

## Procedure – Special Education and Related Services for Eligible Students

The purpose of Educational Service District 112's (ESD's) special education procedures is to set forth the procedures ESD will follow in providing special education and related services to eligible students residing in school districts that are members of the ESD 112 Special Education ESA (ESA Member districts). ESD is the Local Education Agency (LEA) for purposes of special education. ESD is responsible for the free appropriate public education of eligible students residing in ESA Member districts. These procedures address areas where state and federal regulations require specific local procedures or permit local exercise of discretion.

ESD delivers special education and related services to eligible students in accordance with federal and state laws. The state regulations governing implementation of special education services pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) are addressed in Chapter 392-172A WAC. Where Chapter 392-172A WAC imposes obligations on the "school district," ESD, as the LEA for purposes of special education for ESA Members, will comply with WAC 392-172A.

These procedures do not address all of the requirements contained in the state regulations. The procedures address the areas required under WAC 392-172A-06000(1)(b) through (p) and are consistent with state policies, as required under 392-172A-06005

ESD and ESA Member district personnel who are not familiar with the regulations need to contact the ESD 112 Special Education ESA Director at (360) 750-7500, if there are questions regarding special education.

### 1. Free Appropriate Public Education (FAPE)

Except for incidental fees that are normally charged to all students, services for eligible special education students ages three to 21 will be provided without charge to the students or the parents of the students, pursuant to WAC 392-172A-02000-02045. Special education services will include preschool, elementary, and secondary education and will be provided in conformance with the student's Individual Education Program (IEP).

#### 1.1. Services from Birth to Age Three

The ESD participates in the provision of early intervention services to eligible children with disabilities residing in the ESA Member districts, age birth to three, consistent with the State lead educational agency's policies and procedures and the regulations implementing Part C of the IDEA 2004.

#### 1.2. Eligibility

Pursuant to WAC 392-172A-03040(1)(a), upon completion of the administration of assessments and other evaluation measures described below, a group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student. Eligibility will be determined pursuant to WAC 392-172A-03040, as follows:

- (2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:
  - (i) Lack of appropriate instruction in reading based upon the state's grade level standards;
  - (ii) Lack of appropriate instruction in math; or
  - (iii) Limited English proficiency; and
- (b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.
 

In interpreting evaluation data for the purpose of determining eligibility for special education services, the ESD must:
- (3)(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and
- (b) Ensure that information obtained from all of these sources is documented and carefully

considered. See WAC 392-172A-03040(3).

Pursuant to WAC 392-172A-03040(4), if a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392- 172A-03090 through 392-172A-03135.

The ESD will provide the parent a copy of the evaluation report (see below) and a notice of the determination of eligibility.

Students remain eligible for special education services until one of four events occur:

- The student is determined through a reevaluation to no longer be eligible for special education;
- The student has met the ESA Member district's high school graduation requirements;
- The student has reached age 21. A special education student, whose 21st birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year; or
- The parent or adult student submits a written revocation to consent pursuant to WAC 392- 172A-03000(2)(e).

### **1.3. Graduation**

When a special education student is expected to graduate prior to age 21, or when graduation is part of the transition plan, the IEP team will document a student's progress towards achieving course credits towards graduation on the transition portion of the IEP. The ESA Member district where the student resides will provide prior written notice to parents and adult students that the student is expected to graduate and will no longer be eligible for special education services. The district will also provide the parents and student with a summary of academic achievement and functional performance and recommendations to assist the student with postsecondary goals. Identification, Referral (Child Find), and Evaluation

### **1.4. Identification**

Pursuant to WAC 392-172A-02040, the ESD will conduct "child find" activities calculated to reach all students with a suspected disability, for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing in the ESA Member districts, whether or not they are enrolled in the public school system.

The ESD reaches students who may be eligible for special education services through: Preschool Child Find activities, including posting public notices of preschool developmental screenings on websites, in the local newspaper and by providing flyers to ESA Member districts for distribution in the local community and to families of school age students. For school age children, child find activities also occur in the form of teacher, parent or agency referral from any source, formal or informal.

#### **1.4.1. Children Enrolled by Their Parents in Private Schools**

Pursuant to WAC 392-172A-04005, the ESD will locate, identify, and evaluate all students who may be eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in ESA Member districts, in accordance with general child find procedures and WAC 392-172A-04005(2) through (5).

The ESD will consult with parents and representatives of private school students to ensure its child find activities are comparable in private schools located within district boundaries. These consultations will occur at least annually by correspondence which state in person consultation is available upon request of the private school administrator.

#### **1.4.2. Infants and Toddlers**

The ESD will conduct child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of IDEA 2004. The ESD, in collaboration with the Part C lead agency, conducts early childhood screenings for ages birth to three years old.

When parents or others inquire about screenings, the caller will be referred to the local Family Resource Coordinator and a screening will be scheduled.

### **1.5. Referral**

A student, whether or not enrolled in school, may be referred for a special education evaluation by parents, district staff, or other persons knowledgeable about the student. When ESA Member district staff or ESD staff

have concerns that a student may have a suspected disability which could result in eligibility for special education services, they will notify the special education teacher or special education certified ESD staff, who will inform the building Principal and special education team. Referrals are required to be in writing unless the person referring is unable to write. All referrals must be documented.

