

What every parent needs to know

Protecting the Educational Rights of Students with Disabilities in Public Schools



A handbook for parents with children in elementary and secondary
public schools in the state of Washington

Office of the Education Ombuds
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Washington State
Governor's Office of the
**Education
Ombuds**
We listen. We inform. We help solve problems.

UPDATE: CHANGES IN SCHOOL DISCIPLINE RULES

In 2016, major changes were made to school discipline law in Washington state that apply to *all* public school students. The changes include:

- new limits on the maximum length of suspensions and expulsions;
- new limits on the reasons students can be suspended or expelled for more than 10 school days;
- new requirements for districts to provide educational services during any suspensions or expulsions; and
- new requirements for culturally responsive and culturally sensitive re-engagement meetings.

Students with disabilities are protected by these new changes, in addition to the protections in special education rules.

When can students be suspended or expelled for more than 10 school days?

Under special education rules, except in special circumstances, schools may not suspend or expel a student with disabilities for more than 10 school days if the conduct was a “manifestation” of the student’s disability or was due to the district’s failure to implement the IEP. Now, under discipline rules that apply to **ALL** students, schools may not suspend or expel **ANY** student for more than 10 school days unless the conduct fits within one of 4 categories of “non-discretionary offenses.” Those categories include:

1. A violation of the prohibition against firearms on school premises, transportation, or facilities;
2. Certain violent offenses, sex offenses, offenses related to liquor, controlled substances, toxic inhalants, certain crimes related to firearms, assault, kidnapping, harassment, and arson;
3. Two or more violations within a three-year period of criminal gang intimidation or other gang activity on school grounds, possessing dangerous weapons on school facilities, willfully disobeying school administrators or refusing to leave public property, or defacing or injuring school property; or
4. Behavior that adversely impacts the health or safety of other students or educational staff.

If the student’s conduct does not fall within one of those categories, the student MAY NOT be suspended or expelled for more than 10 school days.

When does a district have to provide Educational Services?

Under special education rules, if a student with an IEP is removed for more than 10 school days for disciplinary reasons, the district must provide educational services in an “Interim Alternative Education Setting.” The services must allow the student to continue to make progress on his/her IEP goals and to continue participating in the general education curriculum. The setting is determined by

the IEP team. Under the new discipline rules, now, **ALL** students must have an opportunity to access educational services during **ANY** suspension or expulsion, even if it is less than 10 school days.

What kind of meeting is required when a student is suspended for more than 10 days?

When a student is suspended or expelled for more than 10 school days, the school must invite the family and the student to a **RE-ENGAGEMENT meeting** to develop a plan to support the student's successful return to school. Families must have an opportunity to give meaningful input to the plan. Re-engagement plans must be culturally sensitive and culturally responsive. A re-engagement meeting must be held either:

- Within 20 days of the start of the suspension or expulsion if it is for longer than 20 days; or
- No later than 5 days before the student will return to school if the suspension or expulsion is less than 20 days.

For more information about re-engagement meetings, and to find tips for families, check out OEO's page on [Suspensions, Expulsions and Discipline](#)¹ and our Parents Guide: [Discipline in Public Schools](#)², or call us at 1-866-297-2597.

Where you can have an impact:

- **Ask the school how you can get educational services started right away**, even if the student will not be out for more than 10 school days.
- Review the list of "non-discretionary offenses" and **consider whether a long-term suspension or expulsion is permitted** for the kind of conduct involved.
- If the student will be out for more than 10 school days, talk with the school and district about **planning in advance for the student's re-engagement with school**.
- Remember, students with disabilities and their parents have the **same rights to appeal suspensions or expulsions as any student**. The protections in special education rules are in addition to those basic rights. Check out **OEO's Parent's Guide: [Discipline in Public Schools](#)**^{*} for more information.

¹ <http://www.oeo.wa.gov/education-issues-topics/suspensions-expulsions-and-discipline/>

^{*2} http://www.oeo.wa.gov/wp-content/uploads/manual_discipline_public_schools.pdf

TeamChild®

TeamChild is a non-profit agency that was founded in 1995 to work directly with youth who were involved in or at risk of involvement in the juvenile justice system. TeamChild provides civil legal representation and advocacy to help youth secure appropriate educational services, mental health & medical evaluation and treatment, safe and stable living situations, and other community based supports. TeamChild currently has offices in King, Pierce, Snohomish, Spokane and Yakima counties. TeamChild also provides a wide range of community legal education and training statewide for lawyers, advocates, families and youth. For more information about TeamChild, visit www.teamchild.org.

Office of the Education Ombuds

The Office of the Education Ombuds (OEO) is an agency within the Governor's Office that provides information regarding elementary and secondary public education, promotes family and community involvement in schools, helps resolve problems between families and educators, and makes recommendations to public officials.

OEO promotes equity in education and the academic success of all students attending elementary and secondary public schools in Washington State.

All of OEO's resources and services are free and available Monday through Friday from 8 am to 5 pm. For consultation over the phone with an Education Ombuds or to receive resource materials about other education issues, call toll-free 1-866-297-2597. Interpreter services are available in over 100 languages. For additional information, visit OEO's website at www.oeo.wa.gov. Follow us on facebook at WA Ed Ombuds.

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This publication is an adaptation of portions of the manual, *Make a Difference in a Child's Life: A Manual for Helping Children and Youth Get What They Need in School*, written and produced by TeamChild in partnership with Casey Family Programs. For a copy of the *Make a Difference* manual, visit www.teamchild.org or call TeamChild at (206) 322-2444.

This publication provides basic information on education law in Washington State. While it provides information about the law, it is not legal advice, and is not in any way intended to be a substitute for legal advice or representation. If you need legal advice, please contact a lawyer who can look at the specifics of a particular situation and apply the law.

Keep in mind that laws change and that the law explained in this publication may have changed since it was written. Consult with an attorney who knows this area of law to make certain that it is still valid.

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Protecting the Educational Rights of Students with Disabilities in Public Schools

Protecting the Educational Rights of Students with Disabilities in Public Schools: 3 Quick Tips for Parents

- ◆ A problem that interferes with a child or youth's ability to learn may be considered a disability under the law.
- ◆ Every child and youth with a disability that affects learning has a right to instruction that is specially designed to meet his or her needs, in a school environment that is as much like a general education classroom as possible.
- ◆ Students cannot be punished for behavior that is the result of their disabilities.

I. Introduction

When it comes to discipline, students with disabilities who are eligible for special education services are also entitled to unique protections that are more extensive than the protections that apply to general education students.

Is your child having a difficult time in school? If your child has a disability, or you suspect that he or she has special needs, there is help available. All children and youth between the ages of 3 and 21 who have an impairment that interferes with their ability to learn can be eligible for additional support and services to help them achieve a meaningful education.

When it comes to discipline, students with disabilities who are eligible for special education services are also entitled to unique protections that are more extensive than the protections that apply to general education students. While students with disabilities do have all of the same rights as other students (see the Office of the Education Ombuds' publication on *Discipline in Public Schools* for more information) they also have additional, extensive rights that protect them in discipline situations. The law recognizes that many students have disabilities that cause or at least are related to problem behavior. The law seeks to ensure that students with disabilities are not excluded from school and that their disabilities and any resulting behavior are handled in an appropriate manner. To provide that protection, there are very specific limitations on how a student with a disability can be disciplined.

If you would like to read the laws and statutes cited in this publication, visit the Office of the Education Ombuds' website at www.oeo.wa.gov.

II. Legal Protections for Students with Disabilities

It's important to recognize that having a disability does not mean that a child isn't smart or can't learn. It simply means that he or she needs extra help in certain areas.

There are two primary laws that protect students with disabilities. The two laws are commonly referred to as "Section 504" and the "IDEA."

What is a disability?

A disability is an impairment that interferes with a child's ability to learn.

In general, the term "child or student with a disability" is used to describe a child who has mental, physical, or emotional impairments that affect his or her ability to learn. To qualify for extra services in school, a student's impairment must also meet the definition of disability under special education laws.

It's important to recognize that having a disability does not mean that a child isn't smart or can't learn. It simply means that he or she needs extra help in certain areas.

Why do schools have to provide services for students with disabilities?

There are federal and state laws that protect the educational rights of students with disabilities.

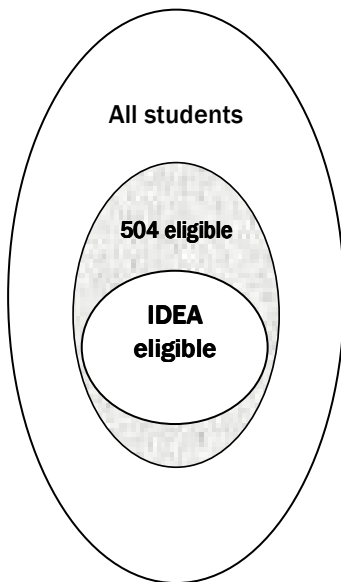
There are two primary laws that protect students with disabilities. The two laws are commonly referred to as "Section 504" and the "IDEA." In 1973, the U.S. Congress passed Section 504 of the Rehabilitation Act, which made it illegal to discriminate against people with disabilities in programs receiving federal funds, such as public schools. Two years later, Congress passed the Education for all Handicapped Children Act. The federal law is reenacted every three years. It was most recently changed in 2004, and is now called IDEA or IDEIA (the Individuals with Disabilities Education Improvement Act). In this publication, we refer to the law as IDEA.

In addition, in 1991, Congress passed the Americans with Disabilities Act, commonly referred to as the ADA. Title II of the ADA defines disability in the same manner as Section 504. When the ADA and Section 504 both apply, Section 504 is usually used because it has regulations that are more specific for schools.

Section 504 and IDEA were enacted to ensure that students with disabilities would be provided with meaningful educational experiences.

What is the relationship between IDEA and Section 504?

Under both laws, school districts are required to provide disabled students with a free appropriate public education, referred to as FAPE. This means that districts must provide a range of services to meet the individual needs of students who have trouble succeeding in school because of a disability.



Where you can have an impact

If you think that your child is having problems in school but you are not sure why, don't feel like you have to know which category of disability applies. Just be sure to tell the school your observations and concerns.

Section 504 provides services for a broader group of students than does IDEA 2004 because it has a more expansive definition of “disability.” Therefore, if a student meets the eligibility requirements for IDEA, he or she is also eligible for the protections of Section 504. But not all students with disabilities who are entitled to Section 504 services are eligible for special education under IDEA.

One way to think about the relationship of the two laws is to think of eligible students as smaller groups of students within a larger group.

To the left is a picture with a large circle representing *all* students. The medium-size circle inside the big circle represents the students who have disabilities and qualify for Section 504 services. Of that group, a smaller group is also qualified for services under IDEA.

What is considered a disability under IDEA and Section 504?

Disability is defined differently under IDEA and Section 504.

1. Disability under IDEA

IDEA provides services to children who fall within one or more of the following categories of disability and who need special education and related services to make academic progress. The categories are:

- › Mental retardation
- › Hearing impairment (including deafness)
- › Speech or language impairment
- › Visual impairment (including blindness)
- › Serious emotional disturbance
- › Orthopedic impairment
- › Autism
- › Traumatic brain injury
- › Other health impairment
- › Specific learning disability (difficulty with thinking, reading, writing, spelling or doing math)
- › Developmentally delayed (age 3-9).

The state regulations (Washington Administrative Code or WAC) give definitions for each of these categories. Washington law also defines two additional categories of disability: deaf-blindness and multiple disabilities.

2. Disability under Section 504

Section 504 provides services and accommodations if a child has a physical or mental impairment that substantially limits a major life activity. “Major life activities” under Section 504 include:

- › Learning
- › Walking
- › Seeing
- › Hearing

- Speaking
- Breathing
- Caring for oneself
- Performing manual tasks.

