychologist and a speech-language pathologist; or by a psychiatrist, a physician, or a licensed psychologist.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

5. The student needs special education.

I. Learning Disability (expires July 31, 2010)

Definition: A learning disability means a specific disorder of one or more of the basic psychological processes involved in understanding, or in using spoken or written language, that may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, which adversely affects the student's educational performance. It is not necessary to identify the specific psychological processes that a student has, as long as the student meets the State Eligibility Criteria.

The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include a student who has needs that are primarily the result of visual, hearing, or motor disabilities; cognitive impairment; emotional disturbance; or environmental, cultural, or economic disadvantage.

For learning disability, students must be within the range of legal kindergarten age through the semester that they turn 21.

State Eligibility Criteria for Learning Disability: An evaluation team will determine that a student is eligible for special education services as a student with a learning disability when all of the following criteria are met and documented on the eligibility report. The documentation of Learning Disability requires an additional form (400a & 400b) used to address the additional requirements.

1. Requirements for Learning Disability

There are two ways to determine eligibility for students with a Learning Disability: *either* Response to Intervention (RTI) or the traditional discrepancy model. Regardless of the process used for identification the following criteria shall be met and documented:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The child has not achieved adequately for the child's age or has failed to meet Idaho Content Standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or Idaho Content grade-level Standards.
 - (1) Oral expression
 - (2) Listening comprehension
 - (3) Written expression
 - (4) Basic reading skills

- (5) Reading fluency skills
 - (6) Reading comprehension
 - (7) Mathematics calculation
 - (8) Mathematics problem solving
- c. To ensure that underachievement is not due to a lack of appropriate instruction in reading or math, the team shall consider:
- (1) data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - (2) data-based documentation of repeated assessments of achievement at reasonable intervals, that reflect student progress during instruction, have been provided to the parent. In Idaho, this refers specifically to the use of local or national progress monitoring systems (e.g. district CBMs, AimsWEB, DIBELS).
- d. An observation of the student's academic performance and behavior in the child's learning environment, (including the regular classroom setting), has been conducted by an evaluation team member other than the student's general education classroom teacher. The purpose of the observation is to document how the areas of concern impact the student's performance in the classroom. The observation should also document the name and title of the observer and the site, date, and duration of the observation. The team shall decide to:
- (1) use information from an observation in routine classroom instruction and monitoring of the child's performance that was conducted before the child was referred for an evaluation or;
 - (2) have at least one member of the team conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation, and parental consent has been obtained.
 - (3) In the case of a student who is out of school, a team member shall observe the student in an environment appropriate for a student of that age.
- e. The team shall determine the student's difficulty is not primarily the result of any of the following factors:
- (1) visual, hearing, or motor disability
 - (2) cognitive impairment
 - (3) emotional disturbance
 - (4) cultural factors
 - (5) environmental or economic disadvantage

- e. An observation documenting the student's academic performance and behavior in the areas of concern

The graph shall include, among other relevant components, an aimline, trendline, phaselines, and decision rules.

3. Additional Requirements Specific to Traditional Discrepancy Model:

In addition to the required learning disability eligibility criteria listed above in Section A, the evaluation team shall make a determination using assessments and procedures that demonstrate the following:

- a. A Pattern Indicative of a Learning Disability

The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Idaho Content Standards for the child's age, or intellectual development that is determined by the team, using appropriate assessments, to be indicative of a learning disability; **and**

- b. A Severe Discrepancy between Ability and Achievement

A severe discrepancy exists between intellectual ability and academic achievement when the broad area standard score is equal to or greater than 15 points below a regressed full-scale intellectual ability score. The severe discrepancy must not be due to the effects of any of the exclusionary factors listed in Section 5 of this chapter.

The district shall use the Regressed Intelligence Quotient Scores table, found in the document section of this chapter, or another appropriate regression table or procedure. This conversion chart can be used in determining the regressed intelligence score from which the achievement score is subtracted in arriving at a discrepancy.

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Ia. Specific Learning Disability

Specific Learning Disability State Eligibility Criteria 2009 Implementation Timeline

2009-2010 School Year

Professional development

IEP teams may use either SLD eligibility determination criteria with the expectation that teams will begin to implement the new 2009 SLD criteria.

Submit one completed SLD eligibility determination per school using new 2009 criteria to the SDE by May 15, 2010.

Alternate Implementation Plan

For School Districts with more than 4 elementary schools, an alternate implementation plan may be submitted to the SDE. The alternate plan must include a minimum of 30% of district elementary schools with a minimum of 4 schools submitting one IEP per building, minimum of 1 junior/middle high school and minimum of 1 high school. The plan must also include a timeline for professional development and implementation across all schools by August 1, 2009. The alternate plan must be submitted to the SDE by January 31, 2010. The SDE will review proposed alternate plans and work with the district to approve alternate plans by February 15, 2010. Plans may be submitted earlier than January 31, 2010.

Submitted eligibility determination documents will be reviewed by a trained team and results will be provided to the school district special education director by June 30, 2010.

Schools without a referral to consider SLD

Submit by May 15, 2010 information about completed and proposed training regarding the 2009 SLD Criteria that will prepare school personnel to begin implementation beginning August 1, 2010.

2010-2011 School Year

Professional development continues

All items of concern found during the eligibility documents submitted for review in May 2010 will be corrected and verified no later than May, 2011.

Beginning August 1, 2010, IEP teams will use the 2009 SLD criteria to determine special education eligibility for all new referrals of students suspected of having a specific learning disability.

Additional guidance will be provided for IEP teams to use for three year re-evaluations and other situations where students have already been determined eligible for special education.

2011-2012 School Year

Professional development continues

IEP teams will use the 2009 SLD criteria to determine eligibility for all students suspected of having a specific learning disability.

High School Students

For a student in **Graduating Classes of 2010, 2011, 2012, and 2013** that has already been identified as eligible for special education services under the category of Learning Disabled, teams may chose to use either the discrepancy criteria that the student was originally identified with or the 2009 Specific Learning Disability criteria for the three year reevaluation and continued eligibility determination. This applies ONLY to the three year reevaluation. For students who are considered 'new' referrals for special education services the 2009 SLD criteria MUST be used after August 1, 2010.

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I. Federal IDEA 2004 Definition: Specific Learning Disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of cognitive impairment, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Only children within the age range of legal Kindergarten to age 21 years may be identified as a student with a specific learning disability.

II. Eligibility Criteria: In determining whether a child has an SLD, the child must meet at a minimum, the following criteria:

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

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

AND

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

AND

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

AND

- D. The student's lack of achievement is not primarily the result of:
- a. A visual, hearing, or motor impairment;
 - b. Cognitive impairment
 - c. Emotional disturbance

- d. Environmental, cultural or economic disadvantage
- e. Limited English Proficiency
- f. A lack of appropriate instruction in reading, including the essential components of reading;
- g. A lack of appropriate instruction in math.

AND

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

III. Evaluation Procedures:

In order to demonstrate the eligibility criteria, the following procedures must be followed.

1. The evaluation for determining SLD eligibility and requirements for parent notification and involvement shall be conducted in accordance with the procedures detailed in Section 3, Chapter 4 of the Idaho Special Education Manual.
2. The evaluation must address the eligibility criteria as listed in *Section 2. LD Eligibility Criteria* (see above). To meet these criteria, the following information is required:
 - A. Evidence of insufficient progress in response to effective, evidence-based instruction and intervention indicates the student's performance level and rate of improvement are significantly below that of grade-level peers. This is documented/demonstrated with the following data:
 - i. Data that helps establish that the core curriculum is effective for most students. The most recent whole grade performance data to verify appropriate instruction in the area(s) of concern may include results from the standards-based assessment system. If the referred student belongs to a population of students whose performance is regularly disaggregated, whole grade data for the disaggregated group should also be reviewed and considered.
 - ii. Information documenting that prior to, or as part of, the referral process, the student was provided appropriate instruction in general education settings. Appropriate instruction includes consideration of both child specific information and whole grade performance data. Child specific data regarding appropriate instruction may include: (1) verification that core (universal) instruction was provided regularly; (2) data indicating that the student attended school regularly to receive instruction; (3) verification that core instruction was delivered according to its design and methodology by qualified personnel; and (4) verification that differentiated instruction in the core curriculum was provided.
 - iii. Data-based documentation of student progress during instruction and intervention using standardized, norm-referenced progress monitoring measures in the area of disability.
 - iv. A record of an observation of the student's academic performance and behavior in the child's learning environment (including the general classroom setting) has been conducted by an evaluation team member other than the student's general education teacher. The purpose of the observation is to document how the areas of concern

impact the student's performance in the classroom. The observation should also document the name and title of the observer and the site, date, and duration of the observation. The team must decide to:

1. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was conducted before the child was referred for an evaluation or;
2. Have at least one member of the team conduct an observation of the child's academic performance in the educational environment after the child has been referred for an evaluation, and parental consent has been obtained.

AND

- B. Evidence of low achievement in one or more of the suspected area(s). These include:
- a. Oral expression;
 - b. Listening comprehension;
 - c. Written expression;
 - d. Basic reading skills;
 - e. Reading comprehension;
 - f. Reading fluency
 - g. Mathematics calculation; or
 - h. Mathematics problem solving

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

AND

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

An assessment of psychological processing skills is linked to the failure to achieve adequately in the academic area(s) of suspected disability and must rely on standardized assessments. These assessments must be conducted by a professional who is qualified to administer and interpret the assessment results. The student's performance on a psychological processing assessment demonstrates a pattern of strengths and weaknesses that help explain why and how the student's learning difficulties occur. Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test psychological processing.

AND

- D. The following criteria must be considered when evaluating the student's low achievement. The team must determine that the student's learning difficulty is ***not*** primarily the result of:
- a. A visual, hearing, or motor impairment
 - b. Cognitive impairment
 - c. Emotional disturbance
 - d. Environmental or economic disadvantage
 - e. Cultural factors
 - f. Limited English Proficiency

This space intentionally left blank.

J. Multiple Disabilities

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

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

1. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2. The student meets eligibility criteria for severe concomitant impairments, the combination of which causes such significant educational problems that the student cannot be accommodated by special education services designed solely for one of the disabilities.
3. The student meets State Eligibility Criteria as outlined for each disability category.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

K. Orthopedic Impairment

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

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

1. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2. The student exhibits a severe orthopedic impairment. The term includes congenital anomalies, impairments caused by disease, and impairments from other causes that are so severe as to require special education services.
3. The student has documentation of the condition by a physician or other qualified professional.
4. The student's condition adversely affects educational performance.
5. The student needs special education.

Chapter 5
INDIVIDUALIZED EDUCATION PROGRAMS

Chapter Contents

Section 1. IEP Initiation.....	73
Section 2. IEP Development.....	80
Section 3. IEP Reviews.....	96
Section 4. IEPs for Transfer Students.....	97
Section 5. IEPs for Children from the Infant/Toddler Program.....	98
Section 6. Students with Disabilities in Adult Prisons	101

Chapter 5

INDIVIDUALIZED EDUCATION PROGRAMS

If a student is eligible for special education services, they have met the requirements of eligibility under the Individuals with Disabilities Education Act of 2004 (IDEA 2004), including a disability that meets the criteria, adversely affects the student's educational performance, and requires specially designed instruction.

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

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

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

In developing each student's IEP, the IEP team shall consider:

- ▶ The strengths of the student;
- ▶ The concerns of the parents for enhancing the education of their child;
- ▶ The results of the initial or most recent evaluation of the student; and
- ▶ The academic achievement, developmental, and functional needs of the student.

Section 1. IEP Initiation

A. Purpose of Meeting

The primary purpose of an IEP team meeting is to design an IEP that shall meet the unique needs of a student with a disability. The IEP team plans the special education and related services calculated to enable the student to receive educational benefits in the least restrictive environment. The parent and/or adult student shall be invited to the meeting and in order to participate meaningfully, the parent and/or adult student should be informed of his or her role as

a team member. The parent and/or adult student, district personnel, and other IEP team members should come prepared to discuss specific information about the student's individual needs and the type of services to be provided to address those needs.

The meeting format should invite open discussion that allows participants to identify and consider all the relevant needs of the student related to their disability. Placement decisions shall be considered *after* the special education services are determined. Placement is based on the IEP services and accommodations and shall not be the determining factor in developing the IEP content.

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

B. Team Decision Making

The IEP meeting serves as a communication vehicle between the parent and/or adult student, district personnel, and other IEP team members that enables them, as equal participants, to make joint, informed decisions regarding the student's special education services. All members of the IEP team are expected to work toward consensus regarding the services that will be included in the student's IEP to ensure that he or she receives a free appropriate public education (FAPE). Consensus means that all members are in general agreement regarding what is written.

If there is a lack of consensus between the parent and/or adult student, district personnel, and other IEP team members regarding an IEP decision, then school personnel on the IEP team should seek consensus and make the decision subject to the due process rights of the parent and/or adult student. If there is a lack of consensus among school personnel, then the district representative on the IEP team shall make the decision.

The district shall follow the procedures in Section 2J of this chapter, "Parent and/or Adult Student Objection to the IEP," if necessary.

C. When IEP Meetings Are Held

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

1. To develop and implement an IEP within 60 calendar days of receiving parent and/or adult student consent for initial evaluation, excluding periods when regular school is not in session for 5 or more consecutive days. With the exception that the meeting to develop the IEP shall be held within 30 days of a determination that the student needs special education and related services. Refer to Chapter 4, Section 3.E regarding

additional timeline exceptions. The IEP shall be implemented as soon as possible following the meeting during which the IEP was developed.

2. To review the IEP periodically, but no longer than 365 days from the date of development of the current IEP. An IEP shall be in effect at the beginning of each school year;
3. When another agency fails to deliver transition or other services outlined in the IEP;
4. To consider revisions to the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
5. At the reasonable request of any member of the IEP team;
6. To review behavioral intervention strategies and/or develop a behavioral plan as part of the IEP; or
7. To address the IDEA 2004 discipline requirements (see Chapter 12).

NOTE: Under the IDEA 2004, an IEP team meeting may not be required to amend the IEP (see IEP Amendments).

D. IEP Team Members and Roles

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

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

Role	Description
<p>Parent of the student <i>or</i> Adult Student if rights have transferred</p>	<p>The term “parent” refers to a biological or adoptive parent, foster parent, a judicially decreed guardian (does not include State agency personnel if the student is a ward of the state), a person acting in place of a parent, or a surrogate parent who has been appointed by the district. The term “acting in place of a biological or adoptive parent” includes persons such as a grandparent, stepparent, or other relative with whom the student lives as well as persons who are legally responsible for a student’s welfare. A foster parent may act as a parent if the natural parent’s authority to make educational decisions on behalf of his or her child has been terminated by law. A foster parent shall be an individual who is willing to make educational decisions required of a parent, and has no interest that would conflict with the interests of the student.</p> <p>If more than the biological or adoptive parents meet the definition of parent, the biological or adoptive parents serve as the parents in the IEP process, unless a judicial decree or order identifies a specific person or persons to make educational decisions for the student.</p> <p>An “adult student” is a student with a disability who is 18 years of age or older to whom special education rights have transferred under the IDEA 2004 and Idaho Code. (See Chapter 11, Section 2C, for more information.) In this case, the parent may attend the IEP meeting as an individual who has knowledge or special expertise regarding the student at the invitation of the adult student or the district.</p>
<p>District Representative</p>	<p>The district representative or designee shall be qualified to provide or supervise the provision of special education to meet the unique needs of students with disabilities. The representative shall be knowledgeable about the general education curriculum and about the availability of resources in the district. They should have the authority to allocate resources and to ensure that whatever services are outlined in the IEP shall be provided. Examples of the district representative include the building principal, the special education director, the district superintendent and others who meet the criteria described above. The district representative may be another member of the IEP team if all the criteria above are met.</p>

Role	Description
Special Education Teacher/Provider—not less than one	This individual will generally be the student's special education teacher or service provider who is responsible for implementing the student's IEP. In the case of a student receiving services from a speech-language pathologist, but not a special education teacher, it would be more appropriate for the speech-language pathologist to fill this role on the IEP team.
General Education Teacher—not less than one	A general education teacher of the student is required to participate in developing the IEP if a student is, or may be, participating in the general education environment. Regardless, a representative that is knowledgeable of the general education curriculum shall be present. For preschool-age students, the general education teacher may be the kindergarten teacher or an appropriate designee. Designees at the preschool level may include a care provider, Head Start teacher, or community preschool teacher if that person meets State and/or national licensing standards.
Individual who can interpret evaluation results and implications	This person may be someone who participated in the evaluation of the student. He or she shall be able to explain the results, the instructional implications, and the recommendations of the evaluation.
Student	Whenever appropriate, the IEP team includes the student with a disability. A student shall be invited by the district to attend any IEP meeting at which post-secondary goals and transition services needed to assist the student in reaching those goals will be discussed. If the student does not attend the IEP team meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.
Representative of a Private School (if applicable)	If a student is enrolled in or referred to a private school, the district shall ensure that a representative of the private school is invited to the IEP meeting. If a representative cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

Role	Description
Representative of Transition Agency(s) (Parental consent shall be obtained in order for the Transition Agency Representative to participate in the IEP) team meeting.	If transition services are being discussed, a representative of any public agency that is likely to be responsible for providing or paying for transition services shall be invited. If a representative does not attend, steps shall be taken to obtain participation from the agency in transition planning.
Part C Coordinator or Representative	At the request of the parent of a student who previously was served under Part C, the Part C coordinator or other representative of the Part C system will be invited to the initial IEP meeting.
Other	At the discretion of the parent and/or adult student or the district, other individuals who have knowledge or special expertise regarding the student, including related service personnel, may be included as IEP team members. The determination of having knowledge and special expertise regarding the student shall be made by the parent and/or adult student or district person who invited the individual to be a member of the IEP team.

E. The General Educator's Role in IEP Development

If a student is participating in the general education curriculum or environment, not less than one of the student's general education teachers who are responsible for implementing any portion of the IEP shall participate to the extent appropriate in developing the IEP. Regardless, a representative that is knowledgeable of the general education curriculum shall participate.

The general education teacher's role in the development, review, and revision of the IEP includes:

1. Discussion of the student's involvement and progress in the general education curriculum;
2. Determination of appropriate positive behavioral interventions and other strategies for the student; and
3. Determination of supplementary aids and services, program accommodations/adaptations, and supports for school personnel.

F. Invitation to IEP Team Meetings

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

The district shall do the following:

1. Schedule the meeting at a place and time mutually agreed on by the parent and/or adult student and the district.
2. Invite the parent and/or adult student to the meeting early enough to ensure that he or she can attend. The district shall keep a record of this invitation. The invitation shall include the following:
 - a. the purpose, time, and location of the meeting;
 - b. who will attend the meeting; and
 - c. information regarding the parent's and/or adult student's right to bring other people to the meeting.