Special education teams are designated in each building in each ESA Member district. The building special education team will process referrals in compliance with WAC 392-172A-03005, as follows:

- (1) A parent of a child, an ESA Member school district, a public agency, and other persons knowledgeable about the child may initiate a request for an initial evaluation to determine if the student is eligible for special education. The request will be in writing, unless the person is unable to write.
- (2) The ESD must document the referral and:
  - (a) Notify the parent that the student has been referred because of a suspected disability and that the ESD, with parental input, will determine whether or not to evaluate the student;
  - (b) Collect and examine existing school, medical and other records in the possession of the parent and the ESA Member district where the student resides; and
  - (c) Within twenty-five school days after receipt of the referral, make a determination whether or not to evaluate the student. The ESD will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

If the building special education team reviews a request for evaluation and supporting data and does not suspect that the child has a disability, the ESD may deny the request. In such a case, written notice, including the reason for the denial and the information used as the basis for the denial, must be given to the parent.

If the determination is that the child should be evaluated, the reviewers shall include information about the recommended areas of evaluation, including the need for further medical evaluation of the student, in a written notice to the parent. A form for obtaining parental consent for the evaluation and the release of appropriate records will be sent with the notice.

Evaluation of Students moving from Part C to Part B and Participation in Transition Planning Conferences

The ESD will participate in transition planning conferences, arranged by the local lead agency as designee of the Part C lead agency for each student who may be eligible for preschool services. Transition plans will be designed to promote uninterrupted provision of appropriate services to the child

1. ESD 112 ESA special education teacher and/or school psychologist will serve as the point of contact with the family resource coordinator for timely execution of transition planning conferences that are arranged at least 90 days before the student's third birthday by the designee of the Part C agency;
2. The district will follow the procedures for obtaining consent and conducting an initial evaluation, if it determines that the student will be evaluated to determine eligibility for Part B services;

The ESD will follow the procedures for timelines and evaluation requirements for students moving from Part C to Part B:

Students turning three, who were previously determined eligible for early intervention services under Part C of IDEA, will be evaluated for initial eligibility for special education services under Part B of IDEA. The evaluation must be completed in enough time to develop an initial IEP by the date of the student's third birthday.

### **1.6. Initial Evaluation**

The ESD will conduct an initial evaluation of a student suspected of having a disability, in compliance with WAC 392-172A-03005.

Pursuant to WAC 392-172A-03005(3), when the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the ESD shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

- (a) Thirty-five school days after the date written consent for an evaluation has been provided to the ESD or its ESA Member district by the parent; or
- (b) Thirty-five school days after the date the refusal of the parent is obtained by agreement through mediation, or overridden by due process procedures; or
- (c) Such other time period as may be agreed to by the parent and documented by the ESD,

including specifying the reasons for extending the timeline.

- (d) Exception. The thirty-five school day time frame for evaluation does not apply if:
- (i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
  - (ii) A student enrolls in another school after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.
- (e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

### **1.7. Initial Evaluation – Part C Children**

Children turning three, who were previously determined eligible for early intervention services under Part C of IDEA 2004, must be evaluated for initial eligibility for special education services under Part B of IDEA 2004. The evaluation must be completed in enough time to develop an initial IEP by the date of the child's third birthday, unless an allowable exception exists.

### **1.8. Consent**

Parental consent is usually required for an evaluation. Pursuant to WAC 392-172A-01040(1) "consent" means that:

- (a) The parent has been 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;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and
- (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive. This means that the revocation does not undo an action that occurred after consent was given and before the consent was revoked.

If a parent revokes consent in writing for their child's receipt of special education services after the student is initially provided special education and related services, neither ESD nor the ESA Member district where the student resides are required to amend the student's educational records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

Pursuant to WAC 392-172A-03000(1)(d), neither ESD nor the ESA Member district is required to obtain consent from the parent for an initial evaluation if the student is a ward of the state and is not residing with the student's parent, and

- (i) Despite reasonable efforts to do so, the ESD cannot discover the whereabouts of the parent of the child;
- (ii) The rights of the parents of the child have been terminated; or
- (iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

### **1.9. Evaluation Requirements**

The evaluation must be an individual assessment designed to determine:

- Whether the student is eligible for special education and any necessary related services; and,
- The nature and extent of special education and related services needed by the student, including information related to enabling the child to be involved in and progress in the general education curriculum.

#### **1.9.1. Evaluation Team**

The building special education team shall select the members of the evaluation team. Members selected must be knowledgeable about the student and the areas of suspected disabilities.

Qualifications of a team member include having the appropriate professional license or certification. The

team may include outside practitioners when necessary. When assessing for specific learning disabilities, the parent and a group of qualified professionals must be part of the team. If the student requires a medical evaluation in order to determine eligibility, the ESD will coordinate with the parents to arrange for the evaluation at the ESD's expense or through the use of public or private insurance, if the parent consents to the use of the insurance.

Professional members of the evaluation team need to be familiar with qualifying disability definitions and criteria in federal and State rules.