Why does this publication focus on the rights of students under IDEA?

This publication uses IDEA as a framework for discussing children's rights to special education and services because the rights under IDEA are more clearly defined. See Section IX of this publication for an outline of Section 504 rights.

What are accommodations and modifications?

Accommodations are different than modifications. While the Individuals with Disabilities Education Act (IDEA) and its regulations do not define accommodations or modifications, there is some general agreement as to what each is, as well as the difference(s) between the two:

Accommodations are provided when the student is expected to reach the same level of proficiency as their non-disabled peers. An accommodation allows a student to complete the same assignment or test as other students, but with a change in the timing, formatting, setting, scheduling, response and/or in any significant way what the test or assignment measures. Examples of accommodations include a student who is blind taking a Braille version of a test or a student taking a test alone in a quiet room.

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Modifications are provided when the student is NOT expected to reach the same level of proficiency as their non-disabled peers. A modification is an adjustment to an assignment or a test that changes the standard or what the test or assignment is supposed to measure. Examples of modifications include a student completing work on part of a standard or a student completing an alternate assignment that is more easily achievable than the standard assignment.

Examples of modifications include a student completing work on part of a standard or a student completing an alternate assignment that is more easily achievable than the standard assignment.

For more helpful resources for school accommodations and modifications visit:

<http://www.k12.wa.us/SpecialEd/Families/IEPs/Accommodations.aspx>

III. The Role of Parents under IDEA and Strategies for Non-Parents

Many rights under IDEA and Washington State special education law can be asserted only by the parents of students with disabilities. A wide variety of caregivers fit into the definition of parent under IDEA and the state special education law. Because this publication focuses on IDEA and state special education law rights, this Subsection talks about the definition of parent and how advocates, like relatives, family friends, and community members, who do not meet the definition can gain legal authority to act in the place of or for a parent.

Who is a “parent” or “guardian” under IDEA?

IDEA defines “parent” to include the following people:

- The birth or adoptive parent of a child
- The foster parent of a child
- A guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child, such as an individual given authority to make educational decisions by a judge (this does not include the caseworker if the child is a ward of the state.)
- A person acting in the place of a parent, such as a grandparent or relative with whom a student with a disability lives, or someone who is legally responsible for the student’s welfare
- A surrogate parent appointed by the district (see information below about surrogate parents).

If there is more than one person in a child’s life who meets IDEA’s definition of parent, the child’s birth or adoptive parent has educational decision-making authority unless the birth or adoptive parent’s rights are limited by a court order or compromised in some way.

What can I do if I want to assert a student’s special education rights but I do not fit the definition of parent under IDEA?

There are many things you can do to help a student even if you aren’t his or her parent. You can use your advocacy skills to encourage the school district to create and maintain good special education services for a student. However, there may be times in your advocacy when a conflict might arise that can’t be resolved directly with the school district. Since many IDEA rights can be asserted only by a parent or guardian as defined by the IDEA laws, you might find yourself running into a brick wall because you do not have legal authority to make educational decisions on behalf of the child.

Below are some ways that you can obtain the authority to enforce a student's special education rights when a parent or guardian is not available.

1. Obtain a Power of Attorney from the student's parents.

A Power of Attorney is a simple legal document that allows a person to give authority for someone else to act on his or her behalf. A student's parent or legal guardian could use a Power of Attorney to give someone else (such as a caregiver, relative, or foster parent) the authority to act as though he or she were the parent. A Power of Attorney form can be purchased at most stationery stores.

2. Get appointed as a surrogate parent.

In certain situations (such as when the parents are not known, the district can't locate the parents after reasonable efforts, or the student is a ward of the state or an unaccompanied homeless youth) school districts must appoint someone to make educational decisions for a student with a disability. This person is called a "surrogate parent." Talk to the school district to find out the district's process for appointing surrogate parents.

3. Request educational decision-making authority through the dependency, CHINS, or other family court process.

If a judge has authority to make decisions about a child's care, he or she can order that someone other than the parent should have the power to make educational decisions. If there is a lawyer for the child, talk to him or her about asking the judge to appoint you to make educational decisions.

IV. Evaluation for Services under IDEA

To conduct a special education evaluation, the district must decide whether to evaluate a student, and then get permission or consent from the student's parent to perform the evaluation.

Districts are required to test in all areas related to a student's suspected disability, so make sure you describe all of the problems.

How does a district locate students who need special education services?

Under IDEA and state special education law, districts have an affirmative duty to identify all students residing in the district who might need special education services. This duty is called "Child Find." Districts are required to have policies and procedures in place to ensure that students with disabilities are identified, located, and evaluated.

How can my child be evaluated for special education?

Your child needs to be referred to the school district for a special education evaluation.

To conduct a special education evaluation, the district must decide whether to evaluate a student, and then get permission or consent from the student's parent to perform the evaluation. School districts must evaluate a student in every area related to his or her suspected disability. The evaluation must be done at no cost to the student or family. There are three basic steps to make an evaluation happen:

- Step 1** Someone makes a request that the student be evaluated.
- Step 2** The district decides that an evaluation is necessary.
- Step 3** Consent to evaluate is given to the district.

Can I make a request for a special education evaluation for my child?

Under Washington law, the following people or entities can refer a student for evaluation:

- › Anyone who meets the definition of parent
- › School district
- › Another public agency
- › Others persons knowledgeable about the child.

How do I make a referral for an evaluation?

1. Do it in writing.

A referral must be in writing, unless the person making the referral is unable to write. It can be handwritten and simple. Make sure to date it and keep a copy for your records.

Where you can have an impact

You can keep things on track by making sure that timelines are met. Note that when the laws or regulations give timelines, “days” can mean different things.

Calendar day means every day on the calendar, including weekends and holidays.

School day means every day of the school year on which students are engaged in educational activity.

Business day means Monday through Friday, except for federal and state holidays unless the holidays are specifically included.

Be sure to check the definition of “day” as it applies to your situation.

2. Don't worry about the referral letter being perfect.

Do worry about getting it done as soon as possible. Nothing will happen until a referral is made, and the date that the district receives the referral triggers the timelines within which the district must act.

3. Request that the school evaluate for both IDEA and Section 504 eligibility.

If the student is not eligible for special education under IDEA, he or she may be eligible to receive services under Section 504.

4. Be specific about what kinds of problems you think your child has.

Districts are required to test in all areas related to a student's suspected disability, so make sure you describe all of the problems. For example, if you think your child has difficulty reading and has emotional problems that need to be addressed, ask that both areas be evaluated.

5. Use examples.

Include your own observations to describe why you think your child may have a disability. If you have them, provide documents that indicate that your child may have an impairment, such as letters from doctors or mental health providers.

6. Send the referral to someone in the school or district who you think has authority and will act quickly.

Although the law does not specify a particular person or office to whom a referral should be sent, it is a good idea to send it to someone you think will act on it. For example, you might choose to send your referral letter to the school principal or the district's special education director.

What happens after the district receives a referral for special education evaluation?

The district has 25 school days to decide whether to evaluate a student. (There are no evaluation timelines in Section 504. If the district doesn't have a 504 evaluation policy, use IDEA timelines as a guide.) In making its decision to evaluate, the district must review any existing educational and medical records in the school files or provided by a parent or caretaker.

Once the district has made a decision about whether to evaluate, the district must send the parent or guardian a written notification of the decision.

If the district decides not to evaluate, you can challenge the decision. See Section VII of this publication for a description of the various ways to resolve disputes with the district.

What consent does the district need to do the evaluation?

Before the district can evaluate a child for the first time, it must ask for permission from a parent. If the parent refuses, the district may request a hearing to override the parent's refusal.

What happens once the district gets consent to do the evaluation?

The school district has 35 school days to evaluate the student.

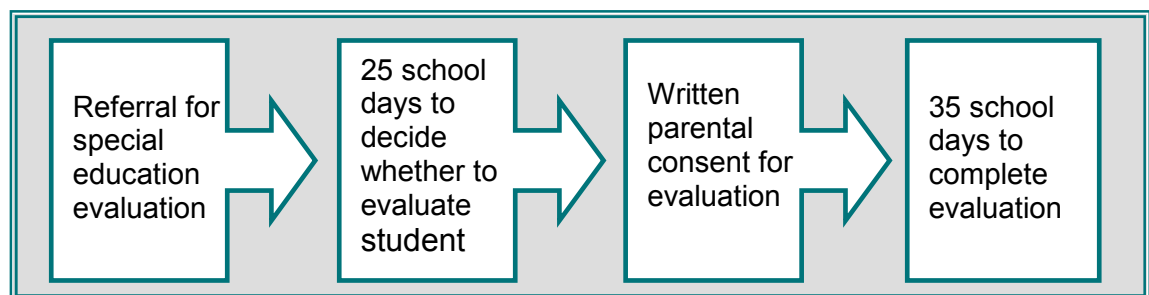
Washington law states that once the district has permission to evaluate for special education eligibility, it has 35 school days to:

- Fully evaluate the student
- Decide whether the student has a disability
- Determine if he or she needs special education services.

The District and the parent can also agree to another timeframe, as long as the District documents the parent's agreement. For example, a parent may wish to agree to extend the timeline to wait for the results of an independent educational evaluation.

The 35 school day timeline is waived if the parent repeatedly refuses to bring the child to the evaluation or if the child moves between districts during the assessment, as long as the new district is making sufficient progress to ensure the evaluation is completed promptly and the parent and new district agree on a timeline to complete the evaluation.

Washington State Timelines for Evaluation



What happens if my child moves during the evaluation process?

If a student moves to a different district in the same academic year, the student's prior and new school must coordinate as quickly as possible to ensure the special education evaluations are completed promptly. Washington State law requires that the new district begin obtaining student records when the student is enrolled and that the student's prior school district provide vital information within 2 school days and school records as soon as possible.

Where you can have an impact

The evaluation should be free to students and their families. If the school district doesn't have staff to do a complete evaluation (like a medical exam), the district must still pay for it. Make sure that the evaluation is complete. The evaluation must also be comprehensive enough to identify your child's instructional needs in all areas if your child is found eligible for special education so that an IEP may be written.

What is the scope of the special education evaluation?

*The district must evaluate a child in **all** areas in which a disability is suspected.*

The special education evaluation has two purposes: 1) to determine eligibility for services, and 2) to identify the needs and strengths of the student so that an individualized education program can be developed. The fact that the district must evaluate in ALL areas of suspected disability is a crucial, important point. Sometimes a student will have problems in more than one area. A district might stop the evaluation once a student is found eligible for special education in one area. If the evaluation has dealt with only one area, there might not be enough information about all of the student's needs when it comes time to develop the individualized program.

In order to get the most appropriate education plan for your child, pay careful attention to the district's evaluation efforts to make sure that they are comprehensive. Remind the district of its obligation to evaluate in all areas.

What areas may be evaluated and what kinds of tests will be used?

The district may evaluate a child in the following areas:

- Health (physical and mental health)
- Vision
- Hearing
- Social and emotional health
- General intelligence
- Academic performance
- Communication, speech, and language
- Motor abilities.

The tests used for the evaluation should be valid and appropriate for the area being tested. This means that the tests need to measure accurately the things they are intended to measure. For example, the Wechsler Intelligence Scale for Children IV (called the WISC IV) is a commonly used test that is designed to measure general intelligence. In general, results of the WISC IV should not be used to assess a child's emotional status because it is not designed for that purpose.

Tests and evaluation materials must be selected and administered so as not to discriminate on the basis of race, culture or sex. In addition, tests and materials must be given to the student in the student's native language or other mode of communication (such as sign language), unless it is not feasible to do so.

What can you do? Ask questions about the tests. Although the jargon of assessments can be intimidating, by asking questions you can understand:

- The purpose of the test, and
- Whether the type of test used seems right for your child.