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

3. Invite the student, if appropriate or required, to attend and participate in his or her IEP team meeting. If the student is a minor, the parent shall make the decision regarding the student's attendance. If a purpose of the meeting is to consider transition, and the student does not attend, the district shall take other steps to ensure that the student's preferences and interests are considered.
4. The invitation may be either written or oral. In either case, the district shall document that all the required components noted in item 2 above were included in the invitation. In addition, the parent and/or adult student shall be provided with a copy of the *Procedural Safeguards Notice* once annually, preferably at the annual review.
5. When one of the purposes of the IEP team meeting is to consider transition services, the invitation shall also:
 - a. indicate this purpose;
 - b. indicate that the district shall invite the student; and

- c. identify any other agency that will be invited, with parent's and/or adult student's consent, to send a representative.
6. The district shall take appropriate action to ensure that a parent and/or adult student understands the proceedings at an IEP team meeting, including arranging for an interpreter for a parent and/or adult student who has a hearing impairment or whose native language is other than English.
7. The IEP team may meet without the parent and/or adult student if he or she cannot attend the meeting or cannot be convinced to attend the meeting. However, the district shall document its attempts to arrange a mutually agreed upon time and place for the meeting. Documentation could include records of telephone calls or conversations, copies of correspondence sent to the parent and/or adult student and any responses received, and detailed records of any visits made to the parent and/or adult student. If a meeting is held without the parent and/or adult student, the district shall offer and document alternative methods, such as conference calls, to gain his or her participation in the development of the IEP.
8. Alternatives to physical meetings such as video and telephone conferencing may take the place of physical IEP meetings if the parent and/or adult student and district agree.

Section 2. IEP Development

Nothing requires additional information be included in a student's IEP beyond what is explicitly required by IDEA 2004 or requires the IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

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

A. General Demographic Components for All IEPs

All IEPs shall include the date of the IEP meeting and the following general demographic components: the student's name as it appears in school records, native language, birth date, and identification number (for State reporting or Medicaid purposes only), names of parents, address, phone number, school, and grade.

B. Documentation of Participants

The district shall ensure the attendance and participation of the IEP team members at the IEP meeting. Documentation of attendance can be accomplished by listing team members on the IEP and checking their attendance status.

The attendance list is not a reflection of agreement or disagreement with the IEP; it is only an indication of attendance. As with any team member, the parent's/adult student's name on the list does not indicate agreement or disagreement with the IEP contents. If the parent and/or adult student disagrees with all or part of the IEP, the district should remind the parent and/or adult student that he or she may file a written objection.

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

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

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

1. Statements of present levels of academic achievement, and functional performance in an area of need include:
 - a. How a school-age student's disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).
 - b. For preschool students, present levels of performance should reference the Idaho Early Learning Standards and describe how the disability affects the student's participation in appropriate activities.
2. Although the content of present levels of performance statements are different for each student, each statement shall:
 - a. be written in objective, measurable terms and easy-to-understand non-technical language;
 - b. show a direct relationship with the other components of the IEP, including special education services, annual goals, and, if applicable, benchmarks/objectives for students who participate in the Idaho Standard Achievement Test - Alternate (ISAT-Alt);
 - c. provide a starting point for goal development; and
 - d. reference general education Idaho Content Standards.
3. Annual goals shall be related to the needs described in the present levels of performance statements. Measurable academic achievement, developmental, and functional annual goals are designed to meet the student's needs that result from the student's disability, to enable the student to be involved in and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability.

- a. A goal is a written, measurable statement that describes what a student is reasonably expected to accomplish within the time period covered by the IEP, generally one year.
 - b. Goals are written to enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability.
 - c. A goal shall include the behavior, the performance criteria, and the evaluation procedure.
4. For students taking the ISAT-Alt aligned to the alternate standards, each goal shall have at least two benchmarks/objectives. Benchmarks/objectives shall include a statement of how far the student is expected to progress toward the annual goal and by what date. The district has the discretion to use benchmarks/objectives as described in this paragraph for all students eligible for IEP services.

D. Progress Toward Goals

The IEP shall include a statement describing:

1. How the student's progress toward IEP goals will be measured;
2. How and when the parent and/or adult student will be informed of the student's progress toward the annual goals, including the extent to which progress is sufficient to enable the student to achieve the goals by the end of the IEP time period.

Periodic progress reports, concurrent with the issuance of report cards shall be provided.

E. Statements of Special Education and Related Services

Each student's IEP shall describe the special education and related services, based on peer-reviewed research to the extent practicable, which will be provided to or on behalf of the student. Special education includes specially designed instruction to meet the unique needs of the student.

The term "related services" refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education as described in the IEP. These services include, but are not limited to:

- ▶ audiology
- ▶ speech therapy
- ▶ language therapy
- ▶ psychological services
- ▶ physical therapy
- ▶ occupational therapy
- ▶ therapeutic recreation
- ▶ early identification and assessment of students' disabilities
- ▶ rehabilitation counseling services
- ▶ orientation and mobility services
- ▶ medical services for diagnostic or evaluative purposes
- ▶ school nurse services
- ▶ social work services in school
- ▶ supports for school staff
- ▶ parent counseling and training. Parent counseling and training includes helping a parent (a) understand child development and the special needs of his or her child and (b) acquire skills to support the implementation of his or her child's IEP.
- ▶ interpreter services

NOTE: The Idaho Educational Interpreter Act (Title 33, Chapter 13) was implemented on July 1, 2009, this statute establishes standards for all education interpreters in the State of Idaho. The complete statute can be found at <http://www3.state.id.us/idstat/TOC/33013KTOC.html>

This list of related services is not exhaustive and may include other developmental, corrective, or supportive services, transition services or assistive technology. Although services may be of benefit to a student with a disability, all of the services listed above may not be required for each individual student. Related services are the responsibility of the district only if the IEP team determines they are required to assist the student to benefit from special education. Further, the student is not entitled to related services if (a) he or she is not eligible for special education or (b) the parent and/or adult student does not consent to initial provision of special education services.

EXCEPTION: The term does not include a medical device that is surgically implanted or the replacement of such device, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. The district is responsible to appropriately monitor and check devices to make sure the devices are functioning properly. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

THIRD PARTY PAYERS: Consent from the parents and/or adult student is required when the district bills Medicaid or the parent's insurance for services provided. See Chapter 11 for details.

F. Supplementary Aids, Services, and Other IEP Considerations

Supplementary aids and services may include general education curriculum accommodations and/or adaptations, support for school staff, positive behavioral intervention plans, extended school year services, transportation, transition services, assistive technology services, and travel training services deemed appropriate by the IEP team shall be provided whether or not the district currently has these services in place.

The description of services in the IEP shall:

1. Identify the program accommodations and supplementary aids to be provided to the student in the areas of need.
2. List the specific services that will meet the unique needs of the student, allowing him or her to advance appropriately toward attaining the annual goals, and:
 - a. be involved in and make progress in the general education curriculum;
 - b. participate in extracurricular and other nonacademic activities; and
 - c. be educated and participate with other students with disabilities and with students without disabilities to the maximum extent appropriate.

NOTE: The public agency shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

3. State the projected starting date and expected duration of the services, and accommodations/adaptations.
4. List the anticipated time per session and frequency of sessions per week or month. The amount of service may not be stated as a range.
5. State the location where services and accommodations/adaptations will be provided.

Based on the unique needs of each student, the IEP team should consider any of the following services that may be appropriate for the student and should document such services on the IEP accordingly:

1. Supplementary Aids and Services

“Supplementary aids and services” means aids, services, and other supports that are provided in general education classes or other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be

G. Statewide and Districtwide Achievement Testing

Students with disabilities are to be included in all statewide and district wide assessments. Participation rates and performance data, both aggregate and disaggregate, for students with disabilities are reported to the public annually.

The IEP team shall determine how the student will participate in statewide and district wide assessments—without accommodations, with accommodations, with adaptations, or by means of the alternate assessment. The IEP team determines what accommodations and/or adaptations to use based on those that are used regularly by the student during instruction or classroom testing and on what is listed in the accommodations section of the IEP.

The IEP team shall determine whether the student meets the state criteria for the alternate assessment. It should be noted that some students might participate in parts of the regular assessment and parts of the alternate assessment. For example, a student may participate with accommodations in the *regular* reading portion of the statewide assessment and may participate in the math portion of the statewide assessment using the *alternate* assessment.

The following guidelines shall be used to determine how the student will participate in statewide and district wide assessments:

1. Regular Assessment without Accommodations

The IEP team determines and documents in the IEP that a student with a disability can adequately demonstrate his or her knowledge, abilities, or skills on statewide and district wide assessments without accommodations.

2. Regular Assessment with Accommodations

Appropriate accommodations for students with disabilities shall be based on the individual needs of each student. Accommodation decisions are made by the IEP team and shall be recorded in the IEP. Accommodations should facilitate an accurate demonstration of academic achievement, developmental, and functional performance on State and district-wide assessments. They should not provide the student with an unfair advantage or change the underlying skills that are being measured by the test. Accommodations shall be the same or nearly the same as those used by the student in completing classroom assignments and assessment activities. The accommodations shall be necessary for enabling the student to demonstrate knowledge, ability, skill, or mastery. Accommodations *do not* invalidate test results.

3. Regular Assessments with Adaptations

A student may be unable to demonstrate what he or she knows or is able to do without using an adaptation. However, an adaptation inherently circumvents the underlying

skills that the test is measuring; therefore, an adaptation *always* invalidates the assessment result. If an adaptation is included in the IEP for statewide and/or district wide assessments, it shall be one that the student uses in completing classroom assignments and assessment activities on a regular basis. Further, the use of an adaptation in statewide and district wide assessments shall be clearly coded on the student's score sheet.

The IEP team has the authority to make the decision that a student needs an adaptation in order to participate in statewide and district wide assessments, even though the adaptation *will* cause the student to score as "not proficient" and to be counted as NOT participating in the assessment under AYP determinations. All IEP team members, including the parent and/or adult student, shall understand (a) the possible consequences that could result from this decision and (b) its effect on diploma options and post school activities involving education, career opportunities, military service, and community participation.

4. Idaho Standard Achievement Test - Alternate (ISAT-Alt)

If the student cannot participate in some or all of the general assessments, the IEP shall contain a statement that includes the reason the student cannot participate in the general assessment and the alternate assessments—language arts, reading, math or science—in which the student will participate.

a. Students Eligible to Take the ISAT-Alt

The IEP team shall find that the student meets all of the criteria listed below to determine that he or she is eligible to participate in the alternate assessment:

- (1) The student's demonstrated cognitive ability and adaptive behavior prevent completion of the general academic curriculum even with program accommodations and/or adaptations;
- (2) The student's course of study is primarily functional-skill and living-skill oriented (typically not measured by State or district assessments); and
- (3) The student is unable to acquire, maintain, or generalize skills in multiple settings and to demonstrate performance of these skills without intensive and frequent individualized instruction.

b. Students Not Eligible to Take the ISAT-Alt

Students are *not* to be included in the ISAT-Alt any of the following reasons:

- (1) The only determining factor is that the student has an IEP;
- (2) The student is academically behind because of excessive absences or lack of instruction; or
- (3) The student is unable to complete the general academic curriculum because of socioeconomic or cultural differences.

H. LRE Explanation and Placement Decisions

The IEP shall explain the extent, if any, to which the student will *not* participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities.

In recommending the most appropriate placement in the least restrictive environment (LRE) for the student with a disability, the IEP team shall consider the student's needs and the continuum of services to meet those needs. The parent and/or adult student shall be involved in the placement decision. Removal from the general education environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. A student with a disability is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and adaptations in the general education curriculum. In addition, a student with a disability shall be educated with students without disabilities in the general education classroom to the maximum extent appropriate.

NOTE: The district's reassignment of students (with or without disabilities) to another classroom or building in the district is *not* a change of placement for a student with a disability as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; and going to a different school as a result of moving from one grade level to another grade level.

See Chapter 6 for more information on placement in the LRE

I. Consent for Initial Provision of Special Education and Related Services

The district shall make reasonable effort to obtain informed consent from the parent and/or the adult student before the initial provision of special education and related services to the student.

If the parent and/or adult student communicates in writing, he or she refuses special education and related services following the evaluation and determination of eligibility, the district shall not provide special education and related services to the student. If the parent and/or adult student fails to respond to a district's documented efforts to gain consent for initial provision of special

education and related services, the district shall not provide special education and related services to the student. In both cases:

1. The district shall not be in violation of the requirement to provide FAPE to the student or the requirement to provide special education and related services;
2. The district shall not be required to convene an IEP meeting or develop an IEP for the student; and
3. The district shall not use due process in order to obtain consent or a ruling allowing initial placement.

If the parent and/or adult student wishes to move forward with the provision of services stated on the IEP and placement in special education, consent for initial placement in special education shall be obtained after the development of an IEP. Consent means that the parent and/or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought.

J. Parent and/or Adult Student Objection to the IEP

If the parent and/or adult student disagrees with an IEP change or placement change proposed by the district, he or she may file a written objection to all or parts of the proposed change. If the parent and/or adult student files a written objection that is postmarked or hand delivered within 10 days of the date he or she receives written notice from the district of the proposed change, the changes to which the parent and/or adult student objects cannot be implemented. If the changes have already been implemented, implementation of those changes shall cease. The district and parent and/or adult student may use methods such as additional IEP team meetings, IEP facilitation, or SDE mediation to resolve the disagreement. If these attempts to resolve the dispute fail, the district may request a due process hearing to obtain a hearing officer's decision regarding the proposed change, unless it is an initial IEP.

If the parent and/or adult student files a written objection to an IEP change or placement change proposed by the district any time *after* 10 days of receiving written notice, the student shall “stay put” in the placement described in the disputed IEP, and that IEP is implemented as written until the disagreement is resolved unless the parent and/or adult student agree otherwise. However, the written objection cannot be used to prevent the district from placing a student in an interim alternative educational setting (IAES) in accordance with the IDEA 2004 procedures for discipline of a student.

See Chapter 11 for information about the prior written notice requirements regarding the provision of FAPE and educational placement.

See Chapter 13 for more information about the various forms of dispute resolution.

K. Additional Transition Components for Secondary-Level IEPs

Secondary transition services are defined as a coordinated set of activities for a student with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post school activities including postsecondary education, vocational education, integrated employment (including supported employment), continuing in adult education, adult services, independent living, or community participation. The activities include instruction, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These activities are based on the individual student's needs, taking into account the student's strengths, preferences and interests. The following are required components for all secondary students receiving special education services.

1. Beginning with the IEP to be in effect when a student is 16 years old (or younger if determined appropriate by the IEP team), the IEP shall include:
 - a. present levels of educational performance based on an age appropriate transition evaluation;
 - b. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
 - c. transition services (including courses of study) needed to assist the student in reaching postsecondary goals identified on the IEP;
 - d. graduation requirements for the student receiving special education services. Refer to Chapter 7 for more detailed information on documentation of high school graduation in the IEP.

The goals and transition services shall be updated on the IEP annually.

2. Not later than the student's 17th birthday, the IEP shall include a statement that the student has been informed whether or not special education rights will transfer to the student on his or her 18th birthday. Special education rights will transfer from the parent to the student when the student turns 18 years old unless the IEP team determines that:
(For more information on the transfer of rights see Chapter 11)
 - a. the student is unable to provide informed consent with respect to his or her special education program; or
 - b. the parent has obtained legal guardianship.

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

L. Following the Meeting

Following the IEP team meeting, a copy of the IEP and written notice of proposed or refused actions shall be given to the parent and/or adult student. IEPs and written notice should also be given to the parent and/or adult student whenever a change is made to the IEP or upon request.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the IEP shall have access to the IEP and be informed of his or her specific responsibilities. This includes being informed of any specific accommodations, adaptations, or supports that shall be provided to the student to ensure that the IEP is implemented appropriately.

Section 3. IEP Reviews

A. Annual Reviews

Each student's IEP shall be reviewed at least annually, once every 365 days. Meetings may be held any time throughout the school year, as long as the IEP is reviewed annually and is in effect at the beginning of each school year. Either at or after the annual review, written notice that the new IEP changes will be implemented shall be provided to the parent and/or adult student.

The IEP review includes the following purposes:

1. to determine whether the student's annual goals have been achieved;
2. to revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. to determine whether any additional assessments are necessary and to address the results of those conducted;
4. to address information about the student provided to, or by, the parent and/or adult student;
5. to address the student's anticipated needs;

6. to monitor the continuing eligibility of the student based on an evaluation or review of a variety of data, which may include formal or informal assessment, progress toward IEP goals and when applicable benchmarks/objectives;
7. to write a new IEP; and
8. to consider a reevaluation to determine if a student is no longer eligible and special education services should be discontinued.

B. IEP Amendments

In making changes to a student's IEP after the annual IEP meeting for a school year, the parent and/or adult student and the district may agree in writing not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend the student's current IEP. The parent and/or adult student will be provided with a revised copy of the IEP with the amendments incorporated. The annual review date remains the date of the original IEP.

If the parent and/or adult student believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP team meeting. The district shall grant any reasonable request for such a meeting. If the district refuses to convene an IEP meeting requested by the parent and/or adult student, the district shall provide written notice to the parent and/or adult student, including an explanation of why the district has determined the meeting is unnecessary.

If any other member of the IEP team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP team meeting.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the amended IEP shall have access to the amendment and be informed of his or her specific responsibilities.

Section 4. IEPs for Transfer Students

A. Transfer from an Idaho School District

When a student with a disability transfers school districts with a current IEP in Idaho, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent and/or adult student, until such time as the district adopts the previously held IEP or develops, adopts, and implements a new IEP. The receiving district shall promptly request records from the sending district and once the district has formally received a request for a student's record from another Idaho district, the district shall forward copies or the original documents within 10 days of the request. If originals are sent, the sending district shall maintain a copy for audit purposes.

B. Transfer from an Out-of-State District

When a student with a disability transfers from out of state to an Idaho school district with a current IEP in that other state, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent and/or adult student, until such time as the district conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP.

If the district has formally received a request from an out-of-state school, the district shall forward copies or the original documents within 10 days of the request. If originals are sent, the district shall maintain a copy for audit purposes.

Section 5. IEPs for Children from the Infant/Toddler Program**A. Interagency Agreement and Protocols**

The school district, as the local lead agency for Part B, shall initiate the development of a signed interagency protocol with the regional Infant/Toddler Program (ITP) of the Department of Health and Welfare (DHW), the lead agency under Part C of the IDEA 2004. The protocol shall be in accordance with the current state Interagency Agreement for Early Childhood Special Education Services and Early Intervention for Children Ages Two through Five. See Appendix 5B.