### **1.9.2. Evaluation Procedure**

Specific areas to be included in the evaluation are determined by the building special education team and other qualified professionals, as appropriate. The ESD will conduct evaluations in compliance with WAC 392-172A-03020 through 03080.

WAC 392-172A-03020 provides:

- (1) The ESD must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010 that describes any evaluation procedures the ESD proposes to conduct.
- (2) In conducting the evaluation, the group of qualified professionals selected by the building special education team must:
  - (a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, which may assist in determining:
    - (i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and
    - (ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;
  - (b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and
  - (c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (3) The ESD must ensure that:
  - (a) Assessments and other evaluation materials used to assess a student:
    - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
    - (ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;
    - (iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;
    - (iv) Are administered by trained and knowledgeable personnel; and
    - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
  - (b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  - (c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (d) If necessary as part of a complete assessment, the ESD obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's

educational performance.

- (e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- (f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
- (g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.
- (h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

WAC 392-172A-03025 provides that as part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

- (1) Review existing evaluation data on the student, including:
  - (a) Evaluations and information provided by the parents of the student;
  - (b) Current classroom-based, local, or state assessments, and classroom-based observations; and
  - (c) Observations by teachers and related services providers.
- (2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:
  - (i) Whether the student is eligible for special education services, and what special education and related services the student needs; or
  - (ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and
- (b) The present levels of academic achievement and related developmental needs of the student.
- (3) The group described in this section may conduct its review without a meeting.
- (4) The ESD must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (1) of this section.
- (5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the ESD must notify the student's parents of:
  - (i) That determination and the reasons for the determination; and
  - (ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.
- (b) The ESD is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

Parents and ESD staff are encouraged to work towards consensus, but the ESD has the ultimate responsibility to determine whether the student has a disability or not. The ESD will provide the parent with prior written notice of the eligibility decision, as well as a copy of the evaluation report. If the parent disagrees with the eligibility decision they need to be informed of their dispute resolution options described in the procedural safeguards.

#### **a. Specific Learning Disability (SLD)**

The ESD will use the severe discrepancy model and/or the response to intervention (RTI) model, which is a process based on a student's response to scientific, research-based intervention, or a combination of severe discrepancy and RTI for identifying whether a student has a specific learning disability. The evaluation

process used will be the same for all students within selected grades and buildings within the ESA Member district and will be consistent with the ESA Member district's RTI policy and procedures.

RTI is only one element of determining whether a student has a specific learning disability. The evaluation will also include whether the student performs adequately to meet the grade-level standards in the ESA Member district's general curriculum and a determination that the failure to make progress is not the result of:

- A physical, mental, emotional, cultural or environmental factor or limited English proficiency; or
- Inadequate instruction in reading or mathematics.

If evidence exists to suspect a disability, a student cannot be required to progress through tier III of the RTI model before being evaluated.

The ESD will document the eligibility determination for children suspected of having SLDs, in compliance with WAC 392-172A-03080, which provides:

- (1) In addition to the requirements for evaluation reports under WAC 392-172A-03035, for a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:
  - (a) Whether the student has a specific learning disability;
  - (b) The basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040;
  - (c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;
  - (d) Any educationally relevant medical findings;
  - (e) Whether:
    - (i) The student does not achieve adequately for the student's age or meet state grade level standards in one or more of the areas described in WAC 392-172A-03055(1); and
    - (ii)(A) The student meets eligibility through a severe discrepancy model consistent with WAC 392-172A-03070; and
    - (B) If used as part of the eligibility determination under (A) of this subsection, a discussion of the student's pattern of strengths and weaknesses in performance, achievement or both, relative to age, state grade level standards, or intellectual development.
  - (f) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

#### **b. Evaluation of Transfer Students**

If a student transfers into an ESA Member district while an evaluation process is pending from another district, the building special education team is responsible for determining the status of evaluations conducted to date and making a determination as to whether the evaluation can be completed within the 35 school day timeline from the date the parent provided consent. If the determination is that additional time will be needed, the parents will be provided prior written notice of the timeline needed to complete the evaluation and the reasons for the additional time needed.

#### **1.9.3. Evaluation Report**

The ESD will provide the parent with an evaluation report, in compliance with WAC 392-172A-03035. Pursuant to WAC 392-172A-03035(1), the evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

- (a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;
- (b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;
- (c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;
- (d) The recommended special education and related services needed by the student;

- (e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;
- (f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

Pursuant to WAC 392-172A-03035(2), individuals contributing to the report must document the results of their individual assessments or observations.

The building special education team is responsible for notifying parents of the date, time, and location of evaluation meetings by following the procedures in the parent participation section of these procedures (See 3.5 below).

### 1.10. Reevaluations

The ESD will periodically reevaluate students eligible for special education, in compliance with WAC 392-172A-03015. Pursuant to WAC 392-172A-03015(1), the ESD must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when:

- (a) The ESD determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation; or
- (b) If the child's parent or teacher requests a reevaluation.

Pursuant to WAC 392-172A-03015(2), a reevaluation:

- (a) May occur not more than once a year, unless the parent and the ESD agree otherwise; and
- (b) Must occur at least once every three years, unless the parent and the ESD agree that a reevaluation is unnecessary.