Ask one of the assessment team members to explain the tests to you in plain language. Make sure that the test can accurately measure the ability it is supposed to measure. For example, some tests have age, reading skill and language ability requirements in order for results to be valid. If your child is too young for a particular test, can't read at the level necessary for the test, or if the test is not given in your child's first language, then the results of the test might not be useful and might be invalid.

Who will do the testing?

Professionals who are qualified to conduct testing in the area of suspected disability.

The school psychologist can conduct many tests. But some areas of disability will need a psychologist with special training, a psychiatrist, a physical therapist/speech therapist, a medical doctor, or some other person with expertise.

If district staff is not able to do a complete evaluation, the district may need to seek outside expertise to complete the evaluation process. These outside evaluations should be paid for by the district. The district might ask if a student or family has private insurance or other funding that would cover the cost of outside evaluations. If a student or family doesn't want to use up insurance benefits or other sources of funding, the district must still arrange and pay for the outside testing necessary to complete the evaluation.

What other ways can the district gather information about my child's eligibility and need for special education?

The district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about a student.

Gathering information may include observation of the student and interviews of family, caregivers, and others who know the student.

IDEA and the No Child Left Behind Act emphasize the use of in-class assessments for gathering information. These in-class assessments are often called curriculum based measures (CBMs). You should ask if CBMs were used with your child so that all members of the evaluation team can review these assessments because sometimes CBMs are completed by the general education teacher and not shared with special education staff.

Where you can have an impact

Upon request, the district must provide parents with information on where to go for an independent evaluation. But keep in mind that the independent evaluation can be done by someone who is not on the district's list.

Once an independent evaluator is chosen, make a point to talk to the evaluator about areas of concern. Ask that the evaluation results include concrete recommendations for educational programming.

What if I disagree with the scope or results of the evaluation?

You can request an independent educational evaluation at the district's expense if you disagree with the evaluation.

- If you have concerns about the scope or results of the evaluation, there are things you can do:
 - Talk with the district and voice your concerns. Ask the district to do additional or further evaluation
 - Find some other means for an evaluation to be performed (Does your child have medical coverage that would pay for an evaluation in the areas of concern? A district must consider outside evaluations.)
 - Ask for an independent educational evaluation at the district's expense, and get a list of evaluators from the district
 - Consider more formal dispute resolution options, such as mediation, a complaint, or a due process hearing. See Section VII of this publication for more information on dispute resolution.

What happens if I request an "independent educational evaluation at public expense?"

The district must either grant the request or initiate a hearing to show that its evaluation is appropriate.

An independent educational evaluation means an evaluation conducted by a qualified person who is not an employee of the district that is in charge of the education of the student. Upon request, the district must give parents information about where an independent evaluation can be obtained. The parents get to choose who does the evaluation.

The district has 15 calendar days to ask for a due process hearing if it opposes the request for an independent evaluation. If the district doesn't request a hearing within 15 calendar days, then it must pay for the independent evaluation or make sure that one is provided at no cost to the student or family.

If the hearing officer determines that the district's evaluation is appropriate, the parent still has a right to an independent evaluation, but the district does not have to pay for it. The district must still consider the results of the independent evaluation even if it doesn't have to pay for it.

V. Qualification for IDEA Services

Where you can have an impact

Ask that a person from the district's Section 504 program be made part of the eligibility determination group. If the group decides that the student is not eligible for special education under IDEA but may be eligible under Section 504, this person can help identify services that can be provided under Section 504.

How does a district decide if my child is eligible for special education, and who takes part in the decision-making?

The district must make an eligibility decision based on the evaluation.

Once the evaluation is completed, the district must produce an evaluation report that states the following:

- Whether the student has a disability
- How the disability affects the student's progress in school
- What services are recommended to address the student's individual needs.

Whether a student is eligible for special education is determined by a group composed of the student's parent(s) and qualified professionals selected by the school district.

Parents have a right to notice of meetings and to participate in all meetings with respect to the identification, evaluation, and delivery of services to the student. Parents must also receive written notice of any decision made at such a meeting.

How will I know if the student is eligible for special education?

The district sends you notice.

The district must provide the student's parent with a copy of the evaluation report and documentation of its decision about eligibility.

What can I do if my child is denied eligibility for special education?

You can challenge the district's decision.

If you think your child has been wrongly denied eligibility for special education services, you can try to change the district's decision by:

- Discussing the situation with school personnel
- Requesting a mediation conference
- Filing a complaint or
- Requesting an IDEA due process or 504 hearing.

Talking things through with school officials—including special education staff, the principal, your child's teachers and counselor—is the best way to start dealing with any problem. If discussing the issue doesn't get you anywhere, consider using more formal dispute resolution. Anyone can file a citizen complaint on behalf of a student. A parent can also request a due process hearing or mediation.

VI. Creating a Special Education Program

What is an individualized education program or “IEP?”

An IEP is a detailed description of the instruction and services a student with disabilities needs in order to receive a meaningful education.

The individualized education program, or IEP, is a document that describes the specific special education services that a child will receive. An IEP is a legal document and students are entitled to receive all of the services outlined in the IEP. An IEP should be tailored to a child and his or her educational needs, and it can include creative strategies for delivering services.

The IEP must include:

- ☒ A statement of the student’s current levels of educational and functional performance—how the student is doing
- ☒ Annual educational goals
- ☒ A statement of how a child’s progress will be measured and when periodic reports on the child’s progress will be provided
- ☒ Descriptions of all of the services a child will receive both in the general education classroom setting and in a special education setting
- ☒ A description of “related services” the student will receive such as speech and language therapy, transportation, and counseling
- ☒ A description of all program modifications to be provided, such as modified reading materials, a reader for exams and other assignments, a tape recorder for lectures, etc.
- ☒ A determination of whether the student needs assistive technology devices and services. Assistive technology means equipment or systems that enhance or maintain the capabilities of the student and can include commercially produced items such as a computer or custom keyboard
- ☒ A decision on eligibility for adaptive PE, and if eligible, how it will be provided
- ☒ A description of how the student will participate in general education classes and activities, and if not, why
- ☒ Any accommodations the student will have for taking extended school year services, if determined necessary by the IEP Team
- ☒ Aversive interventions, if any, required for the student
- ☒ The location, duration, and frequency of services to be delivered
- ☒ Dates on which services will begin
- ☒ Beginning not later than the IEP to be in effect when the student turns 16, or younger if determined appropriate by

the IEP Team: 1) appropriate measurable postsecondary goals and 2) transition services needed to assist the student in reaching those goals.

In addition, students who take alternate assessments must also have the following included in their IEP:

- ☒ A description of benchmarks or short term objectives
- ☒ A statement of why the student cannot participate in the regular assessment
- ☒ A statement of why the particular alternate assessment is appropriate for the student.

How soon after the initial evaluation will my child get an IEP if he or she is eligible for special education?

Within 30 calendar days of the decision that a student is eligible for special education, an IEP meeting must be held.

Once a school district determines a student is eligible for special education services, the district has 30 calendar days (**not** school days) to hold an IEP meeting and develop an individualized plan for the student.

Who develops the IEP?

The IEP Team is made up of people who can help design the student's education program.

A team of people is responsible for writing and approving the IEP. The following people are part of the IEP Team and generally should be present at all IEP meetings:

- ☒ Parent or guardian
- ☒ At least one of the student's general education teachers (if the student is or may be participating in the general education environment)
- ☒ At least one of the student's special education teachers or, where appropriate, special education provider
- ☒ A district representative who is qualified in the education of children with disabilities and is knowledgeable about the general curriculum and available resources (such as a director of special education)
- ☒ An individual who can interpret evaluation data (can be one of the above people or the school psychologist)
- ☒ At the discretion of the parent or district, others who have knowledge or special expertise regarding the child
- ☒ The student (if appropriate)
- ☒ Transition service providers (such as vocational specialists or someone from an outside agency such as the Division of Developmental Disabilities (DDD)).

Other people can be on the IEP Team. The law specifically allows others who "have knowledge or special expertise regarding the child" to participate on the IEP Team. This means that the IEP

Advocacy Tip

To fully understand how your child is doing in school, it may be a good idea to hear input from ALL of the adults working with your child. A full IEP Team may provide a more accurate picture of how your child is doing in school. If you meet the definition of parent under IDEA, you do not need to agree to excuse IEP Team members if you feel it is necessary to have every member of the team present. Refusing to consent to the team member's excusal in writing means that all of the IEP Team members must be present.

Advocacy Tip

If you need an interpreter to fully participate in your child's IEP meeting, make sure to ask for one. The school must arrange for an interpreter to be present.

Team can include relatives, family friends, community members, therapists, and advocates. The district or the parent decides who has knowledge or expertise regarding the child. If there are people that you think should be included in your child's IEP Team, be sure to tell the school so they can be invited.

However, under IDEA and state special education law, members of the IEP Team may not be required to be in attendance in all circumstances. A member of the IEP Team listed above is not required to attend the IEP meeting if the member's area of curriculum is not a subject of the meeting and the parent and the school district agree in writing that his or her attendance is not necessary.

For example, a speech and language provider may not be required to attend if speech services are not the subject of the IEP meeting and the parent and school district both agree in writing that the speech and language provider does not need to attend because the purpose of the meeting is to discuss the student's behavior intervention plan only.

Furthermore, members of the IEP Team may be excused from the meeting EVEN IF the meeting involves a modification or discussion of the team member's area if the parent and the school district agree in writing. However, the excused IEP Team member must submit written input into the development of the IEP to both the parent and the school district prior to the meeting.

How do I know when the IEP Team is meeting?

The district must notify parents of the purpose of the IEP meeting, the time and location, and who will be attending. The district must give notice early enough to make sure that the parents have an opportunity to attend. The meeting should be scheduled at a mutually agreed upon time and place. If the parent and the school district agree, meetings can also be held by telephone or video conference.

What can I contribute to the IEP?

Input from parents and others who know the student and care about his or her success is key to creating an effective special education program. Parents are an essential part of the IEP Team and may have some great ideas about other useful people to include. The IEP Team must consider the limitations when creating a plan. You should let the school know if there are other people you think can contribute to this process.

An important part of your role as an advocate is to analyze the educational program and services being offered by the school district. For example, are the goals and objectives reasonable given your understanding of your child's abilities? Are the kinds of services recommended by the district going to make a

difference for your child? If you have suggestions for improving the education plan, you should voice them in the IEP Team meeting.

You can also add a fresh perspective and creativity to the process. Think about ways to engage your child that the educators may not have considered. For example, if a reward of a special activity or sports time motivates your child to do chores at home, then a similar reward for completing assignments could be put in place at school. Or maybe you know that your child has a difficult time when there are a lot of distractions, people, and noise. You could suggest that your child change classes before or after the rest of students do.

Where you can have an impact

There may be reasons an IEP Team meeting should be requested between annual reviews, such as:

- › Services identified in the IEP are not being delivered
- › Your child's needs have changed
- › Your child's placement has changed.

Ask for an IEP meeting if you feel that the IEP Team needs to discuss or change your child's program. School districts may be reluctant to schedule multiple IEP meetings in one year, but remember there is no prohibition on holding an IEP meeting more frequently than one time per year.

How does the IEP address behavior issues?

The IEP should include a functional behavior assessment and a behavior intervention plan if behavior problems exist.

For a student whose behavior gets in the way of his or her learning or that of other students, the IEP should provide goals and objectives for improving behavior and strategies for addressing the problem. It is important to remember that a student's behavior may be related to his or her disability. The IEP should anticipate behavior problems and create effective ways to respond to those problems before they occur.

When does an IEP get reviewed or revised?

At least once a year, but more frequently if an IEP Team member requests it.

IEPs should be reviewed at least once a year. However, a district must follow an IEP even if it is past due for review. At the end of a year, the IEP Team must meet to review the education program and to determine whether the student's annual goals are being achieved.