The protocol will outline the obligations of each agency to ensure:

1. a smooth and effective transition of children served under Part C to early childhood special education services (ECSE) under Part B,
2. by the child's third birthday, eligibility for Part B services has been determined and an IEP or Individual Family Service Plan (IFSP) has been developed and implemented, and
3. each district and agency shall participate in transition planning conferences.

NOTE: A child, who turns three after May 1, has been determined eligible for Part B services, and parental consent has been obtained for initial placement for Part B services, can be served as outlined in the IFSP by the ITP until school starts in the fall. This is the case unless specified differently in the local interagency protocol.

B. Part C to Part B Transition Planning

In the case of a child who may be eligible for ECSE services, the district shall participate in a transition planning conference with the family arranged by the ITP. The conference will be conducted at least 90 calendar days (and up to 9 months at the discretion of all parties) before the child's third birthday to discuss eligibility requirements under Part B of the IDEA 2004, needs and concerns of the child and family, and any services the child may receive.

For a complete and detailed description of all required transition activities, documentation and timelines, refer to Appendix 5B.

The ITP has the responsibility to:

1. notify the school district of potentially eligible children,
2. invite and coordinate a transition planning meeting to review the process to determine eligibility and assess service options available,
3. establish a plan for facilitating the transition of the toddler with a disability to early childhood special education services,
4. provide the district with a copy of the Child Outcome Summary Form (COSF) completed at exit, and
5. upon invitation, attend the initial IEP meeting.

The school district has the responsibility to:

1. attend and participate in the transition planning meeting,
2. determine eligibility and develop an IEP or IFSP prior to child's third birthday,
3. consider the Part C COSF exit outcome data for Part B early childhood entry outcome data,
4. invite ITP representatives, at the request of the parent, to the initial IEP meeting, and
5. obtain consent for initial provision of special education and related services under Part B.

C. IEP or IFSP Required

1. By the child's third birthday, the district shall have an IEP or IFSP in place for each student 3 through 5 years old who is eligible for ECSE services.
2. In developing the IEP, the IEP team shall consider the content of the IFSP including:
 - a. the natural environments statement, and
 - b. the educational component that promotes school readiness, pre-literacy, language and numeracy skills
3. The IFSP may serve as the IEP of the child, if:
 - a. agreed by the district and the child's parents,
 - b. a detailed explanation of the differences between the IFSP and the IEP is provided to the parents (See Appendix 5B),
 - c. parental written informed consent is obtained, and
 - d. developed according to the IEP procedures outlined in Section 2 of this chapter. If the district elects to use an IFSP, the district is required to implement only the educational components of the IFSP.

D. Consent and Notice Requirements

1. Notice Announcing Initial IEP Team Meeting: The district shall inform the parents of their rights to request the participation of ITP representatives at the initial IEP team meeting for children previously served by Part C.
2. Release of Information: The district shall obtain written parental consent for the release of information to obtain pertinent student records from non-educational agencies such as ITP, developmental disabilities agencies, medical providers, day-care centers, and Head Start.
3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility, the student's present levels of performance, and goals or services on the IEP, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier under Part C). Otherwise, only written notice to inform the parent of the district's decision to use the current evaluation data, and not to conduct any further assessments, shall be provided to the parent. The parent shall also be informed of his or her right to request additional assessments.

4. Consent for Initial Provision of Special Education and Related Services: Parental consent for the initial provision of special education and related services and written notice for the implementation of the IEP or IFSP under Part B is required. Eligibility, initial provision of services, and LRE placement shall be documented for Part B services.

E. Child's Status During Due Process Hearing Proceedings

If an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot remain in Part C services when he or she is over the age of three. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the school district shall provide those special education and related services that are not in dispute between the parent and district until completion of all the hearing proceedings. If the parent does not give written consent for the special education or related services, the student will not receive services until completion of the hearing proceedings.

Section 6. Students with Disabilities in Adult Prisons

The following requirements apply for students with disabilities who are convicted as adults under Idaho law and incarcerated in adult prisons:

1. The student will not participate in statewide assessments.
2. Transition planning and services do not apply if the student will remain in prison beyond his or her 21st birthday.

The IEP team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

Chapter 6

LEAST RESTRICTIVE ENVIRONMENT

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) states that, to the maximum extent appropriate, all students with disabilities, 3-21 years of age, are to be educated with age appropriate peers, both with and without disabilities. This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The district shall have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student.

An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an individualized education program (IEP). The student's IEP shall indicate the LRE for the student and explain to what extent, if any, the student will or will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. This provision includes students with disabilities placed in public or private institutions or other care facilities.

Special classes, separate schooling, and other removals of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education class, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

Section 1. Least Restrictive Environment Considerations

A. When to Make and Review Placement Decisions

1. Placement decisions for a student with a disability are made following the determination of the individual needs, goals, and required services.
2. Placement decisions are revisited at least annually by the IEP team, which includes the parent and/or adult student and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options available in the district.
3. Placement decisions are reconsidered when an IEP team is convened to review a student's academic, functional, or developmental progress.

B. Considerations in Placement Decisions

LRE decisions are made individually for each student. The IEP team shall consider the following when determining the LRE in which the IEP can be implemented:

1. Based on student's IEP: The student's IEP is developed prior to the determination of the location of services and settings. The services and settings needed by each student with

a disability must be based on the student's IEP and unique needs that result from his or her disability, not on the student's category of disability.

2. Age Appropriate Peers: Students with disabilities shall be educated with age-appropriate peers to the maximum extent appropriate. A student with a disability is not removed from age-appropriate general education environments solely because of needed accommodations and/or adaptations in the general education curriculum.
3. School of Attendance: A student with a disability shall be educated in the school as close as possible to the student's home and unless the IEP requires some other arrangement, the student is educated in the school he or she would attend if not disabled.
4. Harmful Effects: Consideration shall be given to any potential current or long term harmful effect on the student or on the quality of services the student needs, including the student's ability to graduate and achieve their post high-school goals.
5. Accommodations and/or Adaptations: A student with a disability is not removed from general education settings solely because of needed accommodations and/or adaptations in the general education curriculum.
6. Participation in Nonacademic and Extracurricular Services and Activities:
 - a. A student with a disability shall be allowed to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development, and assistance in making outside employment available.
 - b. The IEP team determines the supplementary aids and services that are appropriate and necessary for the student to participate in nonacademic settings and extracurricular services and activities.

C. Documentation of Placement Decisions

If the student will not participate *entirely* in the general education classroom, curriculum, and/or nonacademic and extracurricular activities, the IEP shall include a written explanation justifying the IEP team's decisions.

Section 2. District Responsibility for Continuum of Settings and Services

The continuum of settings includes instruction in general classes, special classes, special schools, home instruction and instruction in hospitals and institutions. In addition, the continuum makes

provision for supplemental services, such as resource services or itinerant instruction, to be provided in conjunction with the general classroom. In determining appropriate settings and services for a student with a disability, the IEP team shall consider the student's needs and the continuum of alternate placements and related services available to meet those needs. Regardless of placement, the student shall be given appropriate access to the general education curriculum, as determined by the IEP team. The district shall be able to justify the available continuum of services and placement decisions for individual students.

All LRE considerations also apply to **preschool** students ages 3 to 5 years with disabilities who are entitled to receive a free appropriate public education (FAPE). Settings for implementing IEPs for students of legal kindergarten-age are the same as for all other school-age students. Settings for implementing IEPs for preschool age students may include public or private early childhood programs. Public schools that do not operate early childhood programs for preschool students without disabilities are not required to initiate such programs solely to satisfy LRE requirements. Public schools that do not have an inclusive public preschool that can provide all the appropriate services and supports to meet the individual needs of preschool students with disabilities, shall explore alternative methods to ensure LRE requirements are met for preschool students ages 3 to 5 years, which may include:

1. providing opportunities for participation (even part-time) of preschool students with disabilities in public or private regular early childhood programs operated for preschool students without disabilities by other agencies, such as Head Start;
2. placing preschool students with disabilities in the following:
 - a. private early childhood programs for preschool students *without* disabilities; or
 - b. private early childhood programs or other community-based early childhood settings that integrate students *with and without* disabilities; and
3. locating classes for preschool students with disabilities in elementary schools.

See Chapter 11 for information regarding prior written notice requirements that apply to proposed or refused changes in educational placement.

Section 3. Federal Reporting of LRE

The IEP includes a section for reporting the educational environments required for the Federal December 1 Child Count. This section is for reporting the amount of time the student spends in the general education environment, with or without special education and related services. After determining the LRE and the educational environments in which the student will receive their general education instruction and special education services, the IEP team will document the educational environment for federal reporting.

Chapter 7
DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

Section 1. Discontinuation of Services

A. Students Who Are No Longer Entitled to Services

The district will follow appropriate procedures to discontinue special education services to students who are no longer entitled to those services.

1. Student No Longer Meets Eligibility Criteria

If it is suspected that a student no longer meets the eligibility criteria for the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), the evaluation team will conduct a reevaluation and arrange to have additional assessments conducted if necessary. If the student is no longer eligible, the district will provide the parent and adult student with written notice of this decision prior to discontinuing special education services.

2. Student Completes Requirements for a High School Diploma

The district's obligation to provide special education services ends when the student meets the district and State requirements that apply to all students for receipt of a high school diploma without adaptations. Although this is considered a change of placement, a reevaluation is not required. Prior to graduation and the discontinuation of special education services the district shall:

- a. provide the parent and/or adult student with written notice of the district's obligation to provide special education services ends when the student obtains a regular high school diploma; and
- b. provide the parent and/or adult student with a written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

3. Student Reaches Maximum Age

For students who have not yet graduated from high school by meeting requirements without adaptations to regular graduation requirements, the district's obligation to provide special education services ends at the completion of the semester in which the student turns 21 years of age. This is considered a change of placement that does not require a reevaluation. If a student is turning 21, the district shall:

- a. provide the parent and/or adult student with written notice the district's obligation to provide special education services ends at the completion of the semester in which the student turns 21 years of age; and
- b. provide the parent and/or adult student written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

B. Change in District Obligation to Provide Services

Under certain circumstances, a student may continue to be eligible for special education services, but the district's obligation to provide services changes.

1. Transfer to Another District

When a student moves out of the district, the district will forward the student's special education records electronically or by mail within 10 calendar days of the request from the new district. The records shall include, at least, the student's most recent individualized education program (IEP) and eligibility documentation. The sending district will retain copies or originals of the most recent 5 years of records, including IEPs and eligibility documentation. During an audit, Child Count verification, or monitoring, this documentation may be needed to demonstrate that the student was eligible for special education and received special education services from the district.

2. Enrollment in Private School or Receives Home Schooling

When a parent and/or adult student withdraws a student from public school and enrolls him or her in a private school or provides home schooling, the district's responsibilities vary depending on the circumstances. See Chapter 9 for more information.

3. Dropouts

When a student drops out of school, written notice will be sent to the parent and/or adult student and a copy of the notice will be placed in the student's special education confidential file. If the student reenrolls and is still eligible for special education, the previous IEP can be implemented if it is current and appropriate. A new IEP shall be developed if needed.

C. Parent and/or Adult Student Revokes Consent for Special Education Services

When a parent and/or adult student revokes consent for special education services in writing, prior written notice shall be provided. Written notice shall be sent to the parent and/or adult student following the determination of whether or not the student is still eligible to receive special education services.

Section 2. Graduation

Graduation means meeting district and State requirements for receipt of a high school diploma. If a student is not granted a regular high school diploma or if the high school diploma is granted based on completion of adapted graduation requirements, the student is entitled to receive a free appropriate public education (FAPE) through the semester in which he or she turns 21 years of age or determined no longer eligible as a result of a reevaluation. A General Education Development (GED) certificate does not meet district requirements that are comparable to a regular high school diploma. The IEP team making these decisions shall include a district representative knowledgeable about State and local graduation requirements.

A. Individualized Education Program (IEP) Team Requirements regarding Graduation

1. Determine whether the student will meet all state and local requirements to be eligible to graduate from high school and anticipated graduation date.
2. Develop the course of study in collaboration with the Parent Approved Student Learning Plan required for every student prior to the end of 8th grade.
3. Beginning no later than the end of the student's 9th grade, the IEP team shall review annually the student's course of study. The IEP team shall identify and make changes to the course of study needed for the student to meet graduation requirements.
4. The IEP team shall document any accommodations and adaptations made to the district's and State's regular graduation requirements on the student's behalf.
 - a. Graduation Requirements with Accommodations

Accommodations to graduation requirements are determined by the IEP team and are deemed necessary for the student to complete graduation requirements.
Further:

- 1) Accommodations to graduation requirements must specifically address completion of the student's secondary program.
- 2) Accommodations will maintain the same level of rigor to the district and State graduation requirements. For example, a teacher may use different instructional strategies or alternate methods for assessing the student's acquisition of skills that are equally rigorous.

- 3) Accommodations made to any district or State graduation requirement shall be stated in the student's IEP.
 - b. Graduation Requirements with Adaptations

Long-term consequences for the student shall be considered when adaptations are made to graduation requirements. Further:

 - 1) Adaptations to graduation requirements shall specifically address completion of the student's secondary program.
 - 2) Adaptations may alter the level of rigor required in the district or State graduation requirements. Examples of adaptations include changes made to course content, objectives, or grading standard that alter the level of rigor.
 - 3) Adaptations of any district or State graduation requirement shall be stated on the student's IEP. The team should discuss with the parents the effect of adaptations on regular education diploma and FAPE.
5. Demonstration of Proficiency of State Content Standards State Board of Education rule (IDAPA 08.02.03.105.03) requires a demonstration of proficiency regarding the 10th-Grade Idaho Content Standards as a condition of graduation. Each student receiving special education services will include as part of his or her IEP a statement of how the student will demonstrate proficiency in the Idaho Content Standards as a condition of graduation. If the method is different than meeting proficient or advanced scores on the high school ISAT or the ISAT-Alt, a student with an IEP may meet this requirement by:
- a. achieving the proficient or advanced score on the Idaho Standard Achievement Test (ISAT) or, for eligible students, on the Idaho Standard Achievement Test – Alternate (ISAT-Alt); or
 - b. using the local alternate route established by the local school board as an alternate method of demonstrating proficiency; or
 - c. completing alternate graduation requirements outlined in the IEP.

B. Graduation Ceremonies

A special education student who completes his or her secondary program through meeting graduation requirements or criteria established on his or her IEP will be afforded the same opportunity to participate in graduation ceremonies, senior class trips, etc., as students without disabilities.

Section 3. Transcripts and Diplomas

A. Transcript

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts shall adhere to the following conditions:

1. Accommodations that allow the student to complete and demonstrate that he or she has met graduation requirements will not be noted on the transcript.
2. Adapted course work may be noted on the transcript if the parent and/or adult student is informed in advance and the designation is not discriminatory or identify the student as having a disability or receiving special education.
3. Course designations, titles, or symbols that are used solely to identify adapted course work that is taken by students with disabilities will not be used.

B. Diploma

1. For students who are eligible for special education services, the district will issue a high school diploma at the completion of their secondary program; this includes students who meet the graduation requirements with accommodations and/or adaptations.
2. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities in the same graduating class.

Section 4. Grades, Class Ranking, and Honor Roll

Grades earned by students with disabilities will not be categorically disregarded or excluded from district wide grade point average (GPA) standing. The district may establish objective criteria for class rankings, honors, etc., that weight courses according to degree of difficulty or exclude non core courses so long as such practices are nondiscriminatory. The district may use contracts with a student to establish grading criteria.

Chapter 8

CHARTER SCHOOLS

Federal law requires that students with disabilities be offered educational choices comparable to those offered to students without disabilities. One of these choices is the opportunity to attend a public charter school. Each public charter school, whether a charter school within a district (LEA) or a charter school LEA (Local Education Agency), shares in the obligation to accept and appropriately serve students with disabilities under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) in the same manner as any other public school.

Section 1. Definition and Parent/Student Rights

A. Definition of Charter Schools

In Idaho, a charter school is a public school authorized by Chapter 52, Title 33-5205, Idaho Code. A charter school operates as a nonprofit, publicly funded, nonsectarian school in one of two ways:

1. as a school within a district, if authorized by the local board of trustees of a school district (LEA); or
2. as its own LEA, if authorized by the Idaho Public Charter School Commission.

A charter school is bound by the conditions of its charter, all federal laws, and Idaho Code.

B. The Rights of Charter School Students and Their Parents

A charter school student is a public school student. Students with disabilities who attend charter schools and their parents have all of the same rights granted to students who attend other public schools. These rights are provided under the IDEA 2004; the Elementary and Secondary Education Act (ESEA), reauthorized as the No Child Left Behind Act (NCLB); Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA); and the Family Education Rights and Privacy Act (FERPA). Idaho law specifically states that charter schools cannot discriminate against any student on any basis prohibited by federal or state constitutions or any federal, state, or local law. Under Idaho State Law, the charter of an authorized charter school outlines specific mission statements, policies and procedures.

Section 2. Responsibility for Services

A. Charter School Authorized by the District (See definition in Section 1.A.1)

The district is ultimately responsible to ensure that the requirements of the IDEA 2004 are met with respect to students attending charter schools authorized by the district. A charter school's compliance with the IDEA 2004, Part B, is required regardless of whether the charter school receives any Part B funds.

1. To ensure that a charter school authorized by the district meets the IDEA 2004 requirements, the district shall ensure services to students with disabilities attending the charter schools are provided in the same manner as the district serves students with disabilities in its' other schools, including providing supplementary and related services onsite at the charter school to the same extent to which the district has a policy or practice of providing such services on the site to its' other public schools.
2. The district shall have information on file with the State Department of Education (SDE) that demonstrates students with disabilities who attend charter schools authorized by the district will receive special education and related services from either the district or the charter school (or a combination of both).
3. The district will ensure that its charter schools participate in all monitoring activities conducted by the SDE.

B. Charter School Operating as an LEA (See definition in Section 1.A.2)

Only the Idaho Public Charter School Commission has the authority to allow the creation of a public charter school that operates as an LEA. A charter school LEA, whether virtual or brick-and-mortar or combination thereof, has an obligation to accept and appropriately serve students with disabilities and is solely responsible to ensure that the requirements of the IDEA 2004 are met with respect to students enrolled. Compliance with the IDEA 2004, Part B, is required regardless of whether the public charter school receives any Part B funds. A charter school LEA shall:

1. participate in all monitoring activities conducted by the SDE; and,
2. in its first year of operation, participate in an onsite technical assistance visit by an SDE special education monitoring team to ensure that the essential components of a special education program are in place.

Section 3. Essential Components of a Special Education Program

The Idaho charter school law requires each petition for a charter to describe the manner by which special education and related services will be provided to eligible students with disabilities.

disabilities. This distribution is made at the same time as the district distributes funds to their other public schools and must be consistent with Idaho's charter school law. The individual school's approved charter will identify whether the district will provide funding or services of comparable value.