Pursuant to WAC 392-172A-03015(3), reevaluations shall be completed within:

- (a) Thirty-five school days after the date written consent for an evaluation has been provided by the parent;
- (b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or
- (c) Such other time period as may be agreed to by the parent and documented by the ESD, within the time frames in WAC 392-172A-03015(2).

Students who turn six who met the eligibility requirements for the disability category of "Developmentally Delayed" (DD) under the criteria for ages three to six years need not be reevaluated at age six under the criteria for six to nine years until three years after their initial evaluation was completed.

Students who were previously eligible under the category "Developmentally Delayed" must be reevaluated before age nine to determine eligibility within another category.

If the IEP team members and any other persons reviewing the data determine that no further testing is necessary, the ESD will notify the parents of this determination, using prior written notice and will inform parents that they have the right to request assessments if they disagree with the determination that additional testing is not necessary.

Parent consent to the reevaluation is not required if the reevaluation does not require additional testing. If additional testing is needed, the ESD will request written parental consent for reevaluation.

If the parents do not return the signed consent form, the ESD will send another letter explaining the need for reevaluation and parent consent and will enclose another consent form and a copy of the prior written notice.

- If the parents **do not respond** to the request for consent, the ESD can proceed with the reevaluation;
- If the parents **refuse to consent** to the reevaluation, the evaluation team will notify the building special education team so that the ESD can determine whether it will seek mediation in order to obtain consent or request a due process hearing to ask an administrative judge to override the parents' refusal to consent.

As part of any reevaluation, the IEP team members and other professionals the ESD determines appropriate will review existing data that includes:



1. Evaluations and information provided by the parents;
2. Current classroom-based assessment, local or state assessments and classroom based observations; and
3. Observations by other teachers and related services providers' data.

Based on this review the team will determine whether any additional data is necessary to determine:

1. Whether the student continues to be eligible for special education and any necessary related services;
2. The present levels of performance and educational needs; and
3. Whether any additions or modifications to the student's program are needed. This review can occur with or without a meeting or through individual review. If the IEP team members and any other persons reviewing the data determine that no further testing is necessary, the district will notify the parents of this determination, using written prior notice and will inform parents that they have the right to request assessments if they disagree with the determination that additional testing is not necessary. Parent consent is not required if the reevaluation does not require additional testing:
  - a. If additional testing is needed, the school psychologist will request written parental consent for reevaluation and provide prior written notice identifying the areas of assessment;
  - b. If the parents do not return the signed consent form, the district will send another letter explaining the need for reevaluation and parent consent and will enclose another consent form and a copy of the prior written notice. In addition, the district will document its reasonable attempts to obtain consent such as telephone calls, emails, personal contact and other efforts to obtain consent;
  - c. If the parents do not respond to the request for consent, and the district has documented its reasonable attempts to obtain consent, the district can proceed with the reevaluation; and
  - d. If the parents refuse to consent to the reevaluation, the evaluation group will notify the ESD 112 ESA administrator so that the ESD can determine whether it will seek mediation in order to obtain consent or request a due process hearing to ask an administrative judge to override the parent's refusal to consent.

After the reevaluation is completed, the school psychologist and/or the case manager will both invite parents to the eligibility meeting and will provide prior written notice after the meeting of the results of the reevaluation to parents in their primary language, indicating one or more of the following:

1. Whether the student continues to be eligible and in need of special education;
2. Present levels of performance and educational needs of the student; and
3. Whether any additions or modifications to the special education and related services are needed to enable the student to meet IEP annual goals and to participate, as appropriate, in the general curriculum.

This notice will occur within ten school days of the eligibility decision. The school psychologist is responsible for sending the notice.

### **1.11. Reevaluation and Graduation**

No reevaluation is required when special education eligibility terminates due to graduation from high school with a regular diploma or due to reaching the end of the school year during which the student turned 21. Instead, the ESD will provide prior written notice. For students who leave school during ages 18 through 21 the building special education team will provide the student with a summary of academic achievement and functional performance including recommendations on how to assist the student in meeting post-secondary goals. This summary will be provided to the student at the approximately one month prior to the student's leaving school.

### **1.12. Independent Educational Evaluations (IEE)**

The ESD will respond to requests by parents for an Independent Educational Evaluation (IEE) at public expense in compliance with WAC 392-172A-05005, as follows:

- (1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the evaluation subject to subsections (2) through (7) of this section.
- (b) The ESD shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the

agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

- (c) For the purposes of this section:
- (i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the ESD or ESA Member school district responsible for the education of the student in question; and
  - (ii) Public expense means that the ESD either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.
- (2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the ESD.
- (b) A parent is entitled to only one independent educational evaluation at public expense each time the ESD conducts an evaluation with which the parent disagrees.
- (c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the ESD must either:
- (i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or
  - (ii) Ensure that an independent educational evaluation is provided at public expense, without unnecessary delay unless the ESD demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.
- (3) If the ESD initiates a hearing and the final decision is that the ESD's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- (4) If a parent requests an independent educational evaluation, the ESD may ask for the parent's reason why he or she objects to the ESD's evaluation. However, the explanation by the parent may not be required and the ESD must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.
- (5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:
- (a) Must be considered by the ESD, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and
  - (b) May be presented as evidence at a hearing under this chapter regarding that student.
- (6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.
- (7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the ESD uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
- (b) Except for the criteria described in (a) of this subsection, the ESD may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Any parent request for an IEE at public expense should be immediately referred to the building special education team, who will ensure the Special Education ESA Director is notified without unnecessary delay. The Special Education ESA Director shall review the request and determine whether the ESD will pay for the requested evaluation or file a request for a due process hearing.