The IEP must be revised if the student has not shown academic progress or new information about the student is made available. The IEP should also anticipate a student's changing needs as he or she matures.

The IEP can also be reviewed at any time at the request of a team member or when circumstances have changed.

However, under IDEA and state special education law, changes can now be made to a child's IEP after the annual review meeting without convening an IEP meeting if the parent and the district agree to do so. In this case, a written document can be used to amend or modify the child's IEP. At the parent's request, the school district must provide the parent with a revised copy of the IEP that includes the amendments. If you think that the IEP or your child's special education services have changed, ask the District for a copy of the most recent IEP including any written amendments that have been made through agreement.

Where you can have an impact

If your child's performance is consistently low or a new problem is discovered, you should request an IEP Team meeting to discuss the need for a reevaluation.

Under IDEA, school districts are also encouraged to reduce the number of IEP meetings held for each student per year by encouraging the consolidation of IEP Team meetings.

What if changes are made to my child's IEP without my permission?

Talk to the school right away about your concerns.

You are part of the IEP Team and must be included in all decisions about your child's special education programming. If you are unable to resolve a disagreement informally by talking to school staff, read Section VII Dispute Resolution in this publication for more options.

Once my child qualifies for special education, is there any further evaluation?

Yes, students with disabilities should be evaluated at least once every three years, and more often if necessary.

Although the IEP must be reviewed once a year, reevaluations of students with disabilities need not occur that frequently. Reevaluations must occur at least once every three years. A parent and the school district may agree that a three year reevaluation is not necessary. However, these three year evaluations often give parents and school districts valuable information on how a student is doing. Imagine the changes that a student experiences in the three years from grade school to high school! Think carefully before agreeing not to re-test your child because many things may have changed in the three years that have passed since the last evaluation.

A student can be reevaluated sooner if the school district determines that the educational and service needs of the child warrant a reevaluation (this includes circumstances where the child has made improvement) or if the parent or the teacher requests a reevaluation. However, reevaluations may not occur more frequently than one time per year unless the parent and the district agree that an evaluation is necessary.

The purposes of a reevaluation are to determine:

1. Whether the student continues to meet eligibility criteria
2. What additional services are needed to meet the goals of the IEP
3. The present levels of academic achievement and related developmental needs of the student.

The IEP Team must review the existing evaluation data for the student and decide what additional testing, if any, is needed to address the three issues listed above.

Where will my child with disabilities receive services described in his or her IEP?

Students with disabilities must be educated in the least restrictive educational environment - and that may mean a general education class.

An essential principle of IDEA is that students with disabilities should be included in the general education program as much as possible and not excluded or educated separately.

Children with disabilities have the right to be educated in the **least restrictive environment**. This means that an IEP Team must consider educating and providing services to a student in the same setting as students without disabilities for academic, non-academic, and extracurricular activities. A student with disabilities can be removed from the general education classroom setting only if the needs are so severe or disruptive that he or she cannot make educational progress, even with extra support and services in the general education classroom.

Not all students with disabilities can succeed in a general education classroom without support. Some students need individual help from a teacher's aide in the class, or modifications of curriculum, materials, or methods of instruction. Other students require a different setting entirely, such as a special day school or home instruction.

Every school district must make sure that a range of educational settings is available for students with disabilities since some students with disabilities need more than can be offered in a general education setting. Students must be educated in the educational setting that is closest to the general education classroom, but will still allow the student to make academic progress.

This range of educational settings is sometimes called a continuum of placements and can include the options described in the chart to the left.

What happens if my child has an IEP and we move during the school year?

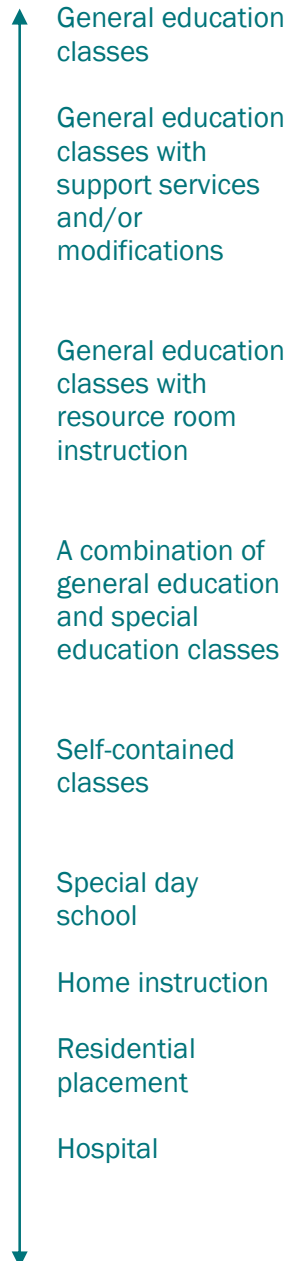
1. Moves within the state

The new school district must provide the student with services comparable to those outlined in the IEP from the former district until the new district either adopts the old IEP or develops a new IEP.

2. Moves out of the state

The new district in the new state must provide the student with services comparable to those outlined in the IEP from the former district until the new district conducts an evaluation, if necessary, and develops a new IEP.

Least Restrictive



Most Restrictive

In both circumstances, the new school must take reasonable steps to promptly obtain the child's special education records and the previous school must promptly reply to the request for records.

Can my child with disabilities receive special education services during the summer?

Yes.

1. Extended school year (ESY) services

A student with disabilities may receive special education services during the summer if the IEP Team decides that the services are necessary in order for the student to get a meaningful education. Eligibility for extended school year services can be based on the following factors:

- The likelihood that the student will lose skills over the summer
- Whether a summer program is necessary for the student to meet the annual IEP goals
- A recommendation from a professional
- The student's educational history.

School districts are required to develop criteria for IEP Teams to use when determining a student's need for extended school year services. If you think your child requires extended year services, ask for a copy of the district's criteria.

If a summer program is provided, it has to meet the goals of the IEP. In other words, participation in the general education summer school courses offered to all students may not be enough. If a student's IEP provides for a one-on-one aide during the school year, he or she has to be provided with one-on-one help during the summer as well. An extended school year program must be provided at no cost to the student.

If the district does not have an appropriate summer program for a student who qualifies for extended school year services, the district should create one or pay for the student to participate in a program offered by another school district or a private organization. The district must pay transportation and other costs associated with the extended school year program.

2. Accommodations and services in general education summer school

If a student with disabilities does not qualify for ESY services but signs up for the district's general education summer school program, the school should still provide accommodations and specialized instruction to the student. Ask for these services under IDEA or Section 504 if your child needs additional help in order to participate in the program.

Can a special education program help my child transition from school into adult life?

Yes, special education must provide transition services to students beginning at least by age sixteen.

Special education provides services to all students with disabilities to help them prepare for adult life. These services, called “transition services,” are designed to promote movement from school to post-school activities, including college and other post-secondary education, vocational training programs, independent living programs, adult services, and supported employment.

School districts must start transition planning for older students, beginning no later than the first IEP to be in effect when the student is 16. This means that the school district must address transition planning at the annual IEP meeting prior to the student’s 16th birthday. After transition is addressed, the IEP must include appropriate, measurable post secondary goals related to training, education, employment and, where appropriate, independent living skills and outline the transition services, including courses of study, the student will need to reach these goals. These goals must be based upon an age appropriate transition assessment. The kinds of transition services a student receives should take into account his or her interests and preferences and the skills he or she needs to acquire.

VII. Dispute Resolution

What can I do to resolve a dispute with the school district?

Meet with the district, request mediation, make a complaint or file for a due process hearing.

In the course of advocating for your child with a disability, you may at some point find yourself disagreeing with the school district. Where possible, it is always a good idea to try to first solve the problem by talking with members of the IEP Team or other district officials. But if that approach doesn't work, there are several methods for resolving disputes that are set up by law.

Formal complaint procedures, mediation, and due process hearings are available to parents and schools to resolve disputes about special education, including disagreements about:

- The identification of a student as disabled
- The evaluation of a student
- The delivery of special education services
- The educational placement of a child.

1. Complaints

There are two formal complaint processes that are available to anyone if there is a disagreement about the special education (IDEA or 504) program of a student.

a. Citizen Complaint to the Washington State Office of the Superintendent of Public Instruction.

What is a citizen complaint?

A citizen complaint is a way to have disagreements between students and districts resolved by an outside agency. Citizen complaints should be filed with the Office of the Superintendent of Public Instruction (OSPI) when someone believes that an educational entity (including the state, a school district, or a public or private school) has violated the requirements of IDEA or state special education regulations.

Who can file a citizen complaint?

Any person or organization can register a complaint with the Office of the Superintendent of Public Instruction.

What are the requirements of the citizen's complaint?

The complaint must:

- Be in writing
- Be signed by the person making the complaint
- Include a statement that the educational entity has violated special education law within the last year

Citizen Complaint

A citizen complaint is a way to have disagreements between students and districts resolved by an outside agency.

Here is where you can find OSPI's citizen complaint information:
<http://www.k12.wa.us/SpecialEd/DisputeResolution/Complaints.aspx>

Where you can have an impact

When you make a citizen complaint, be sure to watch the timelines carefully. If OSPI or the educational entity fails to act within the appropriate time frame, you have grounds for another complaint.

Be sure to include relevant school records with numbered pages with your complaint so that the records are easier to refer to.

A citizen's complaint should be filed within the school year in which the violation has occurred.

Download a "Request for Special Education Citizen Complaint" form at http://www.k12.wa.us/specialed/pubdocs/CCCitiz_Complaint_ReqReqR_Form.pdf

For more information about dispute resolution visit:

<http://www.k12.wa.us/SpecialEd/DisputeResolution/default.aspx>

- State the facts of the violation
- List the name and address of the person making the complaint and
- List the name and address of the educational entity.

If the complaint is about a specific student, the complaint must also include:

- The name of the student
- The name of the student's school district
- A description of the nature of the problem of the student
- A proposed resolution of the problem.

OSPI has created an optional form for you to use when filing a citizen complaint. The form is available at:

http://www.k12.wa.us/SpecialEd/pubdocs/Citizen_Complaint_Request_Form.pdf

What happens after the citizen complaint is filed?

Once OSPI receives the complaint, it must send a copy of the complaint to the school district. Within 20 calendar days of receipt of the complaint, the school district must investigate the complaint and respond in writing to OSPI. OSPI will send you a copy of the school district's response. You then have the option of submitting additional information about the complaint.

Within 60 calendar days, OSPI has to make an independent, written decision as to whether the educational entity is violating federal or state special education law. The decision must include findings of fact and reasonable steps necessary to resolve the complaint. This timeline can be extended if: 1) exceptional circumstances exist related to the complaint or 2) the complainant and educational entity agree in writing to extend the timeline to use mediation or another dispute resolution method.

The school district then has to comply with the timelines established in OSPI's written decision to complete any recommended corrective action. If the school district does not follow through, OSPI can withhold funding to the district or order other punishment.

If it is decided that the school district failed to provide appropriate services to a student with disabilities, OSPI must:

- Decide how the school district should make up for the denial of services, including paying money or taking some other corrective action that addresses the needs of the student
- Address the future provision of services for all students with disabilities.

b. Civil Rights Complaint to the United States Office of Civil Rights for the Department of Education**What is a civil rights complaint?**

Section 504 is an anti-discrimination law that aims to eliminate discrimination on the basis of disability in all programs that receive federal funds. Because public schools and districts receive federal money, they are subject to Section 504 requirements.

The U.S. Office for Civil Rights (OCR) for the U.S. Department of Education enforces the protections of Section 504 and is responsible for investigating complaints.

Who can file a civil rights complaint?