- a. The amount of funds or comparable services will generally be equal to the per student amount the district is allocated from the SDE in the current year multiplied by the charter school's December 1 Child Count from the **previous** school year.
- b. Under certain circumstances the district shall allocate Part B funds to an eligible charter school based on the number of special students enrolled and served in the **current** school year.
 - (1) The district will allocate funds to a charter school within 5 months of opening or significantly expanding its enrollment if the charter school notifies the district at least 120 calendar days before it opens or significantly expands its enrollment due to a significant event that is unlikely to occur on a regular basis (such as the addition of one or more grades or educational programs in major curriculum areas), and it takes place before February 1.
 - (2) When these conditions are met, the district will allocate funds to the charter school as follows:
 - i. If the opening or expansion occurs prior to November 1, the charter school will be allocated funds in the current school year based on the current school year's December 1 Child Count.
 - ii. If the opening or expansion occurs after November 1 but before February 1, the charter school will be allocated a pro-rata share of funds in the current school year based on the number of enrolled special education students with active IEPs 30 days after the opening or expansion. The pro-rata share will be the number of days the charter school will be open or expanded, divided by the number of days in the school year, multiplied by the number of special education students.
 - (3) If the opening or expansion occurs on or after February 1, the charter school will be allocated funds in the following school year based on the **following** school year's December 1 Child Count.
- c. For school districts that have authorized a virtual charter school and the charter school's students are enrolled in the district but live outside district boundaries and receive education outside the district, the SDE will determine the district's Part B funding in the following way:

- (1) The calculation of the district's allocation will be made exclusive of the charter school's enrollment and special education enrollment (student count).
- (2) After calculating the allocations for all districts using the federal funding formula and the distribution formula for any supplemental award, the SDE will determine the statewide average per-student allocation.
- (3) The SDE will add to the district's base allocation an amount equal to the statewide average per-student allocation times the number of students with disabilities enrolled in and determined to be eligible for and receiving special education services.

2. Charter School Operating as an LEA

Public charter schools that are LEA's are responsible for adopting and implementing approved policies and procedures for special education and providing an assurance that funds will be used in accordance with Part B allowable uses.

- a. In the second and subsequent years of operation, Charter School LEAs will be allocated Part B funds in the same manner as all school districts – in accordance with the federally prescribed funding formula for the distribution of flowthrough funds.
- b. The policy for providing federal special education funds to new charter LEAs in the first year of operation, as required by federal regulation, includes the following steps:
 - (1) The LEA submits its December 1 Child Count as required by IDEA 2004.
 - (2) A SDE Special Education monitoring team visits the new LEA to review the files of the students reported on the Child Count.
 - (3) The monitoring team determines the number of students meeting all eligibility requirements and receiving appropriate special education and related services.
 - (4) Based upon the number of students determined to be eligible, amounts of first-year Part B funds for allocation to the charter LEA are calculated as follows:
 - i. The statewide average per-student amount of Part B funding in the current year is determined.
 - ii. That amount is multiplied by the number of students who meet all eligibility requirements and are receiving appropriate special education services to determine the total allocation.

- (5) The charter LEA then shall complete the Part B application documents. These include:
- i. Assurances and Policies and Procedures Adoption
 - ii. Maintenance of Effort Assurance
 - iii. Title Part B Budget Form
- (6) Once the application is submitted and approved, the charter LEA may begin drawing down these funds for the approved special education purposes.

- a. Private school students with disabilities may receive a different amount of services than public students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private school student to receive only a related service or piece of equipment.
- b. Special education and related services provided to parentally placed private school students with disabilities, including materials and equipment, will be secular, neutral and non-ideological.
- c. The district is required to offer FAPE to private school students who reside in their district, including when the student attends a private school outside of the district boundaries unless the parent makes clear their intention to keep their child in the private school.
- d. Services may be provided at a public school building or another agreed upon site (including parochial schools to the extent consistent with the law) determined by the district in consultation with appropriate representatives of private school students.
- e. Services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

2. Eligibility for Services

If an evaluation team determines that a student needs special education and related services:

- a. The district of residence shall offer to make FAPE available upon enrollment or dual enrollment in a district public school; or
- b. If the parent chooses not to enroll the student in the district of residence and designated funds are available in the district in which the private school is located, a meeting will be held to develop a Services Plan (SP). The meeting will include a representative of the private school to develop a SP.
- c. Any services the district provides to a private school student shall be in accordance with an SP.

3. Service Plan Development

The SP shall describe the specific special education and related services that will be provided to the student in light of the determinations that have been made

by the district. To the extent appropriate, the district shall initiate and conduct meetings to develop, review, and revise SPs in accordance with the following requirements:

- a. Given the services that the district has elected to provide to private school students, the SP must meet the requirements of the IEP to the extent appropriate (see Chapter 5). The SP excludes sections pertaining to:
 - (1) extended school year (ESY) services;
 - (2) participation in statewide and district wide assessments;
 - (3) placement determination (least restrictive environment);
 - (4) December 1 federal report settings; and
 - (5) elements that, although typical for an IEP, would be inappropriate given the services the district has elected to provide.
- b. An SP shall be in effect at the beginning of each school year and accessible to each person responsible for its implementation.
- c. Meetings shall be held to review and revise SPs at least annually to address any lack of student progress toward goals and in the general education curriculum.
- d. The SP team members include the same members as an IEP team. The district will ensure that a representative of the private school attends these meetings or participates by some other means.
- e. A parent shall be invited to SP meetings at a mutually agreed upon date and time. The invitation must indicate the purpose, time, and location of the meeting. The parent shall be informed that he or she may bring other persons knowledgeable about the student to the meeting. A copy of the SP will be given to the parent.
- f. The team developing the SP will consider the student's strengths and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the SP.
- g. If necessary for a private school student to benefit from or participate in the services the district has elected to provide, the district shall provide transportation from the student's school or home to the site where services will be provided. The district shall take the student back to either the private school or the home, depending on the timing of the services. In this sense, transportation is not a related service but a means of making the services offered accessible. Transportation costs may be included in the district's expenditure requirement. The district is not required to transport the student from home to the private school.

F. Dispute Resolution

Due process hearings are available to parents of private school students only on the issue of Child Find and evaluation. Parents may challenge decisions regarding the provision of services by filing a formal complaint with the SDE.

G. Determining the Proportionate Funding for Private School Students

IDEA 2004 requires school districts to dedicate a proportionate share of funds received under Part B to provide services for parentally placed students with disabilities who attend private schools within the boundaries of the district, regardless of their place of residence. To determine this proportionate amount, the district shall first determine the number of these private school students through the Child Find activities developed in the consultation process with private school representatives.

The number of parentally placed private school students is divided by the total (public and private) number of students with disabilities in the district to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by the district under Part B grants Section 611 (ages 3-21) and Section 619 (ages 3-5) to determine the district's obligation.

Example for the XYZ School District:

- a. The number of parentally placed private school children within the district on December 1, 2005: **10**
 - b. The number of public school children with disabilities on December 1, 2005: **90**
 - c. Percentage of private school children with disabilities: **A** divided by **A+B = 10%**
 - d. Total Part B funds allocated for school year 2006-2007: **\$150,000**
 - e. Amount the district shall spend on providing special education and related services to parentally placed private school students in 2006-2007: **C x D = \$15,000**
1. State and local funds may supplement but may not supplant the proportionate amount of Federal funds required to be expended for parentally placed private school children with disabilities.
 2. The costs of private school consultations and of carrying out Child Find activities may not be paid from the proportionate share of funds.
 3. The cost of any special education or related service, such as direct service, consultation, equipment, materials, or transportation may be used to determine that the district has

satisfied its expenditure requirement for private school students with disabilities.

4. If all proportionate funds set aside for private school students in a given fiscal year are not expended in that year they shall be carried forward into the next year for the purpose of providing equitable services.

H. Expenditure Guidelines

1. The district may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the district shall:
 - a. retain title and exercise continuing administrative control over all equipment and supplies;
 - b. ensure that all equipment and supplies are used only for Part B purposes;
 - c. ensure that all equipment and supplies can be removed without remodeling the private school; and
 - d. remove equipment and supplies if necessary to prevent unauthorized use.
2. The district may use Part B funds to pay an employee of a private school to provide services to students with disabilities when the employee performs the services:
 - a. outside of his or her regular hours of duty; and
 - b. under public supervision and control.
3. Part B funds shall not be used to:
 - a. finance the existing level of instruction in the private school or otherwise benefit the private school;
 - b. meet the needs of the private school; or
 - c. meet the general needs of students enrolled in the private school.
4. Part B funds shall not be used for repairs, remodeling, or construction of private school facilities.
5. If it is possible for classes to include students enrolled in both public and private schools, then the classes must not be organized separately on the basis of school enrollment or religion.

6. The district shall not appropriate any funds to private schools controlled by any church, sectarian, or religious denomination.

Section 3. Students Placed by the District

When the district places a student with a disability in a private school or facility, as a means of providing special education services, the district shall ensure the following:

1. All special education procedures and timelines are followed.
2. Special education and related services are provided in accordance with an IEP.
3. A representative of the private school or facility attends or participates in the meeting to develop the IEP.
4. The responsibility for reviewing and revising IEPs remain with the district.
5. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP meeting conducted in a geographical area outside the jurisdiction of the district.
6. The placement in the private school or facility is the least restrictive environment for that student.
7. The student is provided an education that meets state and district standards.
8. The student is afforded the same rights as students with disabilities who attend public schools.
9. The parent is afforded the same rights as parents of students attending public schools.

In accordance with federal and state law, the SDE shall approve special education programs in private schools and facilities. The district shall ensure a program is approved prior to placing a student in that school or facility.

At the discretion of the district, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting, the district shall ensure that the parent and a district representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

Section 4. Dual Enrollment of Private School Students by Parents

According to Idaho Code, parents of private school students “shall be allowed to enroll the student in a public school for dual enrollment purposes.” Private school students who are dually enrolled are considered to be nonpublic school students. The district shall allow private school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a 504 plan, if needed.

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

The reporting of attendance for private school students in the district is allowed under dual enrollment. If a student attends at least 2.5 hours per week without rounding hours, he or she shall be included in the weekly aggregate attendance. The average daily attendance (A.D.A.) is computed as .5 if the aggregate weekly hours are 2.5 or greater but less than 4.0 hours. When there are 4.0 hours or greater, divide by 4 to get the A.D.A.

Dually enrolled private school students could also be eligible to receive services that have been agreed upon through the district and private school consultation process. These services would be delivered through a SP.

Section 5. Unilateral Placement of Student by Parents when FAPE is an Issue

A. General Provisions for Reimbursement to the Parent

1. The district is required to make FAPE available to all eligible students with disabilities. If parents do not access FAPE, then the district is required to make provisions for private school students to receive Part B services consistent with Section 2E of this chapter.
2. The district is not required to pay for costs of tuition, special education, or related services and associated costs at a private school or facility for a student who was unilaterally placed there by a parent if the district made FAPE available to the student in a timely manner. If a parent disagrees with the availability of FAPE and there is a question about financial responsibility, the parent may request a due process hearing.

3. If the parent of a student with a disability, who previously received special education and related services from the district, enrolls the student in a private elementary or secondary school without the consent of the district, a court or hearing officer may order the district to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:
 - a. the district had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and
 - b. the parent's placement is appropriate.
4. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards.

B. Denial or Reduction of Reimbursement to the Parent

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. The parent did not inform the district that he or she rejected the placement proposed by the district to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This written notification by the parent shall be provided to:
 - a. the IEP team at the most recent IEP meeting prior to removing the student from the public school; or
 - b. the district at least 10 business days (including any holidays that occur on a business day) prior to removing the student from public school.
2. Prior to removal of the student from the public school, the district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.
3. A judicial decision finds unreasonableness with respect to the actions taken by the parent.

Reimbursement shall not be reduced or denied under any of the following circumstances:

1. The district did not notify the parent of his or her obligation to provide the notice set forth in number 3 above or the district prevented the parent from providing that notice.
2. The parent had not received written notice.

3. The district's proposed placement would likely result in physical harm to the student.

Reimbursement may not be reduced or denied at the discretion of a court or hearing officer for failure to provide this notice if:

1. The parents are not literate or cannot write in English, or
2. The district's proposed placement would likely result in serious emotional harm to the student.

Chapter 10
IMPROVING RESULTS

Chapter Contents

Section 1.	Monitoring Priorities and Indicators	141
Section 2.	Comprehensive Early Intervening Services	143
Section 3.	Personnel	144

Documents:

<i>Standards for Paraprofessionals Supporting Students with Special Needs.....</i>	<i>151</i>
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Chapter 10

IMPROVING RESULTS

This chapter reflects the changes in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) that focus on improving educational outcomes, analyzing and reporting data to the public, and ensuring that personnel who work with students with disabilities are prepared to meet their unique needs.

Section 1. Monitoring Priorities and Indicators

IDEA 2004 requires increased accountability for programs serving students with disabilities. Monitoring priorities include both performance and compliance goals. Accountability areas established by IDEA 2004 include a free appropriate public education (FAPE) in the least restrictive environment (LRE), Effective General Supervision, and Disproportionality. Each priority area encompasses specific performance indicators. These indicators include both performance and compliance components. Data on those indicators shall be collected, submitted to the State Department of Education (SDE), and publicly reported annually. That data shall be used to evaluate the effectiveness of programs and identify strategies to improve student outcomes.

The district is required to submit timely and accurate data from which the district's performance will be calculated on the following goals:

A. FAPE in the LRE

1. Graduation rate
2. Dropout rate
3. Participation and performance of students with disabilities on statewide assessments
4. Suspension and expulsion rates for students with disabilities
5. Students ages 6-21 educated with typically developing peers
6. Students ages 3-5 educated with typically developing peers
7. Students ages 3-5 developing positive social-emotional skills, early literacy, and behavior
8. School facilitation of parent involvement to improve services and results

B. Disproportionality

1. Representation of race/ethnicity in special education programs
2. Representation of race/ethnicity in specific disability categories

C. Effective General Supervision

1. Initial eligibility established within 60 days of consent
2. Eligibility established for children referred from Part C and receiving services by their 3rd birthday
3. By age 16, students have a coordinated, measurable post-secondary goal(s) and transition services needed to meet their goals
4. Students no longer in secondary school who are employed or in post-secondary school, within one year of leaving high school
5. Identify and correct noncompliance as soon as possible, but no later than 1 year from identification

D. SDE Responsibility

The SDE is required to collect, review, and analyze data on an annual basis to determine if the state and districts are making adequate progress toward the required performance goals. This monitoring process includes:

1. Measuring performance on goals both for the state and the districts.
2. Monitoring based on district data, compliance with the IDEA 2004 Regulations, and progress made toward meeting state goals.
3. Identifying districts in one of the following categories: Meets Requirements; Needs Assistance; Needs Intervention; Needs Substantial Intervention.
4. Providing technical assistance statewide and targeted technical assistance to districts demonstrating the highest needs.
5. Reporting to the public on the state and districts' performance on state goals.
6. Developing and submitting an Annual Performance Report and revising the State Performance Plan, as needed, to address state performance on required goals.

E. District Responsibility

Progress on the state's performance goals is directly linked to the districts' efforts and progress in these same areas. On an annual basis and as part of Continuous Improvement Monitoring, the district shall:

1. ensure the data it collects and reports to the SDE regarding special education students and personnel is accurate;
2. use data-based decision-making procedures to review and analyze data to determine if the district is making adequate progress toward performance goals;
3. adjust strategies, as needed, to meet goals and improve student outcomes.

Section 2. Comprehensive Early Intervening Services

Under the IDEA 2004, the district may use up to 15% of its IDEA Part B allocation in any fiscal year to provide comprehensive early intervening services (CEIS) for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

These funds may be used for activities that include:

1. Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software
2. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

A. Budget Requirements

If the district chooses to use IDEA Part B funds in any fiscal year to provide CEIS, the district will budget the amount used to provide these services, up to a maximum of 15% of the total allocation, in the Part B budget that is submitted annually to the SDE as part of the Part B and Preschool Application.

B. Reporting Requirements

When the district uses IDEA Part B funds to provide CEIS, an annual report shall be submitted to the SDE on:

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

C. Relationship between FAPE and CEIS

CEIS provided by the district shall not be construed to either limit or create a right to FAPE under the IDEA 2004 or to delay appropriate evaluation of a student suspected of having a disability.

Section 3. Personnel

The district shall ensure that personnel working with students with disabilities meet the qualifications established by the SDE and have the content knowledge and skills to meet the needs of these students.

A. Appropriate Certification or Licensure

Public school personnel shall meet the appropriate certification or licensure requirements for position assignments. Complete certification standards for personnel providing special education or related services may be found in the handbook titled Idaho Standards for the Initial Certification of Professional School Personnel (April 2006). This handbook is available from the SDE Division of School Support Services.

The lists that follow are general guidelines only. They do not include every possible position or licensing situation. For more information call the SDE Division of School Support Services at 208/332-6800.

1. The following special education and related services positions require individuals who are employed by the district to be certificated and to meet any additional licensure requirements:
 - a. audiologist;
 - b. consulting teacher;
 - c. counselor;
 - d. director of special education;
 - e. early childhood special education teacher;
 - f. school psychologist;
 - g. special education teacher;
 - h. speech-language pathologist; and

- i. supervisor/coordinator of special education.
2. Some special education service providers need both licensure in their area of expertise and certification from the SDE.
 - a. School nurses are certificated by the SDE and licensed by the State Board of Nursing.
 - b. School social workers are certificated by the SDE and licensed by the Bureau of Occupational Licenses.
3. Some special education service providers must meet the licensure or certification requirements in their respective professions, but certification from the SDE is not required.
 - a. Occupational therapists and physical therapists are licensed by the State Board of Medicine.
 - b. Vocational education teachers are certificated by the Idaho Division of Professional-Technical Education.
 - c. Vocational rehabilitation counselors must meet national standards for Certified Rehabilitation Counseling (CRC) to be employed by the Idaho Division of Vocational Rehabilitation.
4. Individuals who used a consultant specialist provision or a letter of authorization in the past are no longer able to use these emergency certificates as an alternative for individuals to become certificated teachers in Idaho. The district shall use the alternative authorization options to request alternative endorsement/certification when a professional position cannot be filled with someone who holds the appropriate endorsement/certification.

B. Highly Qualified Special Education Teachers

In addition to being certified, K-12 special education teachers in the district shall meet the “highly qualified teacher standards” identified in the No Child Left Behind (NCLB) Act. The highly qualified special education teacher requirement does not apply to preschool programs since early childhood education is not a part of the Idaho public elementary and secondary school system at this time.