## **2. Individualized Education Programs (IEP)**

The ESD will develop, maintain, implement, and revise IEPs in compliance with the requirements of WAC 392-172A-03090 through 03115.

The ESD will make the current IEP accessible to the building administrator and building special education team. The building administrator and building special education team will ensure all staff members responsible for providing education, other services, or for implementation of the IEP have access to the IEP. All staff members will be informed of their responsibilities for its implementation. This includes not only teachers and other service providers, but also bus drivers, playground and lunchroom supervisors, nursing staff, and others who may be responsible for the proper implementation. The building special education team is responsible for ensuring that staff members are knowledgeable about their responsibilities

### **3.1 Consent to Initial Provision of Special Education Services**

Parent consent is required before the initial provision of special education services. If a parent fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the ESD may not use mediation or due process to override a parent's refusal. When a parent refuses to provide consent the ESD will notify that parent that neither the ESD nor the ESA Member district will have a FAPE obligation to the student thereafter. The notification will be documented in the student's file.

### **3.2 Revocation of Consent to Provision of Special Education Services**

If at any time after the initial provision of special education and related services, the parent revokes consent for the continued provision of special education and related services, in writing, the ESD will provide the parent written notice in accordance with WAC 392-172A-05015 before ceasing the provision of special education service. The written notice will be documented in the student's file. The ESD may not use the due process procedures in order to obtain agreement or a ruling that services may be provided to the student.

ESD will cease providing services the date the written notice is provided and will no longer have a FAPE obligation to the student.

### **3.3 Definition and Content of IEP**

The ESD will develop IEPs that comply with WAC 392-172A-03090, as follows:

- (1) The term IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:
  - (a) A statement of the student's present levels of academic achievement and functional performance, including:
    - (i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or
    - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
  - (b)(i) A statement of measurable annual goals, including academic and functional goals designed to:
    - (A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and
    - (B) Meet each of the student's other educational needs that result from the student's disability; and
  - (ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (c) A description of:
  - (i) How the ESD will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and
  - (ii) When the ESD will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);
- (d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for ESD and school personnel that will be provided to enable the student:
  - (i) To advance appropriately toward attaining the annual goals;
  - (ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
  - (iii) To be educated and participate with other students including nondisabled students in the activities described in this section;
- (e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;
- (f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-

- wide assessments; and
- (ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:
    - (A) The student cannot participate in the regular assessment; and
    - (B) The particular alternate assessment selected is appropriate for the student;
  - (g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.
  - (h) Emergency response protocols, if determined necessary by the IEP team for the student to receive FAPE and parents provide consent. Emergency response protocols must meet the requirements stated in WAC 392-172A-02105;
  - (i) A behavioral intervention plan (BIP), if determined necessary by the IEP team for a student to receive FAPE. The BIP must meet the requirements stated in WAC 392-172A-01301;
  - (j) The procedures by which parents/guardians will be notified of the use of isolation or restraint or a restraint device on their student (see Procedure 3246).
  - (k) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.
  - (l) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:
    - (i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
    - (ii) The transition services including courses of study needed to assist the student in reaching those goals.
  - (m) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

When an eligible student reaches the age of majority, all education rights under Part B of the IDEA, previously exercised by the parent, transfer to the student, unless an educational representative has been appointed for the student. An educational representative may be appointed for a student over the age of 18 if the student is not legally incapacitated but is otherwise deemed unable to provide informed consent. A student may be deemed unable to provide informed consent only if two professionals conduct an examination or interview the student, and conclude the student is unable to provide informed consent. When a student is unable to provide informed consent, the student's spouse, parent or other adult relative or surrogate educational representative will be appointed to represent the student. The appointment of an educational representative will remain in place for one year. The student or appropriately situated adult may challenge the decision certifying the student as incapable of providing informed consent. The ESD will not rely on the education representative until the challenge is resolved.

- (2) Construction. Nothing in this section shall be construed to require:
  - (a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or
  - (b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

***Use of isolation, restraint and restraint devices:***

***A. Definitions***

1. ***Imminent:*** *The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.*
2. ***Isolation:*** *Restricting a student alone within a room or any other form of enclosure, from*

which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan.

3. **Likelihood of serious harm:** A substantial risk that physical harm will be inflicted by a student:
  - a. upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;
  - b. upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm;
  - c. upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or
  - d. after the student has threatened the physical safety of another and has history of one or more violent acts.
4. **Positive behavioral intervention:** Strategies and instruction that can be implemented in a strategic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior.
5. **Restraint:** Physical intervention or force used to control a student, including the use of a restraint device. It does not include appropriate use of a prescribed medical, orthopedic or therapeutic device when used as intended, such as to achieve proper body position, balance or alignment or to permit a student to safely participate in activities.
6. **Restraint device:** A device used to assist in controlling a student, including, but not limited to, metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. Restraint device does not mean a seat harness used to safely transport students. This definition is consistent with RCW 28A.600.485(1)(c), and is not intended to endorse or encourage the use of such devices or techniques with district students.