Anyone can file a complaint with the U.S. Office of Civil Rights whenever a student with disabilities does not receive educational benefit from a program that is comparable to the benefit received by non-disabled peers. An example is when a student with a behavioral disability is told he or she cannot go on field trips and must stay in the principal's office while the rest of the class is on the trips. OCR complaints can also include access issues, such as the lack of a ramp for a child in a wheelchair or a district's failure to provide accommodations or services that should be or are in a student's 504 plan.

What are the requirements of a civil rights complaint?

A civil rights complaint must be filed within 180 calendar days (6 months) of the date of the discrimination. The complaint should include:

- The name, address and phone number of the person filing it
- The name, address and phone number of the person(s) discriminated against
- The name and address of the school, district, or person that discriminated
- The basis of discrimination (race, disability, national origin, etc.)
- When and where the discrimination took place
- The facts of the discrimination and
- Copies of written materials, data, or other documents that support the complaint.

To file a complaint with OCR, you can use the on-line form found at: <http://www.ed.gov/about/offices/list/ocr/docs/howto.html> or call OCR at 1-800-421-3481 for a hard copy of the complaint form to be mailed to you.

Advocacy Tip

Agreeing to participate in mediation does not prevent you from asking for a due process hearing later on. You can stop the mediation process at any time and still ask for a due process hearing. The only limitation is that at a later due process hearing the conversations that took place during the mediation process cannot be used as evidence. However, the written mediation agreement can be used as evidence.

What happens after the civil rights complaint is filed?

The Office of Civil Rights must acknowledge a complaint within 15 days, but it may take up to 45 days to review the substance of the complaint. OCR will investigate the complaint and send a letter to the person who made the complaint stating its findings within 120 days from the start of the investigation.

If OCR finds that the district is out of compliance with Section 504, it will seek voluntary compliance from the district within 60 days. If the district does not comply, OCR will begin enforcement measures within the next 30 days.

If you think a district is violating a student's right to an appropriate educational experience, consider filing a complaint.

2. Mediation**What is mediation?**

Mediation is a type of dispute resolution. Under IDEA, states are required to provide free mediation services to parents/guardians and school districts for the purpose of resolving conflicts about a student's special education program.

The mediation process brings the school and parent or guardian together with a neutral third person—the mediator. The mediator sits down with both sides to try to come to an acceptable agreement on the educational needs of the student. The process is voluntary, so both the parent or guardian and the school district have to agree to participate. Mediation can be an excellent way to improve services for a student, resolve conflict, and repair relationships between the school and the parent or guardian.

If mediation is successful, the parties sign a legally binding agreement that sets forth the resolution. It is up to the school and parent or guardian to carry out the terms of the agreement. Once a mediation agreement is made, the mediator steps out of the picture and has no power to force either side to do anything. If a conflict comes up around the mediation agreement, the parent or guardian can seek enforcement in state or federal court. If a new or different conflict comes up, the parent or guardian or district can use all the forms of dispute resolution available under the law.

Requests for mediation should be made to Sound Options. You can make your request in writing or over the telephone. Either party can contact Sound Options and they will contact the other party. You can reach Sound Options at 1-800-692-2540.

3. Due Process Hearings

What is a due process hearing?

A due process hearing is a formal administrative proceeding, much like a trial. The parent or guardian and the school district each have the opportunity to present evidence and witnesses and to cross-examine the witnesses presented by the opposing side. A hearing officer makes a written decision based on the facts and the law.

Do I need a lawyer for a due process hearing?

No, but you have a right to be represented by a lawyer if you wish.

The parent or guardian of a student with a disability can be advised or represented by a lawyer in a due process hearing. Having a lawyer is not required, and you can be successful in a hearing without one. Often it is a good idea to consult with a lawyer or another knowledgeable person to help request and prepare for the hearing.

How do I request a due process hearing?

Make the request in writing to OSPI and notify the school district.

A request for a due process hearing must be made in writing and contain the following information:

- The name and address of the student
- The district and school a child attends
- An explanation of the parent's concerns
- Your suggestions for resolving the problem.

Mail or deliver a copy of your hearing request to:

Office of the Superintendent of Public Instruction
Administrative Resources Section
Old Capitol Building
P.O. Box 47200
Olympia, WA 98504

You must also provide the original hearing request to the school district by delivering or mailing it to the Superintendent of the school district. Don't forget to keep a copy for yourself!

OSPI developed a due process hearing request form to help parents with requesting a due process hearing. This form is available at:

<http://www.k12.wa.us/SpecialEd/Data/ModelStateForms.aspx>

What are the limitations for a hearing request?

The hearing request must address a violation or issue that occurred within the past two years. A due process hearing request can address a violation from more than two years ago if one of two conditions is met:

1. The parent was prevented from requesting a due process hearing within two years because the school district misrepresented that it had resolved the problem

Or

2. The parent was prevented from requesting a due process hearing within two years because the school district withheld information it was required to share by law.

It is very important that a hearing request discuss all the potential issues and concerns a parent has. Once the request is received, it can only be changed if the school district agrees in writing or if the hearing officer agrees it can be amended, and the timelines for the resolution session (see below) start to run again.

Also, under IDEA, only issues raised in the hearing request or in an amendment to the request can be addressed at the due process hearing unless the other party agrees. While you aren't required to have a lawyer to request a due process hearing, it may be helpful to consult a lawyer when drafting the due process hearing request to make sure that all of your concerns are raised.

What happens after I submit a request for a due process hearing?

The school district must reply.

Within 10 calendar days of receiving the parent's complaint, the school district must reply to it. The school district must explain why it took the action it did, what other options the IEP Team considered and why they were rejected, a description of the information the district relied on in making its decision and information on any other factors relevant to the district's decision. The school district does not need to reply if it sent prior written notice to the parent about the subject matter in the complaint.

What is a resolution session?

A resolution session is a meeting that occurs after a due process hearing request has been made, but before a due process hearing.

Within 15 calendar days of receiving the due process hearing request from the parent, the school district must convene a meeting with the parent, relevant members of the IEP Team, and a representative of the school district that has decision making authority. The school district cannot bring an attorney to this meeting unless the parent has an attorney as well. The purpose of this meeting is to discuss the complaint and see whether the issue can be settled without a due process hearing.

If the parent and the school district come to an agreement at the resolution session, they must sign a legally binding agreement that is enforceable in court. Either the school district or the parent has three business days to change their mind and to cancel the agreement.

The resolution session must take place unless the parent and the school district both agree in writing to waive the meeting or agree to use mediation instead.

How long is the due process hearing process?

A school district has 30 calendar days from the time it receives the complaint to try and resolve the issue to the parent's satisfaction through the resolution process. If the district does not do so within the 30 calendar days, the due processing hearing timelines begin. The hearing must be held and a decision reached within 45 calendar days.

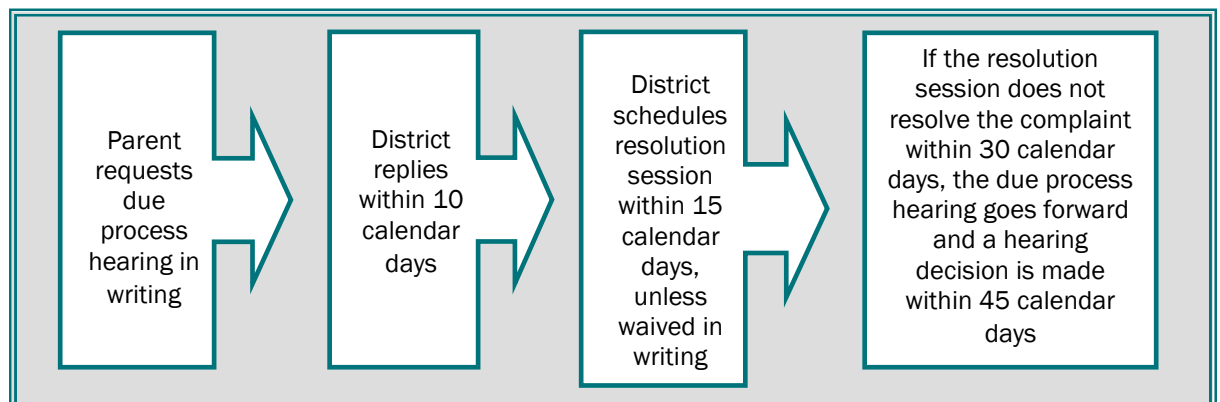
The 30 calendar day resolution period is adjusted if one of the following events occurs:

- Both parties agree in writing to waive the resolution session
- After mediation or the resolution session, both parties agree in writing that no agreement is possible or
- The parties had agreed to participate in mediation past the 30 day resolution session and one party withdraws from mediation. In those situations, the 45 calendar day time begins immediately.

The length of the hearing itself depends on what the issues are and how long each side thinks it will take to present its case.

The resolution session is very important. If a parent is unwilling to participate in the resolution session, the timelines for the resolution meeting and due process hearing are delayed until the meeting is held. In addition, a school district may ask a hearing officer after the end of the 30 day resolution period to dismiss the parent's due process hearing request if the parent refuses to participate in the resolution meeting. On the flip side, if the school district fails to schedule a resolution meeting within 15 days of receiving the hearing request, the parent may ask the hearing officer to immediately begin the 45 day due process hearing timeline.

Due Process Hearing Timelines



What is “stay put?” And, where does my child go to school when I request a hearing?

Stay put is a term used in IDEA to describe where a student goes to school when a hearing is requested. If a hearing is requested, the student has a right to continue to receive his or her individualized education program in the same setting until the hearing is completed and a decision is made. There are some exceptions to **stay put** that apply when students with disabilities are disciplined.

What can a due process hearing accomplish for my child?

The district can be ordered to provide services, give the student compensatory education, and pay for the parent’s legal fees.

A due process hearing can help the student **obtain appropriate services** and make up for education that was lost due to the district’s failures. A hearing officer can help resolve disagreements about a student’s eligibility, the IEP, changes in educational settings, and evaluations and reevaluations.

The hearing officer can also order **compensatory education**, meaning the district must provide services to make up for time or opportunities missed because of the district’s failures. For example, the district might be ordered to pay for a student to participate in a community college course, provide tutoring in addition to the special education program, or make summer programs available, even though the student wouldn’t otherwise qualify for extended school year services.

Compensatory education requests ought to be related to the goals and objectives of the IEP. But be creative when asking for compensatory education services. Think about what a child likes to do (art, music, science) and suggest a program or services that provide those experiences.

If you win at the hearing, the district may have to pay for the costs you incurred for the hearing and the fees that an attorney charged to represent you. Keep track of costs that you have in preparing for the hearing.

VIII. An Overview of Section 504

Where you can have an impact

Urge the district to move quickly to finish the evaluation. If the district doesn't have a policy or set timelines for completing the evaluation, ask that the district use the IDEA evaluation timelines as a guide.

Section 504 of the Rehabilitation Act was the first law made to protect people with disabilities. Under Section 504, all programs that receive federal funding must not discriminate against individuals on the basis of a disability. Schools receive federal funding, and therefore must follow the requirements of Section 504 to ensure that students with disabilities are not treated differently. School districts must also take steps that range from accommodating special needs to providing special instruction and related services. The intent of Section 504 is to remove barriers so that people with disabilities can fully participate in "life activities" such as learning in school.

As discussed earlier in this publication, Section 504 defines disability as an impairment that substantially limits a major life activity. Learning is a "major life activity" for children. Impairments that affect a student's education may qualify him or her for services under Section 504. The definition of disability under Section 504 is much broader than under the IDEA, so many students who are not eligible for IDEA may be eligible for extra support under Section 504.

School districts are required to create procedures and systems for implementing Section 504. In addition, each district must designate at least one person to coordinate the district's efforts to comply with Section 504. Ask for a copy of the district's procedures and for the name of the person designated as the Section 504 compliance officer.