1. General Requirements for Special Education Teacher

Any K-12 special education teacher who is not teaching a core academic subject and only consults with regular education teachers or reinforces instruction from a regular education teacher is highly qualified if the teacher holds a K-12 Exceptional Child Certificate. No waiver or temporary certification qualifies. However, a special education

teacher can meet the general requirements of highly qualified if they are enrolled in an approved alternative route to certification program.

2. Requirements for Special Education Teachers Teaching a Core Academic Subject

If a special education teacher is the primary deliverer of instruction in a core content subject, they shall have met the highly qualified teacher standard in each area taught.

3. Requirements for Special Education Teachers Teaching Multiple Subjects

In the case of a teacher who is not new to the profession, the special education teacher shall demonstrate competence in all the core academic subjects which the teacher teaches in the same manner as is required for elementary, middle, or secondary school teachers who are not new to the profession.

In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, the teacher shall demonstrate competence in the other core academic subjects which the teacher teaches not later than two years after the date of employment.

4. Requirements for Special Education Teachers Teaching to Alternate Standards

Both new and veteran special education teachers who teach core academic subjects exclusively to students assessed against alternate achievement standards (students with significant cognitive disabilities) shall be highly qualified by either:

- (1) meeting the NCLB Act requirement for any elementary, middle school, or high school teachers who are new or not new to the profession; or
- (2) meeting the requirements of the Elementary and Secondary Education Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, demonstrate subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those grade level standards.

5. Assurance of Highly Qualified Standards

The district shall take measurable steps to recruit, train, hire, and retain highly qualified special education teachers. The district will collect and monitor data about special education personnel qualifications and ensure that personnel are appropriately and adequately prepared to serve students with disabilities.

In Title I schools, parents will be notified if students are taught for 4 or more consecutive weeks by a special education teacher who is not highly qualified.

C. Shortage of Personnel

If there is a shortage of highly qualified personnel, the district shall take measurable steps to recruit and hire highly qualified personnel to provide special education and related services to students with disabilities. However, when a professional position cannot be filled with an individual who has the appropriate certification, vacant positions may be filled with personnel on the following approved alternate pathways to teaching:

1. **Teacher to New Certification** – An individual holds a Bachelor's degree and a valid teaching certificate without full endorsement in area of need. The candidate works towards completing a preparation program for special education certification and is employed by the district.
2. **Content Specialist** – An individual who is highly and uniquely qualified in an area holds a Bachelor's degree. The candidate works towards completing a preparation program while employed by the district. The preparation program must include mentoring, one classroom observation per month until certified, and prior to entering the classroom; the candidate completes an accelerated study in education pedagogy.
3. **Computer Based Route to Teacher Certification** – An individual may acquire interim certification through a computer-based alternative route to teacher certification that is approved by the State Board of Education. On November 4, 2003, the Idaho State Board of Education passed a temporary rule approving ABCTE (American Board for Certification of Teacher Excellence) as an alternate route to Idaho certification. During the interim certification, teaching shall be done in conjunction with a two year mentoring program approved by the State Board of Education.

Further information and all requirements for each alternative route to certification are available in Idaho Administrative Code (IDAPA 08.02.02) and the Idaho Standards for the Initial Certification of Professional School Personnel document.

Nothing in the IDEA 2004 creates a right of action for due process on behalf of a student or class of students for failure to employ highly qualified staff.

D. Paraprofessionals, Assistants, and Aides

The district may employ paraprofessionals, assistants, and aides who are appropriately trained and supervised to assist in the provision of special education and related services to students with disabilities if they meet standards established by the SDE (see the Documents section in this chapter).

Appropriate duties to be performed by paraprofessionals are:

1. Provide one-on-one tutoring for eligible students during non-instructional time by a teacher or related service provider.
2. Assist with classroom management and organizing materials.
3. Provide assistance in a computer lab or media center.

4. Conduct parental involvement activities.
5. Act as a translator.
6. Assist in provision of instructional services only under the direct supervision of a certified teacher or related service provider.
 - a. Teacher plans instruction and evaluates student achievement.
 - b. Paraprofessional works in close and frequent physical proximity to teacher or related service provider.

A special education paraprofessional working in a Title I school-wide program shall be highly qualified as demonstrated by the competencies listed in the NCLB Act.

1. Strategies to Assist Individuals in Meeting Paraprofessional Standards

The district shall assist individuals in meeting the paraprofessional standards established by the SDE. A variety of strategies may be used to assist individuals in developing the skills necessary to meet the paraprofessional standards, including:

- a. participating in on-the-job training with follow-up provided by the supervising teacher;
- b. reading printed materials;
- c. participating in workshops;
- d. viewing videos;
- e. completing university course work;
- f. conducting personal research and studying; or
- g. training sponsored by the district.

2. Verifying that an Individual has Met Paraprofessional Standards

The district will determine the means of verification that will be used to assess whether individuals working with students with disabilities have met the paraprofessional standards. Competence may be demonstrated in a variety of ways, such as:

- a. successful performance of duties;
- b. interview with the paraprofessional;
- c. observation;
- d. portfolio assessment;

- e. completion of a course or workshop; or
- f. verification from a former employer.

The district may encourage qualified para-educators employed in their classrooms to become certified teachers. The alternative route preparation program for para-educator to teacher must be completed within five years of admission to the program. Candidates work toward completion of a preparation program while employed by the school district.

E. Educational Interpreters

The district may only employ an individual as an educational interpreter if they have met the state qualifications identified in Idaho Code 33-1304. Educational interpreters employed by the district shall complete a minimum of eighty (80) hours of training in the areas of interpreting or translating every five years.

F. Supervision of Staff

A teacher and/or a related service provider with appropriate certification or licensure who has been informed of his or her specific responsibilities related to a student's IEP has the primary responsibility to ensure the appropriate implementation of the IEP. The district has policies and procedures for the supervision and evaluation of all certificated/licensed or contracted employees.

The certificated/licensed teacher and/or related service provider will generally be responsible for the supervision of all paraprofessionals, assistants, and aides who provide direct services to students with disabilities. All paraprofessionals, assistants, and aides must have a supervision plan developed by a certificated or licensed professional.

G. Professional Development Plan

The district will take measures to ensure that all personnel necessary to provide special education and related services according to the IDEA 2004 are appropriately and adequately prepared. Personnel may use a variety of opportunities for technical assistance and training activities to further develop professional knowledge and skills in order to meet the needs of students with disabilities.

To the extent the district determines it is appropriate, paraprofessional personnel may use the technical assistance and training activities offered by the district or SDE to fulfill part of the Standards for Paraprofessionals Supporting Special Needs Students. See pages the Documents section of this chapter for a list of the standards.

Chapter 11

PROCEDURAL SAFEGUARDS

This chapter reflects changes in procedural safeguards as a result of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004).

Section 1. Procedural Safeguards Notice

A parent and/or adult student has specific procedural safeguards given to him or her by the IDEA 2004 and state law. Each district has a document titled *Procedural Safeguards Notice* that is provided to parents and/ or adult students which contains a full explanation of the special education rights. The *Procedural Safeguards Notice* shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner.

A. Procedural Safeguards Notice Contents

The following table lists various topics contained in the *Procedural Safeguards Notice* and identifies what chapter in this manual provides more information about each topic.

Topic	Chapter
1. parental consent	11
2. written notice	11
3. access to educational records	11
4. independent educational evaluation (IEE)	11
5. the opportunity to present and resolve complaints, including: <ul style="list-style-type: none"> a. the time period in which to make a complaint b. the opportunity for the district to resolve the complaint c. the availability of SDE mediation d. the differences between a due process hearing complaint and state administrative complaint 	13
6. the student's placement during pendency of due process proceedings	13
7. procedures for students who are subject to placement in an interim alternative educational setting (IAES)	12
8. requirements for unilateral placement by parents of students in private schools at public expense	9
9. due process hearings, including requirements for disclosure of evaluation results and recommendations	13
10. civil actions, including the time period in which to file such actions	13
11. attorney fees	13

B. When the Procedural Safeguards Notice Is Provided

The district will provide a *Procedural Safeguards Notice* that includes a full explanation of the special education rights afforded the parent and/or adult student only once per year, except that a copy will be given to the parent and/or adult student:

1. upon an initial referral or parent and/or adult student request for evaluation;
2. upon the first occurrence of a filing of a due process hearing or an administrative complaint;
3. when a decision is made to take a disciplinary action that constitutes a change of placement; and
4. upon request by the parent.

A *Procedural Safeguards Notice* suitable for copying can be found in the document section of this chapter.

Section 2. Domestic Considerations**A. Parent****1. Definition**

The term “parent” means:

- a. a biological, adoptive, or foster parent of a child;
- b. a guardian (but not the state if the child is a ward of the state);
- c. an individual acting in the place of a biological or adoptive parent (including a grandparent, step parent, or other relative) with whom the child lives;
- d. an individual who is legally responsible for the child’s welfare
- e. an adult student; or
- f. a surrogate parent who has been appointed by the district.

2. Determining Who Has Parental Rights

In determining who has parental rights, individuals should be considered in the following order of priority:

- a. a biological parent who retains guardianship;
- b. a person who has legal documentation (guardianship, power of attorney, custody agreement) of being responsible for the student's welfare;
- c. a grandparent, stepparent, other relative, or foster parent with whom the student lives and who is acting as a parent; or
- d. a surrogate parent appointed by the district to represent the student's interests in educational decisions.

B. Surrogate Parent

1. Definition

A "surrogate parent" is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA 2004 in any of the following circumstances:

- a. No parent can be identified or located for a particular student.
- b. The student is a ward of the state.
- c. The student is an unaccompanied homeless youth.

The surrogate parent has the same rights as a biological parent throughout the special educational decision-making process.

2. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district's special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

- a. A parent cannot be identified.
- b. A parent cannot be found after reasonable efforts to locate the parent.
- c. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student's education, including special education, provided he or she meets the criteria for a district-appointed surrogate.
- d. The student is a homeless youth who is unaccompanied.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the biological parent is available but chooses not to participate. When a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth in item 3, below. The district will make reasonable efforts to assign a surrogate within 30 calendar days after it determines that the student needs a surrogate.

3. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement, and the provision of FAPE. The surrogate parent shall:

- a. Have knowledge and skills that ensure effective representation.
- b. Have no personal or professional interest that conflicts with the interest of the student.
- c. Meet the following conditions:
 - (1) is not an employee of the SDE, the district, or any other agency that is involved in the education or care of the student;
 - (2) is not an employee of a nonpublic agency that provides educational care for the student.

Note: A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate can be appointed that meets all the requirements.

C. Adult Students and the Transfer of Rights

An “adult student” is a student who is at least 18 years of age to whom special education rights have transferred under the IDEA 2004 and Idaho Code.

1. Discussion of the Transfer of Rights: Not later than the student’s 17th birthday, the IEP team shall discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns 18 years of age unless:
 - a. the IEP team determines that the student does not have the ability to make informed decisions with respect to his or her educational program; or

4. Screening to determine appropriate instruction strategies for curriculum implementation.
5. A disclosure of personally identifiable information to persons authorized to have access under FERPA.
6. An IEP team reviews and revises a student's IEP. However, the parent and/or adult student may file a written objection if he or she disagrees with all or part of the changes to the IEP.

D. Refusal to Give Consent

At times, a parent and/or adult student may refuse to give written consent for an assessment or the release of information that the district believes is necessary to ensure FAPE during the reevaluation process.

If the parent does not provide consent for the reevaluation assessment, the district may choose not to pursue requesting SDE mediation and/or a due process hearing if the district determines through a review of existing data, that the information does not continue to support the determination of eligibility for special education services. In this case the district shall provide the parent with written notice of the proposed action to discontinue the provision of FAPE to the student based on a review of existing data.

The district may also choose to pursue the reevaluation through SDE mediation and/or by requesting a due process hearing. If the hearing officer determines that the action is necessary, and the parent and/or adult student does not appeal the decision, the district may proceed with the proposed action. The district shall provide the parent with written notice of the proposed actions.

The district shall secure written consent for the initial provision of special education and related services. There is no mechanism available to overturn a parent's/adult student's decision *not* to provide written consent for initial evaluation or initial provision of services. In the case of an initial evaluation or initial provision of services, if a parent and/or adult student fails to respond to reasonable measures to gain consent or does not consent the district cannot be charged with failing to provide FAPE to the student and is not required to convene an IEP meeting or develop an IEP for special education or related services.

E. Failure to Respond to a Request for Consent Regarding Reevaluation Assessment

When a parent and/or adult student fails to respond to reasonable measures taken by the district to obtain written consent to determine continued eligibility, the district may proceed with the evaluation. The district shall have a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment. Failure to respond is not the same as refusing consent for reevaluation.

F. Revoking Consent

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked only before the action occurs. If consent is revoked, the district may continue to pursue the action by using SDE IEP facilitation or mediation and/or requesting a due process hearing (this does not include the initial provision of special education and related services). If the hearing officer determines that the action for which consent is sought is necessary, and the decision is not appealed, the district may proceed with the action without the written consent of the parent and/or adult student. Consent must be revoked in writing.

Section 4. Written Notice**A. Definition**

Written notice is the act of informing a parent and/or adult student, in writing within a reasonable amount of time, before the district proposes or refuses to initiate or change the student's identification, the evaluation, educational placement, or provision of FAPE.

B. Criteria for Written Notice

1. Written notice must be provided in a reasonable amount of time before implementing the proposed action.
2. Written notice shall be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent and/or adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:
 - a. The notice is translated orally or by other means in the native language or other mode of communication.
 - b. The parent and/or adult student understands the content of the notice.
 - c. There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

When a parent and/or adult student disagrees with the district's written notice of a proposed or refused action, he or she can attempt to remedy the dispute using SDE processes, such as IEP facilitation, mediation, formal complaint procedures, or due process hearing procedures afforded by the IDEA 2004. In addition, the parent and/or adult student may have the right to prevent the district from taking action by filing a written objection with the district.

C. Written Notice Is Required

1. The district shall provide written notice before proposing to initiate or change the following:
 - a. identification of the student;
 - b. any assessments for initial evaluation or reevaluation;
 - c. educational placement; or
 - d. the provision of FAPE.
2. After the district's decision to refuse a parent and/or adult student's request to initiate or change the identification, assessment, placement, or provision of FAPE.
3. If the district refuses to convene an IEP team meeting at the request of a parent and/or adult student.
4. When the evaluation team determines that additional assessments are not required during a reevaluation to determine whether the student continues to meet eligibility criteria, the district shall provide written notice to the parent and/or adult student of the decision and the reasons for that decision. The parent and/or adult student must also be informed of his or her right to request assessments when necessary to determine continued eligibility.
5. If a parent files a due process hearing request, the district is required to give written notice specific to the issues raised in the due process hearing request within 10 days.

D. Written Notice is Not Required

The district is not required to provide written notice in the following situations:

1. When reviewing existing data as part of an evaluation or a reevaluation. However, the parent and/or adult student shall be afforded the opportunity to participate in the review of existing data.
2. When tests are administered to both general and special education students in a grade or class.
3. When teacher or related service provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals and benchmarks/objectives on the IEP.
4. Notice is not required if outside observation is in relation to teacher's general practices.

E. Content of Written Notice

The content of written notice is intended to provide the parent and/or adult student with enough information so that he or she is able to fully understand the district's proposed action or refused action and to make informed decisions, if necessary. The written notice shall include the following:

1. a description of the action proposed or refused by the district;
2. an explanation of why the district proposes or refuses to take the action;
3. a description of any other options the IEP team considered and the reasons why those options were rejected;
4. a description of each procedure, assessment, record, or report that the district used as a basis for the proposed or refused action;
5. a description of any other factors relevant to the proposed or refused action;
6. a statement that the parent and/or adult student has special education rights and a description of how to obtain a copy of the *Procedural Safeguards Notice*; and
7. sources to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

F. Objection to District Proposal

If a parent and/or adult student disagrees with an IEP change or placement change that is proposed by the district, he or she may file a written objection to all or part of the proposed change. The district will respond as follows:

1. If the objection is postmarked or hand delivered within 10 calendar days of the date the parent and/or adult student received the written notice, the changes to which the parent and/or adult student objects cannot be implemented.
2. If a proposed change is being implemented during the 10-day period and an objection is received, the implementation of that change shall cease.
3. If an objection is made after 10 calendar days, the district may continue to implement the change, but the parent and/or adult student retains the right to exercise other procedures under the IDEA 2004.

The parties may resolve a disagreement using methods such as holding additional IEP team meetings, or utilizing SDE processes, such as IEP facilitation or mediation. If these attempts fail, the district may request a due process hearing regarding the proposed change. A parent's and/or adult student's written

1. The district hearing will be held within a reasonable amount of time after receiving the request. The district will give the parent and/or adult student notice of the date, time, and place reasonably in advance of the hearing.
2. The district's hearing will be conducted by an employee of the district or other individual who does not have a direct interest in the outcome of the hearing. The district will give the parent and/or adult student a full and fair opportunity to present evidence relevant to the issues raised. The parent and/or adult student may, at his or her own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
3. The district will make its decision in writing within a reasonable period of time after the hearing. The decision shall be based solely on the evidence presented at the district's hearing and shall include a summary of the evidence and the reasons for the decision.

H. Students' Rights

When special education rights transfer to a student under the IDEA 2004 and Idaho Code, the FERPA rights regarding education records also transfer to the student. The district shall inform the adult student and the parent that both the IDEA 2004 and FERPA rights regarding education records transfer.

Section 6. Independent Educational Evaluations

A. Definition

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the district responsible for the education of the student in question.

B. Right to an IEE

1. A parent and/or adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the district. The parent and/or adult student is entitled to only one IEE at public expense for each district evaluation.
2. The parent and/or adult student has the right to an IEE at his or her own expense at any time, and the IEP team shall consider the results.
3. The parent and/or adult student is not automatically entitled to have additional assessments beyond those determined necessary for an evaluation. However, if the parent and/or adult student is interested in additional or different assessments and the district refuses to provide them, he or she may pursue additional assessments through a due process hearing request. In addition, the district may initiate a due process hearing,

without undue delay, to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the evaluation conducted by the district was appropriate, the parent and/or adult student still has the right to an IEE but at his or her own expense.

4. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the district was not appropriate.

C. Procedures for Requesting an IEE

If a parent and/or adult student requests an IEE at public expense, the district may ask why he or she disagrees with the evaluation obtained by the district, but the district cannot require an explanation. The district shall give the parent and/or adult student the criteria under which an IEE can be obtained. The district's IEE criteria shall include the following information:

1. the location for the evaluation;
2. the required qualifications of the examiner;
3. the eligibility requirements for the specific disability categories; and
4. reasonable cost containment criteria applicable to personnel for specified assessments to eliminate unreasonably excessive fees.