**B. Practices presumed to be unreasonable when correcting or restraining any student under the age of 18:**

Under RCW 9A.16.100, the following is a non-exclusive list of acts that are presumed unreasonable when correcting or restraining a child:

1. throwing, kicking, burning, or cutting a child;
2. striking a child with a closed fist;
3. shaking a child under the age of three;
4. interfering with a child's breathing;
5. threatening a child with a deadly weapon; or
6. doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

This non-exclusive list should not be read so as to imply that another, unlisted form of correction or restraint is permissible. Whether or not an unlisted use of force or restraint is presumptively permissible depends upon a balanced consideration of all relevant state laws and regulations, and whether the use is reasonable under the totality of the circumstances.

**C. Conditions specific to use of isolation:**

1. The isolation must be discontinued as soon as the likelihood of serious harm has dissipated;

2. *The enclosure will be ventilated, lighted and temperature controlled from inside or outside for purposes of human occupancy.*
3. *The isolation enclosure will permit continuous visual monitoring of the student from outside the enclosure.*
4. *An adult responsible for supervising the student will remain in visual or auditory range of the student at all times.*
5. *Either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student.*
6. *Any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, unless trained personnel are not immediately available due to the unforeseeable nature of the emergency.*

**D. Conditions specific to use of restraint and restraint devices:**

1. *The use of restraint or a restraint device must be discontinued as soon as the likelihood of serious harm has dissipated;*
2. *The restraint or restraint device will not interfere with the student's breathing;*
3. *Any staff member or other adults using restraint or restraint devices must be trained and certified by a qualified provider in the use of such restraint or restraint devices, unless trained personnel are not immediately available due to the unforeseeable nature of the emergency.*
4. *In the case of a restraint device, either the student will be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of an adult responsible for supervising the student.*

**E. Prohibited practices involving restraint, use of force, and discipline:**

*The following practices are prohibited with students eligible for special education services:*

1. *District personnel are prohibited from using aversive interventions;*
2. *District personnel are prohibited from physically restraining or isolating a student, except when the student's behavior poses an imminent likelihood of serious harm as defined above;*
3. *No student may be stimulated by contact with electric current, including, but not limited to, tasers;*
4. *A student may not be denied or subjected to an unreasonable delay in the provision of food or liquid as a form of punishment;*
5. *A student may not be the recipient of force or restraint that is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law (see above, for example, for a list of practices presumed to be unreasonable when used in correcting or restraining a child);*
6. *A student must not be denied or subjected to an unreasonable delay in the provision of common hygiene care;*
7. *A student must not be denied or subjected to an unreasonable delay in the provision of medication;*
8. *A student may not be excluded from his or her regular instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-02110;*
9. *A student must not be forced to listen to noise or sound that the student finds painful;*
10. *A student must not be forced to smell or be sprayed in the face with a noxious or potentially harmful substance;*

11. A student must not be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration;
12. A student's head must not be partially or wholly submerged in water or any other liquid.
13. A student must not be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392- 172A-02110.

**F. Documentation and Reporting Requirements**

ESD 112 ESA member districts follow the documentation and reporting requirements for any use of isolation, restraint, or a restraint device consistent with RCW 28A.600.485 and the parental notification requirement of RCW 28A.155.210. See Policy and Procedure 3246. (District note: Insert here the district's process for documentation and reporting and include the person(s) responsible.)

**3.4 Composition of IEP Team**

The ESD will identify individuals to be members of each eligible student's IEP team, in compliance with WAC 392-172A-03095, as follows:

- (1) The IEP team for each student eligible for special education includes:
  - (a) The parents of the student;
  - (b) Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment. *The general education teacher will, to the extent appropriate, participate in development of the student's IEP, including determinations of: 1) appropriate positive behavioral interventions and supports for the student; and 2) supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A- 01185 and WAC 392-172A-03110(2)(b);*
  - (c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
  - (d) A representative of the ESD who:
    - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education;
    - (ii) Is knowledgeable about the general education curriculum; and
    - (iii) Is knowledgeable about the availability of resources of the ESD.
  - (e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;
  - (f) At the discretion of the parent or the ESD, other individuals who have knowledge or special expertise regarding the student, including related services personnel and/or building administrator as appropriate; and
  - (g) Whenever appropriate, the student.
- (2)(a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.
- (b) If the student does not attend the IEP team meeting, the ESD must take other steps to ensure that the student's preferences and interests are considered.
- (c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the ESD must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
- (3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.
- (4) The ESD may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the ESD representative, if the criteria in subsection (1)(d)

of this section are satisfied.

- (5)(a) An ESD and/or ESA Member district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education and the ESD agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.
- (b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:
  - (i) The parent, in writing, and the public agency consent to the excusal; and
  - (ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.
- (6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives as specified by the state lead agency for Part C to assist with the smooth transition of services.