How can my child become eligible for 504 services?

Districts are required to identify students who may have disabilities, and evaluate whether they need extra support in order to get a meaningful education. The evaluation must be done at no cost to the student. As under IDEA, districts must use valid assessment tools, administered by trained people. The evaluation tools must also be tailored to test specific needs and accurately reflect the student's abilities. Unlike IDEA, there are no specific timelines for the district to finish an evaluation.

Is parental consent required for evaluation under Section 504?

Yes. The regulations under Section 504 do not provide explicit rules regarding 'consent for evaluation.' The Federal Office of Civil Rights (OCR) has issued guidance for this area that relies on the framework created by the related 'consent' provisions of the IDEA. This means that in order for school districts to implement Section 504 in accordance with OCR guidelines, they must obtain parental consent for an initial evaluation. Similarly, if a parent withholds consent, a school district may use due process hearing

procedures to try and override a parents' denial of consent for an initial evaluation. In addition, if a parent revokes consent under IDEA, the parent is also revoking consent under Section 504.

Where you can have an impact

Ask the district to put the Section 504 plan in writing. If the district refuses, write up what you think the district agreed to do, and send the school a letter. Ask the district to confirm that the district's understanding of the plan is the same as yours.

Can I revoke consent for some services and not other services under the IDEA or Section 504?

Section 504 does not have regulations that address revoking parental consent, so we look to language under the IDEA to provide guidance for both federal laws. The IDEA regulations state that if a parent revokes consent after the initial provision of services, the school district is no longer responsible for providing a free and appropriate public education to the student or to develop an IEP. This also means that the district is no longer responsible for services under Section 504.

However, it should be considered a different matter when a parent is not revoking consent, but rather refusing to consent to some services offered by a school district that they disagree with. Section 300.300 (b)(3) of the federal regulations state: "A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part."

How often does the district have to reevaluate my child?

Section 504 requires periodic reevaluation of students with disabilities. The law does not state clearly how often, except that evaluating at least once every 3 years (like under IDEA) would satisfy this requirement.

Like IDEA, Section 504 also requires a reevaluation whenever the district proposes to make significant changes to a student's program.

Does the district have to develop a plan for my child?

Section 504 requires a plan for meeting the student's special needs, but it doesn't require that the plan be written.

The Washington State Office of the Superintendent of Public Instruction recommends that districts put plans in writing, even if it is not as detailed as an IEP.

Who develops the 504 plan?

There is no clear guidance in the law about who specifically should be involved in the development of the 504 plan. Section 504 does say that decisions about placement and services must be made by a group of people who knows the child, understands the evaluation data, and knows about support available within the

district. You can ask to be on the 504 team and share your information about your child's strengths and needs.

What kinds of things can be put into a 504 plan?

504 plans can range from seating a student near the teacher for extra help to providing specialized instruction and related services. For a student who has challenging behavior, a behavior plan, counseling, or an aide may be necessary in order for him or her to participate in school. For a student who is hearing impaired, a signing interpreter or written lectures might be included in the plan. Be creative! Your suggestions about how your child can participate in school should be open for consideration.

Does the district have to educate my child in a general education classroom?

Unless an IEP or 504 plan requires another arrangement, a child must be educated in the school that he or she would attend if not disabled and be with non-disabled classmates to the maximum extent possible.

What if the district refuses to develop a 504 plan, or there appears to be some other sort of discrimination against my child?

Section 504 requires that school districts develop dispute resolution procedures, including the right to an impartial hearing. Ask for a copy of the district's 504 procedures to determine your next step. In addition, you can make a complaint to the Office of Civil Rights. See Section VII in this publication for more information about making a civil rights complaint.

IX. Steps that Schools Must Take to Discipline Students with Disabilities

Where you can have an impact

Be sure to contact the person in charge of discipline and let him or her know that your child has a disability.

If the school proposes to keep your child out of school for more than ten school days, it is important that the school district is quick to schedule a meeting regarding the behavior and its relationship to your child's disability.

Being on top of discipline issues and aware of the rights of students with disabilities will reduce the number of days your child is without educational services.

What is a school district supposed to do if my child with a disability breaks a school rule that would normally require suspension for more than 10 school days or an expulsion?

1. Give notice.
2. Have a manifestation determination meeting.
3. Look at the behavior and develop a functional behavior plan.

A change in placement occurs when a special education student is removed from school for a period of more than 10 school days in a row or experiences a pattern of shorter removals that over time exceed 10 school days. Long term suspensions and expulsions are considered a change of placement. If the district wants to order a change of placement for a special education student, it must follow the steps outlined above before the change can be implemented. School district staff may consider any unique circumstances on a case by case basis when deciding whether to order a change in placement for a student with a disability who violates a code of conduct.

What notice is required when a school district wants to remove my child with disabilities from school for any period of time?

The school district must give written notice of the decision to remove the student AND describe the procedural protections available. Notice must be given no later than the date that the decision to remove the student is made. The law says that the written notice must be given to parents of the disciplined student.

What is a manifestation determination and why is it important when my child who receives special education services gets disciplined at school?

A manifestation determination is what a district must do when a student is facing a suspension or expulsion for more than 10 school days. The manifestation determination requires the school district, the parent and relevant members of the student's IEP Team to meet and consider whether the student's behavior is related to his or her disability.

This meeting has huge consequences for a student and the stability of the student's educational placement.

If there is a relationship between the disability and the behavior, then the student cannot be punished and several things must happen. The student must be allowed to return to the educational placement that he or she attended prior to the disciplinary removal unless special circumstances (described

Where you can have an impact

Act quickly if your child is excluded from school. It may be several days before you receive notice or information about why he or she is not allowed to return.

Bring the special needs of your child to the attention of school district administration. If you think that the school administration is not listening to you, call the district's Director of Special Education.

Ask for an IEP or 504 meeting.

Ask that educational services be provided during the period of exclusion.

below) exist or unless the parent and the district agree otherwise. In addition, the student must receive a functional behavior assessment and behavior intervention plan or have his or her existing plan reviewed and modified, as necessary, to address the behavior.

If it is determined that there is no relationship between the disability and the behavior, then the normal disciplinary procedures can be applied and the student can be suspended or expelled. However, the school 1) must provide educational services to the student, although services may be provided in an interim alternative educational setting and 2) perform, as appropriate, a functional behavior assessment and develop a behavior intervention plan.

See Section X. Weapons, Drugs, Serious Bodily Injury, Dangerous Behavior and Interim Alternative Educational Settings in this publication for information on special circumstances when a student can be removed from his or her educational placement even if it is decided at a manifestation determination meeting that the student's behavior was related to his or her disability.

When does the manifestation determination meeting have to take place?

The manifestation determination must take place immediately if possible, but in no case later than 10 school days after the date the district decides to change the placement of the student for disciplinary reasons.

Who is a part of the manifestation determination meeting?

The district, the parents and relevant members of the IEP Team.

IDEA says that the manifestation determination team consists of the parent and those members of the IEP Team that the parents and school district determine to be relevant to the decision making, implying that not all IEP Team members need to be present. Note that you can always ask that certain members be present if you think that his or her information will be valuable to the manifestation determination process. Throughout this publication, we will refer to the team that makes decisions at a manifestation determination meeting as the "manifestation determination team." If we are referring to situations where the full IEP Team is present, we will indicate "IEP Team."

What does the manifestation determination team consider when conducting the manifestation determination?

The manifestation determination team must take into consideration all relevant information.

The manifestation determination team must consider:

- Evaluation and diagnostic results, including those provided by the parents of the student
- Observations of the student
- The student's individualized education program.

What questions must the manifestation determination team ask as part of the manifestation determination?

Under IDEA and state special education law, the manifestation determination team must ask:

1. Was the child's conduct caused by, or did it have a direct and substantial relationship to, the child's disability?
2. Was the conduct the direct result of the school district's failure to implement the current IEP?

If after consideration the manifestation determination team determines that the answer is "YES" to either of the above questions, then the behavior must be considered a manifestation of the student's disability and the discipline cannot be imposed. The student must be allowed to return to the educational placement that he or she attended prior to the disciplinary removal unless special circumstances exist or unless the parent and the district agree otherwise. If it is determined that the student's behavior was the direct result of the district's failure to implement the student's IEP, the district must take immediate steps to ensure the IEP is implemented.

In some cases, a student may be acting out because the services or programs outlined in his or her IEP are inappropriate, even though the IEP is being implemented. IDEA does not prevent the parents or advocate from also asking that the manifestation determination team consider whether the IEP was appropriate at the time the behavior occurred. In addition, you can always ask for another meeting with the IEP Team and request that the IEP Team change the IEP or your child's placement because your child needs additional services or a different educational setting to be successful.

What is a functional behavior assessment?

A functional behavior assessment is a way of understanding why and how a student with disabilities is having difficulty in school. There is no exact definition in the law of functional behavior or how it can be assessed. One way to think about functional behavior is to ask the questions:

Who? What? Where? When? Why? and How?

An example of questions that can be asked when doing a functional behavior assessment

- ? Who is usually around when the behavior takes place? Who is the behavior directed toward? Who is most successful in managing the behavior when it takes place?
- ? What happens? What behavior is problematic?
- ? When does the behavior take place? During passing period, lunch, or other unstructured time? In the morning? At the end of the day? During frustrating lessons? During lectures? During quiet time?
- ? Where does the behavior take place? In the classroom? On the playground? On the bus?
- ? Why does the behavior take place? Is the student frustrated with the work or format of the class? Is the student getting picked on and doesn't know how to react? Does the student's medication wear off? Did the student have someone or somewhere safe to go to get help?
- ? How does the behavior arise? Is it predictable? Are there signs that things are getting out of hand? What are the triggers?

What is a behavior intervention plan?

A behavior intervention plan takes information from the functional behavior assessment and lays out steps to address the problem behavior.

Behavior intervention plans should do several things and should not be focused just on "bad" behavior. The plan should also include rewards for good behavior and acknowledgement of successes that a student has while in school.

A good plan will incorporate more than one strategy. Here are some ideas on how a behavior intervention plan can:

- **Manage the student's behavior.** A behavior intervention plan can reduce or prevent the behavior from taking place by controlling a student's environment and limiting the opportunity for problems to take place. For example, a student's behavior might be managed better if the student checks in with school staff at critical times of the day, eats

Where you can have an impact.

The functional behavior meeting and the manifestation meeting can take place at different times, or both issues can be discussed at the same meeting.

The functional behavior meeting and the manifestation meeting might not take place right away because the school district doesn't yet know how long the removal will last.

If your child is removed from school and you don't get a notice and nothing is happening, request a meeting. Take that opportunity to discuss the proposed discipline and the special needs of your child.

lunch separate from others, or has an aide in class or during passing periods.

- **Guide teachers to address behaviors.** A behavior intervention plan can be a guide for teachers and school staff to recognize the signs that inappropriate behavior is developing and to prompt or redirect the student before the situation gets out of hand. For example, teachers may know that a student who starts pacing or getting in and out of his seat is becoming frustrated. The teacher can offer the student extra help, a timeout, or a verbal prompt to refocus.
- **Help students learn skills to help themselves.** A behavior intervention plan can work on teaching the student skills to recognize signs that behavior is getting unmanageable and to redirect himself or herself. A student might start to recognize that he gets frustrated when the teacher is giving more than one verbal instruction at a time. Rather than stop paying attention or disrupt the class, the student might ask the teacher to write out the instructions, or ask to have a classroom buddy to help take notes, or request a short break.

When do school districts have to look at functional behavior and develop a behavior intervention plan?