Except for the criteria listed above, the district may not impose other conditions or timelines if doing so would be inconsistent with the parent's and/or adult student's right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

A parent and/or adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's cost criteria. If an IEE that falls outside the district's cost criteria is justified, that IEE will be publicly funded.

D. District Responsibilities Following IEE Requests

1. If a parent and/or adult student requests an IEE at public expense, the district shall do one of the following without unnecessary delay:
 - a. Provide the district's IEE criteria and information about where an IEE may be obtained.
 - b. Offer SDE mediation to try to resolve differences.
 - c. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the parent and/or adult student may pursue an IEE, but at his or her own expense.

2. If a parent and/or adult student asks the district to pay for an IEE that has already been obtained, the district shall pay for the IEE if it meets the criteria for publicly funded IEEs. If the district believes that its evaluation was appropriate, but agrees to pay for the IEE, the district should state this in writing within the same document in which it agrees to pay. The district can also request SDE mediation.

E. Consideration of the IEE Results

If a parent and/or adult student obtains an IEE and makes that evaluation available to the district, the results must be considered by the district in any decision made with respect to the provision of FAPE. The results may also be presented as evidence at a hearing regarding the student. This is true regardless of whether the IEE is at the expense of the parent and/or adult student or district.

The results of an IEE cannot be the sole determining factor for eligibility. The evaluation team has the responsibility to use existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA 2004.

Part B PROCEDURAL SAFEGUARDS NOTICE

Revised June 2009

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide you, the parents of a child with a disability, with a notice containing a full explanation of the procedural safeguards available under IDEA and U.S. Department of Education regulations. A copy of this notice must be given to you only one time a school year, except that a copy must also be given to you: (1) upon initial referral or your request for evaluation; (2) upon receipt of your first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of your first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action against your child that constitutes a change of placement; and (4) upon your request. [34 CFR §300.504(a)]

Your school district can provide more information on these rights. If you have questions, you should speak to the special education teacher, school principal, director of special education, or superintendent in the district.

For further explanation on any of these rights you may also contact:

Idaho State Department of Education
Division of Student Achievement and School Improvement
P.O. Box 83720
Boise, Idaho 83720-0027
(208) 332-6910
TT: 800-377-3529

Idaho Parents Unlimited, Inc. (IPUL)
1878 W Overland
Boise, Idaho 83705
800-242-4785
V/TT: (208) 342-5884

DisAbility Rights Idaho (formerly Comprehensive Advocacy, Inc. (Co-Ad))
4477 Emerald St., Suite B-100
Boise, Idaho 83706
866-262-3462
V/TT: 800-632-5125
V/TT: (208) 336-5353

Table of Contents

General Information	1
Prior Written Notice.....	1
Native Language.....	2
Electronic Mail	2
Parental Consent—Definition.....	2
Parental Consent	3
Independent Educational Evaluations.....	6
Confidentiality of Information	8
Definitions	8
Personally Identifiable	8
Notice to Parents	8
Access Rights	9
Record of Access.....	9
Records on More Than One Child	10
List of Types and Locations of Information	10
Fees.....	10
Amendment of Records at Parent's Request.....	10
Opportunity for a Hearing.....	11
Hearing Procedures	11
Result of Hearing	11
Consent For Disclosure of Personally Identifiable Information.....	11
Safeguards	12
Destruction of Information.....	12
State Complaint Procedures	13
Differences Between the Procedures for Due Process Complaints and Hearings and for State Complaints	13
Adoption of State Complaint Procedures	13
Minimum State Complaint Procedures.....	14
Filing a State Complaint.....	15
Due Process Complaint Procedures	17
Filing a Due Process Complaint.....	17
Due Process Complaint	17
Model Forms	19
Mediation	20
Resolution Process	21
Hearings on Due Process Complaints	24
Impartial Due Process Hearing	24
Hearing Rights	25

Hearing Decisions	26
Appeals	27
Finality of Decision; Appeal; Impartial Review	27
Timelines and Convenience of Hearings and Reviews	27
Civil Actions, Including the Time Period in Which to File Those Actions	27
The Child's Placement While the Due Process Complaint and Hearing are Pending	28
Attorneys' Fees	29
Procedures When Disciplining Children with Disabilities	32
Authority of School Personnel	32
Change of Placement Because of Disciplinary Removals	35
Determination of Setting	35
Appeal	35
Placement During Appeals	37
Protections for Children Not Yet Eligible for Special Education and Related Services	37
Referral to and Action by Law Enforcement and Judicial Authorities	38
Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense	39
General	39

GENERAL INFORMATION

PRIOR WRITTEN NOTICE

34 CFR §300.503

Notice

Your school district must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

Content of notice

The written notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of IDEA;
7. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; and
8. Provide a description of other reasons why your school district proposed or refused the action.

Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; and
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your school district must ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that the requirements in paragraphs 1 and 2 have been met.

NATIVE LANGUAGE

34 CFR §300.29

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

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

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

ELECTRONIC MAIL

34 CFR §300.505

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

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

PARENTAL CONSENT - DEFINITION

34 CFR §300.9

Consent

Consent means:

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

3. You understand that the consent is voluntary on your part and that you may withdraw your consent at any time.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the school district is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

PARENTAL CONSENT

34 CFR §300.300

Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings ***Prior Written Notice*** and ***Parental Consent***.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

Your school district may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Special rules for initial evaluation of wards of the State

If a child is a ward of the State and is not living with his or her parent —

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

1. Despite reasonable efforts to do so, the school district cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; **or**

3. A judge has assigned the right to make educational decisions to an individual other than the parent and that individual has provided consent for an initial evaluation.

Ward of the State, as used in IDEA, means a child who, as determined by the State where the child lives, is:

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

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a *parent* as used in IDEA.

Parental consent for services

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

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

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, your school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

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

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district may not continue to provide such services, but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before discontinuing those services.

Parent's Right to Object

Once you consent to the initial start of services, the school district is not required to obtain your consent to make changes to the IEP. However, if you do not want the school district to implement the changes to the IEP, you must submit your objections in writing. Your written objections must either be postmarked or hand-delivered to the school district within 10 days of receiving the written notice of the changes.

IDAPA 8.02.03.109.05a

Parental consent for reevaluations

Your school district must obtain your informed consent before it reevaluates your child, unless your school district can demonstrate that:

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

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

Documentation of reasonable efforts to obtain parental consent

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

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

Other consent requirements

Your consent is not required before your school district may:

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

The school district must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE). Also, your school district may not use your refusal to consent to one of these services or activities as a

basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

INDEPENDENT EDUCATIONAL EVALUATIONS

34 CFR §300.502

General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district's criteria that apply to independent educational evaluations.

Definitions

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

Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of the Act.

Right to evaluation at public expense

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

1. If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.

2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

Parent-initiated evaluations

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

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by hearing officers

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

School district criteria

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

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

CONFIDENTIALITY OF INFORMATION

DEFINITIONS

34 CFR §300.611

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

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

PERSONALLY IDENTIFIABLE

34 CFR §300.32

Personally identifiable means information that includes:

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

NOTICE TO PARENTS

34 CFR §300.612

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of these activities.

ACCESS RIGHTS

34 CFR §300.613

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

Your right to inspect and review education records includes:

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

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

RECORD OF ACCESS

34 CFR §300.614

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

RECORDS ON MORE THAN ONE CHILD

34 CFR §300.615

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

LIST OF TYPES AND LOCATIONS OF INFORMATION

34 CFR §300.616

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

FEES

34 CFR §300.617

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

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading ***Opportunity For a Hearing***.

OPPORTUNITY FOR A HEARING

34 CFR §300.619

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

HEARING PROCEDURES

34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

RESULT OF HEARING

34 CFR §300.620

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

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; and
2. If the participating agency discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

34 CFR §300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the

circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

SAFEGUARDS

34 CFR §300.623

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding your State's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

DESTRUCTION OF INFORMATION

34 CFR §300.624

Your school district must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

STATE COMPLAINT PROCEDURES

DIFFERENCES BETWEEN THE PROCEDURES FOR DUE PROCESS COMPLAINTS AND HEARINGS AND FOR STATE COMPLAINTS

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the State Educational Agency, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The State Educational Agency must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading *Model Forms*.

ADOPTION OF STATE COMPLAINT PROCEDURES

34 CFR §300.151

General

Each State Educational Agency must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the State Educational Agency;
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Remedies for denial of appropriate services

In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2. Appropriate future provision of services for all children with disabilities.

MINIMUM STATE COMPLAINT PROCEDURES

34 CFR §300.152**Time limit; minimum procedures**

Each State Educational Agency must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for the State Educational Agency's final decision.

Time extension; final decision; implementation

The State Educational Agency's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) you and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
2. Include procedures for effective implementation of the State Educational Agency's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described under the heading ***Filing a Due Process Complaint***, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the school district), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

FILING A STATE COMPLAINT

34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
 - (a) The name of the child and address of the residence of the child;
 - (b) The name of the school the child is attending;
 - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
 - (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

DUE PROCESS COMPLAINT PROCEDURES

FILING A DUE PROCESS COMPLAINT

34 CFR §300.507

General

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; or
2. The school district withheld information from you that it was required to provide you under Part B of IDEA.

Information for parents

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or the school district file a due process complaint.

Idaho Parents Unlimited, Inc.
1878 W Overland
Boise, Idaho 83705
800-242-4785
V/TT: (208) 342-5884

DisAbility Rights Idaho
4477 Emerald St., Suite B-100
Boise, Idaho 83706
866-262-3462
V/TT: 800-632-5125
V/TT: (208) 336-5353

DUE PROCESS COMPLAINT

34 CFR §300.508

General

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the State Educational Agency with a copy of the complaint.

Content of the complaint

The due process complaint must include:

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

Notice required before a hearing on a due process complaint

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney) files a due process complaint that includes the information listed above.

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

Complaint amendment

You or the school district may make changes to the complaint only if:

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

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving

the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

Local educational agency (LEA) or school district response to a due process complaint

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

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

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

Other party response to a due process complaint

Except as stated under the sub-heading immediately above, ***Local educational agency (LEA) or school district response to a due process complaint***, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

MODEL FORMS

34 CFR §300.509

The State Educational Agency must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, your State or the school district may not require the use of these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint.

MEDIATION

34 CFR §300.506

General

The school district must develop procedures that make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint***.

Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

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

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

The State must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the costs of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); **and**

2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

Impartiality of mediator

The mediator:

1. May not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

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

RESOLUTION PROCESS

34 CFR §300.510

Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

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

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

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

The resolution meeting is not necessary if:

1. You and the school district agree in writing to waive the meeting; **or**

2. You and the school district agree to use the mediation process, as described under the heading ***Mediation***.

Resolution period

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, ***Hearing Decisions***, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

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

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

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

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

Adjustments to the 30-calendar-day resolution period

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

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

If you and the school district agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the

mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written settlement agreement

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

1. Signed by you and a representative of the school district who has the authority to bind the school district; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the State Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement review period

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

HEARINGS ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR §300.511

General

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

Impartial hearing officer

At a minimum, a hearing officer:

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

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

Subject matter of due process hearing

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

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

HEARING RIGHTS

34 CFR §300.512**General**

You have the right to represent yourself at a due process hearing (including a hearing relating to disciplinary procedures) or an appeal with a hearing to receive additional evidence, as described under the subheading, ***Appeal of decisions; impartial review***. In addition, any party to a hearing has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the hearing by an attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
6. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional disclosure of information

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

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

Parental rights at hearings

You must be given the right to:

1. Have your child present at the hearing;

2. Open the hearing to the public; and
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

HEARING DECISIONS

34 CFR §300.513

Decision of the hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; or
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536).

Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Findings and decision provided to the advisory panel and general public

The State Educational Agency or the school district, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; and
2. Make those findings and decisions available to the public.

APPEALS

FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

34 CFR §300.514

Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions***.

TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

34 CFR §300.515

The State Educational Agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

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

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the school district).

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

CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

34 CFR §300.516

General

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

Time limitation

The party (you or the school district) bringing the action shall have 42 calendar days from the date of the decision of the hearing officer to file a civil action.

IDAPA 08.02.03.109.05g

Additional procedures

In any civil action, the court:

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

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

Jurisdiction of district courts

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

Rule of construction

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

THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING

34 CFR §300.518

Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES***, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or

school district agree otherwise, your child must remain in his or her current educational placement.

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

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

If a hearing officer in a due process hearing conducted by the State Educational Agency agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

ATTORNEYS' FEES

34 CFR §300.517

General

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you, if you prevail (win).

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
 - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
 - b. The offer is not accepted within 10 calendar days; **and**
 - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

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

3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

Fees also may not be awarded for a mediation as described under the heading **Mediation**.

A resolution meeting, as described under the heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

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

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

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

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

AUTHORITY OF SCHOOL PERSONNEL

34 CFR §300.530

Case-by-case determination

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

General

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

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

Additional authority

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

Services

The school district does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability

(see subheading, ***Manifestation determination***) or who is removed under special circumstances (see the subheading, ***Special circumstances***) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

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

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

Manifestation determination

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Team (as determined by you and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

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

If the school district, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school district, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

Determination that behavior was a manifestation of the child's disability

If the school district, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

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

Special circumstances

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:

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

Definitions

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

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

Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Notification

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

CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

34 CFR §300.536

A removal of your child with a disability from your child's current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
 - a. The series of removals total more than 10 school days in a school year;
 - b. Your child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

DETERMINATION OF SETTING

34 CFR §300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional authority*** and ***Special circumstances***.

APPEAL

34 CFR §300.532

General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; **or**

2. The manifestation determination described above.

The school district may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

Authority of hearing officer

A hearing officer that meets the requirements described under the subheading ***Impartial hearing officer*** must conduct the due process hearing and make a decision. The hearing officer may:

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

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

Whenever you or a school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints***, except as follows:

1. The State Educational Agency or school district must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.
3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the school district may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading ***Appeal***).

PLACEMENT DURING APPEALS

34 CFR §300.533

When, as described above, you or the school district file a due process complaint related to disciplinary matters, your child must (unless you and the State Educational Agency or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

34 CFR §300.534

General

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

Basis of knowledge for disciplinary matters

A school district will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

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

Exception

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

1. You have not allowed an evaluation of your child or have refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by you, the school district must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

34 CFR §300.535

Part B of IDEA does not:

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

Transmittal of records

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

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

GENERAL

34 CFR §300.148

Part B of IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

Reimbursement for private school placement

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

Limitation on reimbursement

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

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

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice if: (a) You are not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to your child.

Chapter 13

Dispute Resolution

On occasion, conflicts arise between school districts and parents and/or adult students. Several mechanisms are available through the State Department of Education (SDE) to assist in resolving disputes. The processes are individualized education program (IEP) facilitation, mediation, formal complaints, due process hearings, and expedited due process hearings. This chapter contains information on each of these processes.

Contact Information

The SDE accepts formal complaints and requests for IEP facilitation, mediation, complaints, and hearings via fax, mail, and personal delivery. Additionally, requests for IEP facilitation and mediation may also be made by telephone. Formal complaints and hearing requests should be directed to:

Dispute Resolution Coordinator
State Department of Education
Division of Student Achievement and School Improvement
Special Education
P.O. Box 83720
Boise, ID 83720-0027
208/332-6912
800/432-4601
TT: 800/377-3529
Fax: 208/334-2228

For further assistance in matters relating to dispute resolution, you may contact:

DisAbility Rights Idaho (formerly Comprehensive Advocacy, Inc. (Co-Ad))
4477 Emerald Street, Suite B-100
Boise, ID 83706
V/TT: 208/336-5353
V/TT: 800/632-5125

Idaho Parents Unlimited, Inc. (IPUL)
1878 W Overland
Boise, ID 83705
800/242-IPUL (4785)
V/TT: 208/342-5884

Section 1. IEP Facilitation

A request for IEP facilitation may be made by the parent and/or adult student or by a district representative, such as a director of special education. Requests may be made in writing or by phone to the SDE Dispute Resolution Coordinator as directed in the introduction to this chapter.

A. Definition

IEP facilitation is a voluntary process during which an SDE-contracted individual is appointed to facilitate an IEP team meeting. The role of the facilitator is to help team members communicate more effectively and efficiently. IEP facilitation supports early dispute resolution, providing assistance to the IEP team before a potential conflict develops into a more serious dispute. The facilitator is an impartial third party, not a member of the IEP team, and has no stake in decisions made by the team. All IEP facilitators have received specialized training provided by the SDE. Facilitators are selected on a rotational and/or geographical basis.

The SDE provides IEP facilitation at no charge to the district or the parent and/or adult student.

B. IEP Facilitation Requests

A request for IEP facilitation may be made by either a parent and/or adult student or a designated district representative, such as a special education director, who has the authority to allocate resources and has knowledge of special education. A request for IEP facilitation:

1. may concern an initial, annual, or amended IEP that may be considered too difficult to manage; and
2. should be made at least two weeks prior to the scheduled IEP meeting.

The SDE will consider IEP facilitation requests on a case-by-case basis. As part of this consideration, the SDE Dispute Resolution Coordinator will contact the other party to determine whether that party is willing to participate; both parties shall agree to IEP facilitation for the process to go forward.

Section 2. Mediation

The SDE has developed a mediation system to help resolve disagreements between districts and parents and/or adult students regarding the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE). A request for mediation may be made by either the parent and/or adult student or the district at any point without the necessity to request a due process hearing. Requests may be made in writing or by phone to the SDE Dispute Resolution Coordinator as directed in the introduction to this chapter.

The ultimate goal of mediation is to obtain a written agreement that is acceptable to both parties. Mediation agreements are legally binding. Even if a written agreement is not achieved, mediation may be helpful in clarifying issues.

A. Definition of Mediation

Mediation is a structured, voluntary process in which an impartial third party (a mediator) assists parents and/or adult students and district personnel resolve disputes. Mediation builds positive working relationships, encourages mutual understanding, and helps the parties focus on their common interest—the student. The district will not use the term “mediation” to refer to any district-level process for resolving disputes.

The Special Education Mediation Process Is:

Voluntary for parents and school personnel;

Offered when disputes arise, including, but not limited to, formal complaints and due process hearing requests;

Confidential, thus encouraging all participants to speak freely;

A **No-Cost Service** to parents and schools provided by the SDE; and

An **Alternative** that does not delay the status of a due process hearing or formal complaint.

B. Mediation Policies

1. No video or audio recording of the mediation proceedings will be made.
2. Each party is limited to no more than three participants and shall designate a person who has the authority to make final resolution decisions.
3. The district shall have at least one representative present who has the authority to commit resources.
4. Because mediation is a non adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during a mediation session is strongly discouraged.
5. Except for the signed agreement and confidentiality pledge, all notes or records taken during the proceedings will be collected and destroyed by the mediator at the conclusion of the mediation session.
6. The mediator will provide signed copies of the agreement to each party and the SDE.