### **3.5 Parent Participation**

The ESD will ensure parent participation in the IEP process in compliance with WAC 392-172A- 03100 through 03115. WAC 392-172A-03100 provides:

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

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.
- (3) The notification required under subsection (1) of this subsection must:
  - (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
  - (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA 2004.
- (4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:
  - (a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the ESD will invite the student; and
  - (b) Identify any other agency that will be invited to send a representative.
- (5) If neither parent can attend an IEP team meeting, the ESD must use other methods to ensure parent participation, including video or telephone conference calls.
- (6) A meeting may be conducted without a parent in attendance if the ESD is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:
  - (a) Detailed records of telephone calls made or attempted and the results of those calls;
  - (b) Copies of correspondence sent to the parents and any responses received; and
  - (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (7) The ESD must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (8) The ESD must give the parent a copy of the student's IEP at no cost to the parent.

The building special education team is responsible for all notifications regarding the student's IEP as well as selecting the appropriate forms. The building special education team is also responsible for making arrangements to facilitate parent participation and arrange for interpreters, if necessary. The building



special education team will document all attempts to convince the parent to attend the IEP team meeting.

Pursuant to WAC 392-172A-03115 and consistent with WAC 392-172A-05000 (3)(a), the ESD will ensure that the parents of each student eligible for special education are members of any group that makes decisions on the educational placement of the student.

### **3.6 When IEPs Must Be in Effect**

The ESD will comply with the effective date requirements for IEPs, as set forth in WAC 392-172A-03105(1) through (3), as follows:

- (1) At the beginning of each school year, ESD must have an IEP in effect, for each student eligible for special education that it is serving through enrollment in the ESA Member districts.
- (2) For an initial IEP, ESD must ensure that:
  - (a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and
  - (b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.
- (3) The ESD must ensure that:
  - (a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
  - (b) Each teacher and provider described in (a) of this subsection is informed of:
    - (i) His or her specific responsibilities related to implementing the student's IEP; and
    - (ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

### **3.7 When IEPs Must Be in Effect for Transfer Students**

Pursuant to WAC 392-172A-03105(4), if a student eligible for special education transfers to an ESA Member district from another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the building principal and/or the registrar will notify the special education department. The ESD, in consultation with the parents, will review the student's IEP to ensure the ESD provides FAPE to the student including services comparable to those described in the student's IEP, until the ESD either:

- (a) Adopts the student's IEP from the previous school district; or
- (b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

Pursuant to WAC 392-172A-03105 (5), if a student eligible for special education transfers from a school district located in another state to an ESA Member district and has an IEP that is in effect for the current school year from the previous school district, the building principal and/or the registrar will notify the special education department. The ESD, in consultation with the parents, will review the student's IEP to ensure the ESD provides FAPE to the student including services comparable to those described in the student's IEP, until the ESD:

- (a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the ESD believes an evaluation is necessary to determine eligibility under state standards; and
- (b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

Pursuant to WAC 392-172A-03105(6), to facilitate the transition for a transfer student:

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

### **3.8 Development, Review, and Revision of IEPs**

The ESD will develop, review, and revise IEPs in compliance with WAC 392-172A-03110, which provides:

- (1) In developing each student's IEP, the IEP team must consider:
    - (a) The strengths of the student;
    - (b) The concerns of the parents for enhancing the education of their student;
    - (c) The results of the initial or most recent evaluation of the student; and
    - (d) The academic, developmental, and functional needs of the student.
  - (2)(a) When considering special factors unique to a student, the IEP team must:
    - (i) Consider the use of positive behavioral interventions and supports, and other strategies, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and
    - (ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;
    - (iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;
    - (iv) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
    - (v) Consider whether the student needs assistive technology devices and services.
  - (b) A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:
    - (i) Appropriate positive behavioral interventions and supports and other strategies for the student; and
    - (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.
  - (c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the ESD may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the ESD must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).
  - (d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.
  - (e) To the extent possible, the ESD must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.
- (3) ESD must ensure that, subject to subsections (4) and (5) of this section the IEP team:
- (a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and
  - (b) Revises the IEP, as appropriate, to address:
    - (i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;
    - (ii) The results of any reevaluations;
    - (iii) Information about the student provided to, or by, the parents, as described under WAC

392-172A-03025;

- (iv) The student's anticipated needs; or
  - (v) Other matters.
- (4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section. In the case of a student whose behavior continues to impede the progress of the student or others despite the use of positive behavioral support strategies: Consider the need for an emergency response protocol only as a last resort, if positive behavior supports have been used in accordance with the student's IEP, the use of positive behavior supports has been documented to be ineffective, and the IEP team, consistent with WAC 392-172A-03120 through 392-172A-03135 determines that an emergency response protocol is necessary for the student.
- (5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.
- (6)(a) If a participating agency, other than the ESD, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the ESD must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
- (b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.
- (7)(a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:
- (i) The requirement that students eligible for special education participate in ESA Member district or state-wide assessments.
  - (ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
- (b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
- (ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

#### **4. Least Restrictive Environment (LRE), Access to Extracurricular and Non-Academic Activities, Continuum of Services**

##### **4.1. Least Restrictive Environment (LRE)**

The ESD provides special education and related services to eligible students, in the least restrictive environment (LRE), pursuant to WAC 392-172A-02050 through 02070. WAC 392-172A-02050 provides:

Subject to the exceptions for students in adult correctional facilities, the ESD shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:

- (1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and
- (2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Pursuant to WAC 392-172A-02060(2), when determining the educational placement of a student eligible for special education, including a preschool student, the selection of the appropriate placement for each student shall be based upon:

- (a) The student's IEP;

- (b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including WAC 392-172A-02060;
- (c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and
- (d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

Pursuant to WAC 392-172A-02060 (3), unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

Pursuant to WAC 392-172A-02060 (4), a student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum.