IDEA and state special education laws do not have a definite timeline for when functional behavior assessments must be completed and behavior intervention plans written. However, IDEA does indicate the situations in which functional behavior assessments and behavior intervention plans must be developed. The district must conduct a functional behavior assessment and implement a behavior intervention plan, or revise an existing behavior intervention plan, if the student's behavior is determined to be related to his or her disability at the manifestation determination meeting. In situations where the student's behavior is determined not to be related to his or her disability at the manifestation determination meeting and the student is subject to a change in placement or in situations when a student is placed in an interim alternative educational setting for special circumstances (bringing a gun or drugs to school, inflicting serious bodily injury, or by order of a hearing officer), the district must perform a functional behavior assessment and implement a behavior intervention plan when appropriate.

You should ask for the functional behavior assessment and behavior intervention plans to be developed as soon as possible to ensure your child's behavioral needs are being addressed.

Who takes part in the functional behavior assessment and planning meeting?

The IEP Team.

The IEP Team must determine if there has ever been a functional behavioral assessment or a behavior intervention plan for the student. If not, the IEP Team must develop a functional behavior assessment and behavior intervention plan. If a student already has a behavior intervention plan, the IEP Team must review the plan and make changes to the plan as necessary to address the current behavior.

X. Weapons, Drugs, Serious Bodily Injury, Dangerous Behavior, and Interim Alternative Educational Settings

Where you can have an impact

Review the IEP. Consider whether the proposed 45-day placement is a setting that can meet your child's needs. If not, ask the IEP Team to consider additional services or a different setting.

There are four special circumstances in which a special education student can be removed from his or her current placement immediately and for up to 45 school days (regardless of whether the behavior was a manifestation of the child's disability). When the disciplinary incident involves weapons, drugs or serious bodily injury, a district can decide to remove a student for up to 45 school days.

If a district wants a student removed because it believes that the student is dangerous, the district can ask a judge to order the student removed for up to 45 school days.

No matter how or why the student is removed from school, special education students must continue to get educational services in an alternative setting. This alternative setting is called an **interim alternative education setting** or **IAES**. The IEP Team determines the interim setting.

Guns/weapons	District may remove student to an IAES for up to 45 school days
Drugs	District may remove student to an IAES for up to 45 school days
Serious Bodily Injury	District may remove student to an IAES for up to 45 school days
Dangerous Behavior	District may ask a judge to remove a student to an IAES for up to 45 school days

What can happen to a special education student who brings a weapon to school?

A district can remove a student to another educational setting for up to 45 school days if the student possesses a weapon or carries a weapon to school or to a school function. "Weapon" means a weapon, device, material, or substance, or animate or inanimate instrument that is used for, or is readily capable of, causing death or serious bodily injury. Weapon *does not* include a pocketknife with a blade of less 2 ½ inches long. Note that this is a different definition of weapon than the definition used in general education discipline laws and regulations.

What can happen to a special education student with a disability who has, uses, or sells drugs at school?

A district can remove the student to another educational setting for up to 45 school days if the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.

What can happen to a special education student with a disability who causes serious bodily harm to another person?

IDEA added a fourth category of misconduct that could lead a school to remove a special education student to an IAES. A district can remove a student to another educational setting for up to 45 school days if the student has inflicted serious bodily injury on another person while at school or at a school function. "Serious bodily injury" means bodily injury which involves 1) a substantial risk of death, 2) extreme physical pain, 3) protracted and obvious disfigurement or 4) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

What can a district do when it believes a student is too dangerous?

The district's authority to automatically remove a student to an Interim Alternative Educational Setting (IAES) is limited to situations where there are drugs, weapons or serious bodily injury involved. If the district believes that a student is dangerous for another reason and wants to remove him or her from the current special education program, the school needs to request a due process hearing and ask that the hearing officer order the student to an interim alternative educational setting for up to 45 school days. A hearing officer has the authority to change a student's placement for 45 school days if maintaining the current placement is substantially likely to result in injury to the student or to others.

If the school district is successful in getting the hearing officer to order the student out of school, the district still has a responsibility to provide the student with an education.

XI. Limitations on Discipline and Removal of Students with Disabilities

Where you can have an impact

Keep track of the number of days your child has been out of school. See important changes in discipline laws at the front of this manual. Request educational services in an alternative setting. Put your request in writing.

When considering whether to discipline a student with a disability, a district must first comply with the steps outlined in the previous section—notice, manifestation determination and examination of the functional behavior. If the relevant members of the IEP Team decide that behavior was not a manifestation of the disability, the district may proceed with disciplining the student. But there are still limitations on how the district can discipline special education students.

How long can a special education student be removed from school without educational services?

See important changes in discipline laws at the front of this manual.

Schools can order removals of less than 10 school days in the same school year for separate incidents of misconduct as long as the removals do not constitute a pattern of exclusion which is a change of placement and needs to be addressed through the IEP process. A series of removals—one day here, another day there—can be a pattern that needs to be discussed by an IEP Team. To determine whether a series of removals is a pattern, consider the length of removals, the total amount of time, the proximity of one to the other, and the reason for the removals.

What educational services should a special education student receive when he or she is removed from school for more than 10 school days in the same school year?

The school must continue to provide the services and program described in the student's IEP, even if the student is suspended or expelled from school.

During any exclusion from school for more than 10 school days in the same school year, the school district **must** provide another educational setting where the student's IEP can be implemented. The setting should be one that allows the student to participate in the general education curriculum and to progress towards achieving the goals set out in the IEP.

For example, if the student has goals and objectives to help improve social skills with peers, the alternative setting should allow opportunities and instruction for those peer interactions. A tutoring program at home is not enough. The alternative setting should also include services and modifications that are designed to address the behavior that resulted in the removal, so that it does not recur again. The IEP Team makes the decision on what setting is appropriate if the removal is for more than 10 consecutive school days or constitutes a change of placement.

XII. Protections for Students with Disabilities Who Have Not Been Found Eligible for Special Education

What are my child's rights if he or she may have a disability but he or she was not evaluated or found eligible for special education before being disciplined?

In some cases students can get the same protections they would have had if they had been eligible for special education services before the disciplinary incident.

If you think your child may have a disability and your child is being disciplined but he or she has not yet been found eligible for special education services, then ask this question:

"Did the district know that my child should have been evaluated or should have been receiving special education services?"

A student can get all of the protections for special education students if the district had knowledge that the student had a disability before the behavior that resulted in disciplinary action occurred.

What constitutes whether a district "had knowledge" of my child's disability as described in the law?

Under IDEA and state special education law, the district had knowledge if:

- The parent of the child expressed concerns in writing to supervisory or administrative staff of the district, or the teacher of the child, that the child was in need of special education and related services or
- The parent has specifically requested an evaluation of the child or
- The child's teacher has expressed specific concerns about the behavior or performance of the child to the district's special education director or other special education supervisory personnel.

When can a district argue it did not have knowledge that my child had a disability before the behavior resulting in discipline occurred?

School districts are not considered to have knowledge of a student's disability if the parent has refused a special education evaluation or special education services or if the student was evaluated and not found to be a student with a disability.

What if the district did not have knowledge that my child had a disability before the behavior resulting in discipline?

An evaluation can still be requested.

If you suspect that your child has some type of disability but the district did not have knowledge of the disability, a request can still be made for an evaluation to see if your child is eligible for and needs special education services. This request for evaluation can take place during the time your child is out of school on the expulsion or suspension.

What if a request for evaluation is made during the time that my child is being disciplined?

The law requires the evaluation to take place quickly.

If an evaluation is requested during a period of disciplinary exclusion, the law requires the evaluation to be completed in an *expedited* or quick manner. It does not matter if the district knew about the disability previously. There is no set timeline in the law for completion of this expedited evaluation. It can probably be assumed that expedited means more quickly than the amount of time allowed when an evaluation is being done under normal circumstances when discipline is not an issue. Under the normal special education procedures, the district has 35 school days to complete the evaluation after receiving parental consent.

What if my child is found eligible for special education during the time he or she is suspended or expelled?

If a student is found eligible during the period of removal from school, the school district must start providing special education and related services.

XIII. What to do if Students with Disabilities are Wrongly Disciplined

What kind of things might indicate my child with disabilities is being wrongly disciplined?

There are several things to watch out for.

There are a variety of ways that a student with a disability may be wrongly disciplined. Some examples are:

- Notice was not given.
- There are no IEP meetings to discuss functional behavior or a manifestation determination for a change in placement.
- The functional behavior was never properly examined when problems first arose.
- A behavior intervention plan was not put in place to deal with the student's behavior in a good way.
- The manifestation determination was not done correctly:
 - The right questions were not considered.
 - The decision was not based on enough data.
 - The group making the decision was not made up of the right people.
 - The decision that the behavior was not related to the disability seems wrong.
- If discipline is imposed:
 - It is too harsh for the behavior.
 - It is longer than 10 school days in a row.
 - It is more than 10 school days over time and it looks like a pattern that excludes the student from his or her IEP.
 - It is for 45 school days and the incident did not involve drugs, weapons or serious bodily injury, or it was not imposed by a hearing officer at a discipline hearing.
 - The student did not behave in the way the district says he or she behaved.

What can be done if my child with disabilities is being wrongly disciplined?

Your child can assert all the rights of a general education student, as well as rights under special education law.

Students with disabilities can ask for both a special education due process hearing and a general education discipline hearing. Note there are limitations on who may ask for a special education due process hearing.

Think of these two procedures as two parallel roads running side by side. There can be cars traveling on both of them, perhaps at

Where you can have an impact

Students with disabilities have all the rights given to general education students who are disciplined. Review the Office of the Education Ombudsman's publication *Discipline in Public Schools* to learn more about challenging general education discipline.

Make sure you request a general education discipline hearing within the timelines stated in the discipline notice. You can always cancel the hearing if the situation is resolved through the special education process.

Where you can have an impact

If your child is eligible for special education services and is out of school for more than 10 school days, even for discipline reasons, the district must provide services to implement your child's IEP. If a hearing has been requested and your child is out of school while waiting for the decision, be sure to remind the district of this obligation. You may not be able to assert "stay put" and have your child return to his or her educational placement, but he or she should not sit at home without any services in place!

different speeds, but both going the same direction. It is the same when both a discipline and special education hearing are being scheduled. The two hearings are addressing some of the same issues, but they may not be directly related.

In most cases, if a special education matter is being pursued, the district should stop the general education discipline hearing process and resolve the special education issues before going on with the general discipline proceedings.

Ordinarily, if a special education due process hearing is requested, the student has a right to remain in his or her special education program until the hearing is resolved. This right is called "STAY PUT" and it refers to the student's legal right to stay in his or her current educational program until a decision is made in the due process hearing. Despite stay put, the district may try to have the student removed through a separate court action or hearing.

There is a new and important exception to this rule under IDEA. If the parent requests a hearing to contest the discipline and 1) the student is in an interim alternative educational setting due to special circumstances (weapons, drugs, serious bodily injury or dangerousness) or 2) the student is in an interim alternative educational setting because the student's behavior was not found to be related to his or her disability at the manifestation meeting, the student must remain in the IAES until the hearing officer makes a decision or until the end of the disciplinary removal, whichever comes first. (The parent and the district can agree otherwise.)

However, the school district must arrange for the hearing to take place within 20 school days of the request, and the hearing officer must make a decision within 10 school days of the hearing. In addition, a resolution session must take place within 7 calendar days of the request for a hearing unless the district and parent agree in writing to waive this process.

XIV. Behavior Charged as a Crime**Can the school district call the police when a student with a disability gets in trouble?**

Yes, schools may report crimes committed by students with disabilities and general education students.

What if the incident is filed as a crime?

If the misconduct at school is referred to juvenile court and is charged as a crime, the youth will have either a public defender or other criminal defense attorney to advise and represent him or her on these charges. A youth who has been charged with a crime as a result of alleged misbehavior at school should immediately consult with his or her criminal defense attorney before discussing his or her school discipline case with the school district. For example, it may not be a good idea for the youth to make statements in a school discipline or due process hearing if the criminal matter has not yet been resolved. Those statements could be used against the youth in the criminal case.