7. The mediator will be excluded from subsequent actions—complaint investigations, due process hearings, and legal proceedings.
8. A due process hearing requested prior to mediation may be canceled by the requesting party.
9. If for any reason the mediation fails, the mediator will provide each party and the SDE with a statement certifying that the mediation was unsuccessful.
10. Either party has the option to make another request for mediation.

C. Mediation System

Mediation offered by the SDE is voluntary, confidential, and at no cost to the parent and/or adult student or district.

1. Both the district and the parent and/or adult student may request mediation at any time.
2. The SDE has the discretion to suggest mediation to either party at any time it deems appropriate, but is required to make mediation available to the parties after a formal complaint or a request for a due process hearing has been filed.

Following a request for mediation, the SDE will contact the other party and ask whether they are willing to participate in mediation. Mediation may not be used to deny or delay the right to a due process hearing or any other rights afforded to students and parents.

D. SDE Contracted Mediators

Idaho SDE **contracted** mediators are impartial and trained in effective mediation, communication, negotiation, and problem-solving skills, and in laws and regulations relating to the provision of special education and related services. A mediator assists the parent and/or adult student and the district in resolving disputes. The SDE will select the mediator on a random, rotational, or other impartial basis from a list of highly qualified mediators. At times, the SDE may appoint two individuals to serve as co-mediators.

1. In all cases a mediator shall not:
 - a. be an employee of the SDE or district involved in the dispute;
 - b. have children enrolled in the district involved in the dispute; or
 - c. have a personal or professional interest that conflicts with the person's objectivity.
2. Additionally, if the parties have agreed to mediation following a due process hearing request:

- a. co-mediators may not be used; and
 - b. the mediator may not be an employee of any district or state agency providing services that are publicly funded under the IDEA 2004, Part B.
3. The mediator:
- a. Contacts the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation.
 - b. Establishes the ground rules for all parties to follow.
 - c. Guides the process.
 - d. Encourages open and honest communication.
 - e. Ensures that each party is heard.
 - f. Rephrases information and summarizes issues.
 - g. Facilitates the writing of the agreement.

E. Mediation Timelines

The SDE will appoint a mediator within 3 business days of a request for mediation. The mediation will be held in a location convenient to the parties involved, and every effort will be made to complete the process within 21 calendar days.

F. Confidentiality

Discussions that occur during the SDE mediation process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding. The parties in the SDE mediation process will be required to sign a confidentiality pledge before mediation begins.

G. Mediation Agreement

An agreement reached by the parties through SDE mediation shall be set forth in writing and is enforceable in state and federal courts.

Section 3. Formal Complaints

A formal complaint may be filed with the SDE by any individual or organization from Idaho or another state who believes the district or other education agency has violated a requirement of Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), including the alleged failure to comply with a due process hearing decision rendered. The SDE

will accept a complaint received by mail, fax or hand delivery. A complaint filed by email will not be accepted. Contact information is listed in the introductory paragraph to this chapter.

See the document section at the end of this chapter for “Procedures for Resolving Complaints.”

A. Filing Complaints

A formal complaint can be made by any person or organization. The complaint shall be in writing and include the following information:

1. current date;
2. the name, address, and telephone number of the person making the complaint (or available contact information);
3. the signature of the person making the complaint;
4. if alleging violations regarding a specific student, the name and address of the student involved (or available contact information in the case of a homeless student or family);
5. the school and district or other education agency that is the subject of the complaint;
6. one or more statements (allegations) that the district has violated one or more requirements of Part B of the IDEA 2004;
7. the facts and/or a description of the events that support each allegation; and
8. proposed resolution of the problem or the relief sought.

The complaint shall allege a violation that occurred not more than one year prior to the date that the complaint is received. The SDE has a form available that may be used. (see the Documents section of this chapter)

B. SDE Complaint Procedures

Upon receipt of a written complaint, the SDE will do the following:

1. Determine whether the complaint meets all of the required criteria. The SDE will notify the complainant if his or her submission is insufficient as listed in Section A, above.
2. Notify the district that a complaint has been received and offer both parties SDE mediation. Parents shall receive a copy of the Procedural Rights statement.
3. Set aside all or any part of the written complaint that is being addressed in a due process hearing until the conclusion of the hearing. Any issue that is not a part of the due process action will be resolved using the SDE complaint procedures and timelines. If a

hearing officer's decisions are not adequately addressed by the district, the SDE will investigate.

4. Give the complainant the opportunity to provide additional information about the allegations, either orally or in writing.
5. Resolve the complaint and issue a Final Report that includes the findings of fact, conclusions, and resolution for each allegation within 60 calendar days of receipt of the complaint. This time period may be extended, but only under exceptional circumstances, which shall be documented by the SDE. The resolution will state:
 - a. how to remedy any denial of services, which may include the award of compensatory services, monetary reimbursement or other corrective action as appropriate to the needs of the student; and
 - b. the future provision of services for a student with a disability, if such clarification is needed.
6. Ensure the district takes corrective action if it is determined that the district was out of compliance.

C. Methods of Resolving Complaints

The SDE will make every effort to resolve complaints in the least adversarial manner possible. Mediation will be offered to the disputing parties. If mediation is not accepted by the parties or fails to resolve the allegation(s), then resolution of a formal complaint may be achieved through one or more of the following four processes:

1. **Verification of resolution:** Upon receipt of the initial complaint from the SDE outlining the allegations, the district may submit information to the SDE to document that one or more of the allegations of the complaint have been resolved. The SDE may also receive similar information from other sources.
2. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The SDE may accept, reject, or negotiate the proposed CAP or require other corrective actions or timelines to ensure the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the SDE will conduct a full investigation.
3. **Early complaint resolution (ECR):** The SDE may propose the use of ECR to resolve the complaint. This approach, which shall be mutually agreed upon, provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular allegations. The SDE Dispute Resolution Coordinator or an SDE-contracted complaint investigator will facilitate a resolution through the development of a written agreement to be signed by both parties. If this process is not successful the SDE will conduct a full investigation.

4. **Full investigation:** If necessary, the SDE will investigate the complaint by conducting interviews and reviewing files, correspondence, and other information. An on-site investigation may occur if necessary. The SDE will write a Final Report, including Findings of Fact, Conclusions, and identify appropriate Corrective Actions, if required.

Section 4. Due Process Hearings

A request for a due process hearing may be made by either a parent and/or adult student or the district.

A parent and/or adult student or district may file a request for hearing with the other party. The request shall be mailed, faxed, or hand delivered. When the request is filed with the district, the parent and/or adult student shall send copies to the Dispute Resolution Coordinator at the SDE.

All applicable timelines for due process hearing and resolution sessions will start when the request has been filed with the other party and the SDE.

A. Definition

Idaho's due process system has two types of hearings, a regular due process hearing and an expedited due process hearing:

1. A regular due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of FAPE.
2. An expedited due process hearing is as an administrative hearing to resolve disputes concerning discipline occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

B. Due Process Hearing Request from Parent and/or Adult Student

A due process hearing may be requested on behalf of a student by a parent, adult student or by an attorney representing the student.

1. A due process hearing shall be initiated within two years of the date the parent and/or adult student knew or should have known of the dispute. The two-year timeline will not apply if the parent and/or adult student was prevented from requesting a hearing due to misrepresentations or the withholding of information by the district.
2. A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of FAPE if:
 - a. the district proposes to initiate or change any of these matters; or

- b. the district refuses the parent's and/or adult student's request to initiate or change any of these matters.

See the Documents Section of this chapter for a *Due Process Hearing Request* form. The parent and/or adult student, or his or her attorney filing a due process hearing request shall forward a copy to the SDE and the district. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request.

C. Due Process Hearing Request by a District

A district may initiate a due process hearing within two years of the dispute in an attempt to accomplish one or more of the following:

1. override a parent's and/or adult student's refusal of consent for an initial evaluation or the release of information;
2. override a parent's/adult student's written objection to an IEP change, an educational placement change, or disciplinary actions when there is an imminent threat to safety;
3. ask a hearing officer to place a student in an interim alternate education setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others; or
4. request that a hearing officer determine whether an evaluation conducted by the district was appropriate or whether an evaluation obtained by a parent and/or adult student meets the criteria for a publicly funded independent educational evaluation (IEE).

If the district initiates a hearing, the district will inform the parent and/or adult student and the SDE.

D. Contents of a Request for a Due Process Hearing

A request for a due process hearing shall be made in writing and shall include the following information:

1. the current date;
2. the student's name, address (or available contact information in the case of a homeless student), and school district;
3. the signature of the individual make the request for a due process hearing;
4. a description of the nature of the problem, including supporting facts; and
5. a proposed resolution of the problem or the relief sought.

E. Actions for Due Process Hearings**1. A Due Process Request is Filed**

- a. A request may be filed by either party.
- b. Either party may challenge the sufficiency of the due process hearing request within 15 days of the receipt of the hearing request. The hearing officer shall render a decision regarding the sufficiency within five calendar days and immediately notify the parties of the decision in writing.
- c. The district superintendent has the responsibility for informing the district's board of trustees of any request for a hearing.
- d. The district shall inform a parent and/or adult student of any free or low-cost legal or other relevant services available to him or her and provide a copy of the Procedural Safeguards if a due process hearing is requested or if the parent and/or adult student requests such information.

2. A Hearing Officer is Assigned

- a. Within 10 calendar days of a request for a hearing, an impartial hearing officer will be assigned by the SDE. The SDE maintains a list of trained hearing officers, along with their qualifications, and assignments are made on a rotational basis.
- b. A hearing officer may not be an employee of the district or the SDE, an individual having any personal or professional interest that would conflict with his or her objectivity in the hearing, or a member of the board of trustees of the district.
- c. The district will pay for all actual expenses incurred by the hearing officer and for the cost of a verbatim transcript of the hearing. The hearing officer will be compensated at rates set by the SDE.

3. SDE Mediation is Offered

The SDE is required to offer mediation as an alternative dispute resolution mechanism to the involved parties.

4. Response to a Due Process Request

- a. The other party shall file a response with 10 calendar days addressing the issues raised.
- b. If the district has not sent a written notice to the parent and/or adult student regarding the subject matter contained in the due process request, the district will,

within 10 calendar days of receiving the request, send the parent and/or adult student a response that includes all the components of written notice.

- c. Either party may amend the request, upon obtaining written consent from the other party or as granted by the hearing officer, at least 5 calendar days prior to the hearing. If the request is amended, timelines for resolution and resolving the issues begin again as of the date of the amended request.

5. Pre-hearing Resolution Session

- a. A resolution session will be held within 15 calendar days of a request for a due process hearing unless:
 - (1) Both parties agree in writing to waive the resolution meeting.
 - (2) Both parties agree to go to mediation.
 - (3) The district initiates the hearing. The IDEA 2004 requires the resolution session only if the parent has requested the due process hearing.
- b. A “resolution team” includes the parent and/or adult student, a representative of the district who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties. The district’s attorney will not attend the resolution session unless the parent and/or adult student will be accompanied by an attorney. Note: SDE Facilitation may be requested with the approval of both parties.
- c. The purpose of the meeting is for the parent and/or adult student to discuss the due process hearing request, and the facts that form the basis of the request, so that the district has the opportunity to resolve the dispute.
- d. If a resolution is reached regarding the issues raised in the request for a due process hearing, the district representative and parent and/or adult student will sign a legally binding document that is enforceable in state and federal court. Either party may void this agreement within 3 business days of signing the agreement.
- e. A due process hearing will be scheduled if no resolution is reached within 30 calendar days of receiving the request for a due process hearing.
- f. If the district is unable to obtain the participation of the parents after reasonable efforts have been made and documented, at the conclusion of the 30 calendar day period, the district may request that the hearing officer dismiss the parents due process hearing request.

- g. A parent may request an immediate due process hearing from the hearing officer if the district has not scheduled or participated in a resolution session within 15 days of the request.

The 45 day timeline for the due process hearing request starts the day after one of the following events:

- a. Both parties agree in writing to waive the resolution meeting;
- b. After either the mediation or resolution meeting starts but before the end of the 30 day period, the parties agree in writing that no agreement is possible;
- c. Both parties agree in writing to continue the mediation at the end of the 30 day resolution period, but later, the parent or public agency withdraws from the mediation process.
- d. The district files a hearing request.

6. Hearing Preparation

- a. A parent and/or adult student will be allowed to inspect and review reports, files, and records pertaining to the student not less than 5 business days prior to a due process hearing. A district may charge a fee for copies of records if the fee does not effectively prevent a parent and/or adult student from exercising his or her right to inspect and review those records. The district may not charge a fee to search for or retrieve records.
- b. Not less than 5 business days prior to a due process hearing, each party will disclose to all other parties:
 - 1. Evaluations completed by that date; and
 - 2. Recommendations based on those evaluations intended to be used at the hearing.
 - 3. Copies of exhibits which will be introduced and a list of witnesses each party intends to call at the hearing.
- c. The hearing officer will provide notification as to the time and place of the due process hearing to the parent and/or adult student, district officials, and the SDE. The hearing shall be conducted at a time and place reasonably convenient to the parent and/or adult student.

7. The Due Process Hearing

- a. The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information

and opinions pursuant to the Idaho Administrative Procedure Act (IDAPA) and the IDEA 2004 requirements.

- b. A parent and/or adult student and district personnel may be accompanied and advised by legal counsel and other persons with special knowledge or training about students with disabilities.
- c. A parent and/or adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
- d. Only a parent and/or adult student, a district, and their respective attorneys have the right to present evidence, to compel the attendance of witnesses and the production of documents, and to confront and cross examine witnesses.
- e. New issues (issues not in the original due process request) may not be raised at the hearing unless agreed to by the other party. Any party may prohibit the introduction of any evidence at the hearing that was disclosed less than 5 business days before the hearing.
- f. During the hearing the district will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the SDE for resolution.
- g. A record of the hearing will be made. The record will be a written verbatim transcript. The parent and/or adult student may choose an electronic verbatim record. The district will pay the transcript costs, and a copy of the transcript will remain with the SDE. The parent and/or adult student and district personnel have the right to obtain a copy of the record upon formal request.

8. Decision of the Hearing Officer

- a. The decision of the hearing officer will be based solely on presentations made at the due process hearing.
- b. The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received FAPE.
 - (1) In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:
 - (a) impeded the student's right to FAPE;
 - (b) significantly impeded a parent's and/or adult student's opportunity to participate in the decision-making process; or
 - (c) caused a deprivation of educational benefit.

- (2) A hearing officer may order a district to comply with procedural requirements, regardless of whether a district's failure in this area did or did not result in a denial of FAPE.
- c. The decision will include findings of fact and conclusions of law.
- d. The hearing officer's written decision shall be available within 45 calendar days from the date of the request for a hearing. The 45-calendar-day timeframe begins when the written request is actually received by the district or the SDE, whichever is earlier.
- e. The findings of fact and decision shall be sent to the parent and/or adult student at no cost. Copies will also be mailed to the district superintendent, the SDE, and representatives of the district.
- f. After deleting personally identifiable information, the SDE will transmit the decision to the Special Education Advisory Panel (SEAP) and make the decision available to the public upon request.
- g. A hearing officer's decision will be enforceable in state and federal court. It will be implemented not later than 14 calendar days from the date of issuance unless:
 - (1) the decision specifies a different implementation date; or
 - (2) either party appeals the decision by initiating civil action in state or federal district court.
- h. Nothing in this section can be interpreted to prevent a parent from filing a separate due process hearing request on an issue separate from the request already filed. The SDE may consolidate multiple hearing requests involving the same IEP.
- i. Stay Put
 - (1) During the pendency of any due process hearing, the student shall remain, or "stay put," in his or her current educational placement unless the district and parent and/or adult student agree otherwise.
 - (2) The stay put placement continues during any subsequent appeals unless a hearing officer agrees with a parent and/or adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer's decision becomes the stay-put placement.
 - (3) If the dispute involves an application for initial admission to public school in Idaho, the student, with the written consent of his or her parent, shall be placed in the public school program until the proceedings are completed.

- (4) “Stay put” does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B services in Idaho. Following the development of an IEP or an individual family service plan (IFSP), if an educational placement dispute arises involving a student transitioning from Part C to Part B, the student cannot “stay put” in Part C:
 - (a) With written consent of the parent, the student shall be placed in the public school until completion of all the hearing proceedings.
 - (b) If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.
 - (c) If the student is eligible for special education and related services, and the parent consents, then the district shall provide those special education and related services which are not in dispute.

Section 5. Expedited Due Process Hearings

A request for an expedited due process hearing may be made by either a parent and/or adult student or the district. The request should be mailed, faxed or hand delivered to the Dispute Resolution Coordinator at the SDE. A request for an expedited due process hearing filed by email will not be accepted. Contact information is listed in the introduction to this chapter.

A. Definition

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

B. Expedited Hearing Requests

1. A district may request an expedited hearing if the district believes maintaining the current placement or returning the student to the prior placement is substantially likely to result in injury to the student or others.
2. A parent and/or adult student may request an expedited hearing if:
 - a. he or she disagrees with a determination that the student’s behavior was not a manifestation of the disability; or
 - b. he or she disagrees with the district’s discipline decision, which resulted in a change of placement.

See Section 5D of this chapter for additional information regarding placement during a hearing.

C. The Expedited Hearing Process and Decisions

An expedited hearing will be conducted in a fair and impartial manner. Guidelines and proceedings will be the same as those in a regular due process hearing, except for the following changes:

1. The SDE will appoint a hearing officer within 2 business days of a request.
2. A resolution session shall occur within 7 days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation.
3. A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 day of the receipt of the expedited due process hearing request.
4. Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least 2 business days before the hearing.
5. The hearing shall occur within 20 school days of the request, with a decision rendered within 10 school days of the hearing. A written decision will be mailed to both parties.
6. A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other original due process hearings.

D. Placement During an Expedited Hearing

When a hearing has been requested by either the parent and/or adult student or the district regarding placement decisions, the student shall “stay put” during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

1. The student will remain in the IAES until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first.
2. Upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if district personnel maintain that it is dangerous for the student to return to that placement, the district may request an expedited hearing to continue the IAES for up to an additional 45 school days. This procedure may be repeated as necessary.

If the hearing officer finds for the parent and/or adult student, the change of placement cannot occur and the IEP team will need to determine the extent of services that are appropriate to meet the student’s individual needs and to address the student’s behavior. If the hearing officer finds for the district, the district may use the same disciplinary procedures, including expulsion, as it uses for any other student, except that FAPE shall be provided according to the requirements in Chapter 12, Section 3.