The defense attorney should also be made aware of any disabilities that might affect whether the youth should be charged. For example, if the young person has a very low I.Q., the court may decide that it isn't right to take care of the matter in juvenile court.

XV. Conclusion

All students are entitled to an education that helps prepare them for life. If students are disabled in some way, they may have a right to a vast array of services and accommodations that help them succeed. If your child needs more help than he or she is getting in school, advocate for special education services.

Students with disabilities also cannot be punished in school for behavior that is related to or the result of a disability. School districts must follow specific rules when seeking to punish a student with a disability. Notice of the intent to discipline must be given, the behavior must be examined and planned for, and a team of people must determine whether the behavior was related to the disability.

Even if the problem behavior is not related to the disability, there are significant limits on how a student with a disability can be disciplined. Students with disabilities have strong protections under the law that ensures they will not unnecessarily lose their right to education.

XVI. Action Points – Protecting the Educational Rights of Students with Disabilities

If you feel that you have hit a dead end or you are stuck trying to get help for your child, read this list for ideas about possible steps you can take to move things forward. **Remember, you can be a strong advocate for your child!**

- Ask (in writing) for a special education evaluation if you suspect your child has a problem that is interfering with his or her ability to learn.
- Remember to ask for an evaluation under both IDEA and Section 504.
- Make sure the district evaluates in all areas of suspected disability.
- Be the “*squeaky wheel that gets the grease.*” Make sure the district keeps to the required time lines and does everything necessary for your child.
- If things are not going well, ask for a meeting.
- Share your knowledge about your child with the school district.
- Become an active member of the IEP Team.
- Invite people to the IEP Team who can help you advocate for your child.
- Involve your child in the planning process.
- Make suggestions for how the school can best serve your child.
- Scrutinize all aspects of the IEP to make sure the program will really help your child.
- Ask for summer special education services if your child needs them.
- Make sure that transition services are part of your child’s IEP if he or she is 16 or older.
- If you think your child is being discriminated against, file an OCR complaint.
- Make a file of your child’s special education records. Include records from outside evaluators and service providers who work with your child.
- Remind the school administrator, director of special education, etc., that your child has an IEP or 504 plan if your child is being disciplined.
- Ask for an IEP meeting if the district suspends or expels your child with disabilities.

- Ask the district to do a manifestation determination and functional behavioral assessment if your child is being disciplined.
- Review the IEP or behavior plan after your child is disciplined. Was it being followed? Could it be improved so that the behavior is better managed? Make these proposals at the IEP meeting.
- Provide or request new evaluation information that can be used to develop a plan that will prevent the behavior from recurring.
- Insist that the district provide educational services during a period of disciplinary exclusion so that your child can make progress on IEP goals, even if your child is not allowed to return to the same school.
- Demand services that fulfill the IEP when your child is suspended for more than 10 school days.
- Request a general education discipline hearing for your child with disabilities who is disciplined in case the special education process does not resolve the issues.

XVII. Key Terms – Protecting the Educational Rights of Students with Disabilities

Accommodations	Changes in the way instruction, assessment, and instructional materials are designed and used to respond to the special needs of students with disabilities. Most often related to students who have a 504 plan or an IEP.
administrative hearing	A formal process for parents and school districts to resolve disagreements about discipline and special education services. In special education cases, the process is called a “due process hearing.”
administrative law judge (ALJ)	A judge who handles only administrative hearings. In Washington State, ALJs are appointed by the Governor and work for the Washington State Office of Administrative Hearings. ALJs are the judges in special education due process hearings.
alternate assessment	Any form of measuring what students know and are able to do other than traditional tests. Examples are: oral reports, projects, performances, experiments, portfolios (collections of student’s work), and class participation.
assistive technology device	Any piece of equipment or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability.
assistive technology service	Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.
aversive intervention plan	A plan developed by the IEP team that describes the systematic use of stimuli or other treatment which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. The purpose of an aversive intervention plan is to assure that students eligible for special education are safeguarded against the use and misuse of various forms of aversive interventions.

Aversive interventions should not be used with a student until a plan is developed to clearly define what specific aversive interventions will be used, how often and under what circumstances.

behavior intervention plan	A plan to address behavior that may be getting in the way of a student with disabilities success at school.
change of placement	A concept in special education law that describes when student with disabilities is moved from one setting to another, or when there are significant changes in a student's individualized education program (IEP).
consent	When a parent or guardian understands and agrees in writing to evaluation, the provision of special education services, or to release educational records for their student. Granting consent is voluntary and can be revoked at any time. The parent should be fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication
continuum of services	The range of services which must be available to the students of a school district so that they may be served in the least restrictive environment. The IEP team must have the opportunity to consider placement in the general education classroom, special education classroom, home or hospital setting with whatever supports or services that are necessary.
due process hearing	An administrative hearing presided over by an administrative law judge. Hearings in special education matters are called Due Process Hearings.
extended school day	A provision for special education students to receive instruction for a period longer than the standard school day.
extended school year or ESY	Special education and related services provided beyond the normal school year which are necessary in order for the student to receive a meaningful education.
FAPE or Free Appropriate Public Education	A concept in special education law that describes the right of a student with a disability to special education and other supportive services at no cost. Students with disabilities are entitled to FAPE under the IDEA and Section 504.

functional behavioral assessment	An evaluation of the behavior issues of a student with disabilities. Also known as FBA.
IDEA	See Individuals with Disabilities Education Act.
Individualized Education Program or IEP	A document that describes the special education services that a student with disabilities will receive. The IEP is specific to each student and tailored to his or her educational needs.
IEP Team	A group of people made up of education professionals, the student's parent, and others who have information about a student and his or her needs. Every student with disabilities must have an IEP Team that is responsible for creating and reviewing the student's IEP and determining where the services will be delivered.
Individuals with Disabilities Education Act	Federal law that establishes the right of children with disabilities to special education and describes how services are to be delivered. This law was recently amended in 2004 and renamed the Individuals with Disabilities Education Improvement Act. Also referred to as IDEA or IDEIA.
instructional aide	A school employee who is assigned to help teachers with the education of student. Also know as an Instructional Assistant, Paraeducator, or Paraprofessional.
interim alternative educational setting	Also referred to as IAES. A placement of up to 45 days for students with disabilities who a) bring weapons to school, b) bring drugs to school, c) inflict serious bodily injury at school, or d) are determined to be dangerous by an administrative law judge. The IAES must be developed so that students can participate in the general education curriculum and progress towards achieving the goals set out in the IEP.
LRE or least restrictive environment	LRE or least restrictive environment is used to describe the requirement in special education law that children with disabilities be educated, to the maximum extent possible, in regular (also referred to as general education) classes with students who do not have disabilities.

mainstream	The practice of placing students with disabilities into regular classrooms with the supports defined in their IEP. The students usually also receive some assistance and instruction in separate classrooms, or resource rooms.
manifestation determination	A process that looks at the relationship between a student's disability and behavior that would normally be subject to discipline, suspension or expulsion. The manifestation determination is made by relevant members of the student's IEP Team, as determined by the school and the parents.
mediation	A free, voluntary process for resolving disputes between school districts and parents/advocates. A trained, neutral mediator helps both parents and school personnel clarify issues and come to a mutually acceptable resolution.
OCR/Office of Civil Rights	Abbreviation for the Office of Civil Rights for the U.S. Department of Education. OCR enforces the protections of Section 504 and is responsible for investigating civil rights complaints.
OSPI	Abbreviation for the Office of the Superintendent of Public Instruction. OSPI is the state agency that oversees school districts.
placement	Refers to how and where special education services described in an IEP or 504 Plan will be provided to a child.
positive behavior support	An approach to changing student behavior that interferes with learning that is focused on scientifically-based, best evidence-based practices, data, and positive outcomes for students. Generally, the goal of positive behavioral support is to increase a student's integration and access to their peers and the educational environment, and to prevent isolation, restraint or disciplinary actions for a student.
reasonable accommodation	The modification of programs in ways that permit students with disabilities to participate more fully. Section 504 requires school districts to provide reasonable accommodations for students with disabilities.

referral	A written request made to a school district to evaluate a child for special education and/or Section 504 eligibility.
related services	Transportation and other supportive services required to help a student with a disability benefit from special education. Includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling, social work services, and parent counseling and training.
resolution session	A meeting between the parents, the school district and relevant members of the IEP Team that is scheduled after a due process hearing is requested. The meeting is to discuss the complaint, the facts forming the basis for it, and to provide an opportunity to resolve the complaint. This meeting can be waived if the parents and the district agree in writing.
Section 504	Refers to Section 504 of the Rehabilitation Act of 1973. Section 504 is a federal anti-discrimination law that protects the rights of students with disabilities and provides for services and program modifications necessary to meet the needs of such students.
Section 504 plan	A plan for providing services and program modifications necessary to meet the needs of students with disabilities who qualify for Section 504 accommodations. Includes a summary of evaluation data, documentation of the eligibility determination, and a description of accommodations, services and placement.
special education	Instruction that is specially designed to meet the individual needs of a child with a disability. Special education is paid for by the school district.
stay put	A concept describing the right of a student with a disability to remain in his or her current education placement until disputes have been resolved.
transition services	A coordinated set of activities for a student with a disability that is designed to help a student move from school to post-school activities, including post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, and community participation.

Sample Letter: Request for IDEA and 504 Evaluations

December 15, 2014

Ms. Jane Doe - Principal
ABC Elementary School
1234 5th Avenue
Anywhere, WA 00000

Identify the student.

Re: John Johnson, date of birth 12/28/95

Dear Ms. Doe:

Identify yourself and the reason for the letter: **Referral for evaluation.**

I am writing with regard to John Johnson, a student in your school. I am John's father, and I believe that he has several impairments that interfere with his ability to learn. I am requesting that the school district evaluate John for special services under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

Identify areas of suspected disability.

I am concerned that John might need special education or services in two areas: reading, and his ability to concentrate on a task.

Give examples from personal experience of the areas where the student needs help.

With regard to reading, I have noticed on several occasions that John will not read materials when they are given to him. He later learns the contents of the materials by asking questions of others who have read them.

As for his attention problems, I have found that John has a hard time staying on task. When asked to complete a chore at home, such as taking out the trash, he will start to do it, but within several minutes he becomes distracted. When I remind him that he has a job to do, he usually gets upset and refuses to finish.

If applicable, identify others with concerns and records documenting disabilities.

John's counselor at CDF Mental Health Clinic, David Davidson, is also concerned that John does not read well and may have a disability such as Attention Deficit Disorder. I have enclosed a copy of Mr. Davidson's progress report for John.

State what you expect to happen next.

I understand that you need consent to proceed with the evaluation. Please contact me as soon as possible to start this process.

Include contact information.

Thank you for your prompt attention to my concerns. If you have any questions, I may be reached at (555) 555-5555.

Sincerely,

Your NAME and SIGNATURE

Request for IDEA and Section 504 Evaluations

Date: _____

To: _____

Student: _____

Dear _____:

I am requesting that the school district evaluate student, _____ [insert student's name], for special services under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

I am concerned about the student for the following reasons:

Attached are records that describe some of these concerns.

Thank you for your prompt attention to my concerns. If you have any questions, please call me at _____.

Sincerely,

(Signature)

Request for IEP Team Meeting

Date: _____

To: _____

Dear _____:

I am writing to request an IEP Team meeting regarding _____[insert student's name]. As a member of the IEP Team, I have concerns that I feel must be addressed by the entire team. The following is a list of my concerns:

Thank you for your prompt attention to my concerns. If you have any questions or need to know my availability to schedule an IEP meeting, please call me at _____.

Sincerely,

(Signature)

Notes

[illegible]

Notes

[illegible]



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