Section 6. Appeals and Civil Action

1. An appeal to state or federal court shall be filed within 42 calendar days from the date of issuance of the hearing officer's decision.
2. Either party shall exhaust all dispute resolution procedures available under the IDEA 2004 prior to filing action in civil court. However, nothing in the IDEA 2004 restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other Federal laws protecting the rights of children with disabilities. This means either party may have remedies available under these laws that overlap with the IDEA 2004. To obtain relief under those other laws, either party shall first use the available dispute resolution procedures under the IDEA 2004 before going directly into court.

Section 7. Attorney Fees

A district court will have jurisdiction in the awarding, determination, or prohibition of attorney fees. The court may:

1. award reasonable attorney fees as part of the costs to the prevailing party; and
2. determine the amount of attorney fees, using prevailing rates in the community in which the action occurred, for the kind and quality of services provided. No bonus or multiplier may be used in calculating the amount of fees awarded.

Funds under Part B of the IDEA 2004 cannot be used by the district to pay any attorney fees or costs of a party related to an action or proceeding, such as deposition, expert witnesses, settlements, and other related costs. However, Part B funds may be used to pay hearing officer fees or the costs of a meeting room to conduct the hearing.

A. Prohibition of Attorney Fees

1. Attorney fees may not be awarded:
 - a. for legal representation at an IEP meeting, including a resolution session, unless such a meeting is convened as a result of a due process hearing or a judicial action; or
 - b. for mediation that is conducted prior to a request for a due process hearing.
2. Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent and/or adult student if:

- a. the district makes an offer at least 10 calendar days before a due process hearing or a civil proceeding begins;
- b. the offer is not accepted by the parent and/or adult student within 10 calendar days after it is made; and
- c. a court or due process hearing officer finds that the relief obtained by the parent and/or adult student is not more favorable to the parent and/or adult student than the offer of settlement.

B. Exception to the Prohibition of Attorney Fees

An award of attorney fees and related costs may be made to a parent and/or adult student who is a prevailing party and who was substantially justified in rejecting the district's settlement offer.

C. Reduction in the Amount of Attorney Fees

A court may reduce an award for attorney fees under any of the following circumstances:

1. During the course of the action or proceeding, the parent and/or adult student or his or her attorney unreasonably extended the final resolution.
2. The amount of the award unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience.
3. The time spent and legal services rendered were excessive considering the nature of the action.
4. The attorney representing the parent and/or adult student did not provide the information required in a due process hearing request.

D. Exception to the Reduction of Attorney Fees

The amount of attorney fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.

E. Special Provisions Regarding Attorney Fees

1. A district or SDE that prevails may seek attorney fees from a court against the parent's and/or adult student's attorney if the action is deemed frivolous, unreasonable, without foundation or prolongs the litigation.
2. A district or SDE that prevails may seek attorney fees from a court against the parent's/adult student's attorney or the parent and/or adult student if the hearing request

was presented for improper purposes such as to harass the district, cause unnecessary delay or needlessly increase the cost of litigation.

SPECIAL EDUCATION MEDIATION IN IDAHO

MANAGING PARENT AND SCHOOL CONFLICT THROUGH EFFECTIVE COMMUNICATION

If conflict occurs between a parent and school personnel regarding the educational program of a special education student, mediation provides a non-adversarial alternative to resolve the dispute.

Mediation is a structured, voluntary process in which an impartial third party, a mediator, helps parents and school personnel who are experiencing conflict to reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and school personnel focus on their common interest—the student.

Section 1. Mediation in Idaho

The mediation process:

1. May resolve disputes regarding the identification, evaluation, educational placement, or related services for students with disabilities;
2. Clarifies areas of agreement and disagreement; and
3. Fosters better relationships between parents and schools

Section 2. Requesting Mediation

An oral or a written request for mediation may be made to the SDE by a parent and/or adult student with a disability, a legal guardian, a surrogate parent, or the district. In addition, the SDE will encourage parents and districts to participate in mediation when it seems appropriate. Following a request for mediation, the SDE will make every effort to complete the process within 21 days.

A request for mediation:

1. Is appropriate when parents and/or adult students and schools are unwilling or unable to modify their position without outside assistance;
2. May occur when parents and/or adult students and schools, after making a good-faith effort, face an impasse in attempting to resolve the conflict; and
3. Can be scheduled prior to, or concurrent with, a request for a due process hearing.

Section 3. Proposed Mediation by the SDE

The SDE will offer mediation to resolve a dispute between parents and the district:

1. When there is a formal request for a due process hearing; and
2. At any other time the SDE deems the use of mediation appropriate.

Section 4. Appointment of a Mediator

The SDE maintains a list of qualified mediators. When both parties in a dispute agree to mediate, every attempt will be made by the SDE to appoint a mediator within 3 business days of the request. A mutually agreed upon time, date, and place of the mediation will be coordinated by the mediator.

If a due process hearing has been requested, the SDE will use a rotation list to select the mediator or both parties will be involved in and agree with the selection of the mediator.

If a due process hearing has been requested, the mediator may not be an employee of any district or state agency providing publicly funded services under the IDEA 2004 and co-mediators may not be used.

Section 5. The Mediator

A mediator is a neutral third party trained in communication, problem-solving and negotiation skills, and specific mediation techniques who acts as a facilitator to assist parents and/or adult students and schools in resolving conflicts. The mediator:

1. Educates the parties about the mediation process.
2. Establishes the ground rules for all parties to follow.
3. Guides the process.
4. Encourages open and honest communication.
5. Ensures that each party is heard.
6. Rephrases information and summarizes issues.
7. Facilitates the writing of the agreement.

Section 6. Roles of Parents and Schools

It is in the best interest of all parties, including the student, to explore mediation as a means to a resolution of the conflict. Parents and/or adult students and school personnel play a very important role in mediation. As active participants, each party can help design a mutually agreeable solution.

Section 7. Prior to the Mediation

The SDE will provide:

1. Notification to the disputing parties of the mediator appointed.
2. A copy of the *Procedural Safeguards Notice* to each party.
3. A copy of the “Confidentiality Pledge” to the parent, district, and mediator. The parties should review the pledge, come to the mediation with any questions regarding confidentiality, and be prepared to sign the pledge.

The mediator will:

1. Contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation.
2. Assist in determining who will attend the mediation session and inform the parties that participants need to be knowledgeable about the student and of available resources or services the student may need.
3. Advise the SDE of the names of all parties who will participate in the mediation session.

The parent and/or adult student and district will:

1. Determine who will attend the mediation session and advise the mediator of their choices.
2. Advise the mediator that the individual(s) with authority to commit resources and make final resolution decisions will participate in the mediation session.

Section 8. Preparing for the Mediation Session

The following guidelines can help participants prepare for the mediation session:

1. Keep your schedule free and be willing to give at least one full day to the mediation process.
2. Put aside personality conflicts and center on the educational interests of the student.
3. Approach mediation in good faith.

4. Be open, honest, and willing to listen.
5. Be familiar with all documents related to the dispute, including the Individualized Education Program (IEP).
6. Organize your information and materials.
7. Set goals you would like to achieve during the session.
8. Be open to alternatives.

Section 10. The Mediation Session

Every mediator has his or her own personal style of conducting a mediation. Participants should feel free to ask questions and seek clarification on any issue during the session. The mediation may include the following stages:

1. **Introduction:** The mediator will explain the process, set the ground rules for all parties, respond to questions, and encourage the parties from the onset to deal with issues – not personalities.
2. **Identification of issues:** Each party will have an opportunity, without interruption, to identify issues and share information. The mediator may seek additional information or summarize the issues.
3. **Expression of interests:** At this stage, the mediator helps the parties identify their interests (those factors underlying their issues). Goals, needs, beliefs, hopes, and fears are expressed, explored, and clarified.
4. **Caucus:** On occasion, issues and underlying interests may not be clear. Opportunity is provided for each party to “caucus” with the mediator for the purpose of sharing information or seeking clarification about the issues. The mediator will not disclose information from caucus sessions without consent.
5. **Recess:** A break may be requested by any participant during the session. This time provides an excellent opportunity for all parties to gather their thoughts and absorb what has transpired.
6. **Creating alternatives:** After the basic issues and interests have been identified, discussed, and clearly understood by all parties, the mediator will assist the parties in identifying or developing options to resolve the conflict. At any time during an open session or in a caucus, either party may propose solutions.

7. **Developing and writing a plan:** The ultimate goal of mediation is to obtain a written resolution to the conflict. The parties establish the terms of the agreement. The mediator writes the final agreement, which is signed by the parent(s), school representatives, and mediator. Each party retains a copy of the agreement. If an agreement involves proposed changes to a student's IEP, an IEP team meeting should be convened as soon as possible.
8. **Implementation:** For the final agreement to work effectively, its provisions shall be implemented. The signed agreement demonstrates a commitment by both parties to abide by the conditions of the agreement. Ultimately, it is the responsibility of the parties to fulfill their obligations.

For additional information, contact:

Dispute Resolution Coordinator

State Department of Education
Division of Student Achievement and School Improvement
P.O. Box 83720
Boise, Idaho 83720-0027
208/332-6912
800/432-4601
TT: 800/377-3529
FAX: 208/334-4664

Regional Special Education

North: 208/667-2588 Coeur d'Alene
 208/885-9060 Moscow
Southeast: 208/282-3610 Pocatello
 208/736-4263 Twin Falls
Southwest: 208/426-4315 Boise
 208/426-4397 Boise

DisAbility Rights Idaho (formerly Comprehensive Advocacy, Inc. (Co-Ad))

4477 Emerald Street, Suite B-100
Boise, ID 83706
V/TT: 208/336-5353
V/TT: 866/262-3462

Idaho Parents Unlimited, Inc. (IPUL)

1878 W Overland Road
Boise, ID 83705
800/242-IPUL
V/TT: 208/342-5884

IDAHO STATE DEPARTMENT OF EDUCATION
PROCEDURES FOR RESOLVING COMPLAINTS
UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004

Section 1. Filing Complaints

A. Filing a Formal Complaint

Any individual or organization from Idaho or another state who believes a school district or other education agency has violated a requirement of Part B of the Individuals with Disabilities Education Improvement Act 2004 (IDEA 2004) may file a formal complaint with the State Department of Education (SDE). The complaint shall:

1. Be in writing. Electronic mail is not acceptable. (The SDE will provide reasonable accommodations to individuals who need assistance in filing written complaints.)
2. Be signed and dated.
3. Include one or more allegations. Allegations are statements that an education agency has violated a requirement of Part B of the IDEA 2004. The alleged violations may not be older than one year from the date the complaint is received by the SDE.
4. Include the supporting facts of each allegation. Supporting facts are a description of the events to support the allegation(s), including the name(s) of the student(s) involved, as appropriate.
5. Include a proposed resolution for the complaint.

B. Contact Information Required

Complainants should include their mailing addresses and work and home telephone numbers as well as the name, address, and telephone number of the student(s) involved.

C. Formal Complaints Address

Complaints shall be mailed to:

Dispute Resolution Coordinator
State Department of Education
Division of Student Achievement and School Improvement
P.O. Box 83720
Boise, ID 83720-0027

Section 2. Evaluating Complaints

At times, the SDE may not be able to proceed with resolution of all of a complainant's concerns. Complaints will be evaluated to determine whether the SDE can proceed with resolution. The SDE will notify the complainant, within 30 days of receipt of a complaint, if it cannot proceed with complaint resolution and the reasons. The complainant has the option of filing a new complaint and restarting the 60-day timeline or revising the complaint. If the revised complaint contains additional allegations on which the SDE can proceed, the SDE will modify the scope of complaint resolution and may extend the 60-day timeline.

A. Complaint resolution cannot proceed when:

1. The complaint is not in writing.
2. The complaint is not signed.
3. The complaint does not include allegations of Part B violations. (If appropriate, the SDE will notify the complainant of the appropriate agency, entity, or process to address his or her concerns.)
4. The complaint does not include the facts to support the allegations for any of the allegations.
5. All of the allegations in the complaint have been resolved in a previous due process hearing. However, the SDE will resolve a complaint alleging that the education agency failed to implement a due process hearing decision.

B. Resolution of every allegation cannot proceed when:

1. Some of the statements in the complaint are not allegations that an education agency has violated a requirement of Part B of the IDEA 2004. In this situation, the SDE will proceed with resolution of the statements that are allegations. Where appropriate, the SDE will assist the complainant in clarifying other statements and/or will inform the complainant of the appropriate agency, entity, or process to address concerns that do not allege violations of the IDEA 2004.
2. The facts to support some of the allegations are not provided. In this situation, the SDE will proceed with resolution of the allegations for which facts have been included. If appropriate, the SDE will assist the complainant in identifying the facts for his or her other allegations.
3. Some or all of the allegations in the complaint are the subject of a current due process hearing. In this situation, the SDE will proceed with resolution of allegations that are not part of the due process hearing. The SDE will set aside allegations that are the subject of a due process hearing and will suspend the timeline for those allegations.

When the hearing is resolved, the SDE will proceed with resolution of any allegation on which the hearing officer has not ruled. However, the SDE will proceed to resolve allegations that an education agency failed to implement a due process hearing decision.

- C. If the complaint is withdrawn by the complainant prior to expiration of the timeline for resolution, the SDE will close the complaint.

Section 3. Complaint Resolution Processes

The SDE will make every effort to resolve complaints in the least adversarial manner possible. Resolution of a formal complaint may be achieved through one or more of the following four processes:

1. **Verification of resolution:** At any time during an investigation, the education agency may submit information to the SDE to document that one or more of the allegations in the complaint have been resolved. The SDE may also receive similar information from other sources.
2. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The SDE may accept, reject, or negotiate the proposed CAP or require other corrective actions or timelines to ensure that the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the SDE will conduct a full investigation.
3. **Early complaint resolution (ECR):** The SDE may propose the use of ECR to resolve the complaint. This mutual approach provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular findings of fact and conclusions. The SDE Dispute Resolution Coordinator or a contracted investigator will facilitate a resolution through the development of a written agreement to be signed by both parties. If this process is not successful, the SDE will conduct a full investigation.
4. **Investigation:** If necessary, the SDE will investigate the complaint by conducting interviews and reviewing files, correspondence, and other information. An on-site investigation may occur if necessary.

Section 4. Compliance Activities

The SDE will negotiate or require corrective actions, including timelines, as necessary, for the education agency to achieve compliance.

- A. **Remedies:** The SDE will identify the specific corrective action necessary for the district to achieve compliance. If it is determined that the district has failed to provide appropriate services, the SDE will address:

DUE PROCESS HEARING REQUEST FORM

Please submit any request for a due process hearing to your district superintendent and to the Dispute Resolution Coordinator, State Department of Education, Division of Student Achievement and School Improvement, P.O. Box 83720, Boise, ID 83720-0027. (You may use this form or submit a letter that includes the information below.)

A. General Information: (type or print)

Date of Written Request: _____ Date Received (completed by SDE): _____

Name of Individual Requesting Hearing: _____

Address: _____

City: _____ Zip: _____ Day Phone: _____

Parent/Guardian of Student: _____

Address: _____

City: _____ Zip: _____ Telephone: (Hm) _____ (Wk) _____

Name of District/Agency Hearing Request Is Against: _____

Student Information:**District Information:**

Student Name: _____

District Contact: _____

Address: _____

Address: _____

City: _____ Zip: _____

City: _____ Zip: _____

Telephone: _____

Telephone: _____

School Student Attends: _____

(Complete if the information is available):

Student's Attorney: _____

(Complete if the information is available):

District's Attorney: _____

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface. There is no handwriting or other markings on the paper.

Date _____

FORM FOR FILING A FORMAL COMPLAINT

Please submit any request for a formal complaint to the Dispute Resolution Coordinator, State Department of Education, Division of Student Achievement and School Improvement, P.O. Box 83720, Boise, ID 83720-0027. The alleged violations may not be older than one year from the date the complaint is received by the SDE. (You may use this form or submit a letter that includes the information below.)

A. General Information: (type or print)

Date: _____

Name of Individual Filing the Complaint: _____

Address: _____

City: _____ Zip: _____ Day Phone: _____ Home Phone: _____

Relationship to Student: _____

Name of District /Agency Complaint Is Against: _____

Student Information:

Student Name: _____

Address: _____

City: _____ Zip: _____

Telephone: _____

District Information:

District Contact: _____

Address: _____

City: _____ Zip: _____

Telephone: _____

School Student Attends: _____

(If complaint involves more than one student, please complete the student and district information for each student.)

In the case of a homeless child or youth, provide available contact information:

B. Allegation(s): Describe the specific issue(s) that relate to potential violations of Part B of the IDEA 2004. Provide supporting facts and information for each allegation. (Attach additional pages if needed.)

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C. Resolution: Please provide your suggestions for solving the problem. (Attach additional pages if needed.)

[illegible]

Signature of Individual Filing Complaint

Title or Relationship to Student

Date

Document date:

RESOLUTION SESSION FORM

Page ____ of ____

Student's Name:	District ID:	State ID:	Grade:	Sex:
Native Lang:	Ethnicity:	Birth Date:	Age:	
District:	School:			
Parent/Guardian Name:		Home Phone:		
Address:				
Native Language:		Daytime Phone:		
Parent/Guardian Name:		Home Phone:		
Address:				
Native Language:		Daytime Phone:		
Director:		Daytime Phone:		

The Individuals with Disabilities Education Improvement Act of 2004 requires that options be made available to resolve conflict when a request for a due process hearing is filed. The "resolution session" provides an opportunity for the parent and/or adult student and the district to resolve issues identified in a due process hearing request. A resolution session is a meeting scheduled by the district and involves relevant members of the IEP team and the parent and/or adult student. The attorney for the school district will not attend the meeting unless the parent's/adult student's attorney is present. If requested by both parties, the State Department of Education (SDE) will appoint a neutral facilitator to conduct the resolution session.

A resolution session will be scheduled by the district unless one of the following occurs:

1. Both the parent and/or adult student and the school district mutually agree to participate in SDE mediation.
2. Both the parent and/or adult student and the school district mutually agree in writing to waive the resolution session.

Should a resolution session occur, the 45-day hearing process will not start until up to 30 days have expired, allowing for resolution.

Should the parties mutually waive the resolution session and mutually agree not to participate in SDE mediation, the due process hearing will be scheduled, and the 45-day timeline for completing the hearing will start on the date that the request for a hearing was received.

Please sign below regarding your participation in a resolution session. Unless both the district and the parent and/or adult student waive the resolution session, a meeting will be scheduled. If the district schedules a resolution session and the parent and/or adult student does not attend, the issues cannot be taken to a due process hearing.

Signature	Waive Resolution Meeting	Date
Parent:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Parent:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
District Representative:	<input type="checkbox"/> Yes <input type="checkbox"/> No	