#### **4.2. Access to Extracurricular and Nonacademic Services**

In compliance with WAC 392-172A-02025, the ESA Member districts will provide nonacademic and extracurricular services and activities in the manner necessary to afford students eligible for special education an equal opportunity for participation in those services and activities. Within the nonacademic setting, students will be provided nonacademic and extracurricular activities with non-disabled students.

Nonacademic and extracurricular services and activities available through the ESA Member districts may include: vocational and school counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, post-secondary transition services such as referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

Pursuant to WAC 392-172A-02065, each student eligible for special education will participate with nondisabled students in extracurricular services and activities to the maximum extent appropriate to the needs of that student. The ESD will ensure that each student eligible for special education has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

#### **4.3. Continuum of Alternative Placements**

The ESD provides a continuum of alternative placements for students, pursuant to WAC 392-172A-02055, as follows:

- (1) ESD shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.
- (2) The continuum required in this section must:
  - (a) Include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and
  - (b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

### **5. Procedural Safeguards and Discipline Procedures**

#### **5.1. Notice of Procedural Safeguards**

Pursuant to WAC 392-172A-05015(1), the ESD shall provide a copy of the procedural safeguards notice to the parents of eligible special education students and students referred for special education and adult students one time per school year, and

- (a) Upon initial referral or parent request for evaluation;
- (b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;
- (c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and
- (d) Upon request by a parent.

The procedural safeguards notice used by the ESD must include a full explanation of all the procedural safeguards relating to independent educational evaluation, prior written notice, parental consent, revocation of consent, access to educational records, discipline procedures for students who are subject to placement in an interim alternative educational setting, requirements for unilateral placement by parents of

children in private schools at public expense, State complaint procedures, mediation, the child's placement during pendency of due process proceedings, including requirements for disclosure of evidence, due process hearings, civil actions, and attorney's fees.

Copies of the special education procedural safeguards notice are available from the building special education team or the ESD. The building special education team is responsible for ensuring that the procedural safeguards are provided at least once a year and for initial referral for evaluation, when a student's placement is changed because the student has been removed for more than 10 school days in a year, and upon parent request. ESD is responsible for providing the procedural safeguards when the first state complaint and/or due process complaint is received.

## **5.2. Prior Written Notice**

The ESD will provide prior written notice as required by WAC 392-172A-05010, as follows:

- (1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the ESD:
  - (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or
  - (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.
- (2) The notice required under this section must include:
  - (a) A description of the action proposed or refused by the ESD;
  - (b) An explanation of why the ESD proposes or refuses to take the action;
  - (c) A description of each evaluation procedure, assessment, record, or report the ESD used as a basis for the proposed or refused action;
  - (d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
  - (e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;
  - (f) A description of other options that the IEP team considered and the reasons why those options were rejected; and
  - (g) A description of other factors that are relevant to the ESD's proposal or refusal. (3)(a)

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

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

## **5.3. Mediation**

Mediation shall be made available under WAC 392-172A-05060 through 05075. The purpose of mediation is to offer both the parent and the ESD an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator.

Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process. Mediation cannot be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under IDEA 2004.

Mediation services are provided by the Office of the Superintendent of Public Instruction (OSPI) at no cost to either party, including the costs of meetings described in WAC 392-172A-05075.

To access the state-wide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case. The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. See WAC 392-172A-05060.

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

- (a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- (b) Is signed by both the parent and a representative of the ESD who has the authority to bind the ESD.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal or state court. See WAC 392-172A-05070.

#### **5.4. Due Process Hearing**

Both parents and the ESD may file requests for due process hearings involving the identification, evaluation, placement, or provision of FAPE to a student, pursuant to WAC 392-172A-05080 through 05125.

##### **5.4.1. Due Process Hearing Request**

IDEA 2004 requires that specific information be provided as part of a due process hearing request. The requirements are identified in the procedural safeguards notice and on the due process hearing request form. Due process hearing request forms are available at the ESD and on the OSPI Special Education Administrative Services and ESD web sites.

If a staff person receives a request for a due process hearing, a copy of the request should be immediately forwarded to the ESD Special Education ESA Director. If the parent has not filed the request for hearing with the OSPI, the ESD will forward the parent request to the OSPI Administrative Resources Section. The ESD may not delay or deny a parent's due process hearing request. Parents are entitled to a copy of the notice of procedural safeguards if this is the first due process hearing in a school year. ESD is responsible for providing the parents a copy of the procedural safeguards in this situation and documenting that the safeguards were provided to the parent.

When a parent files a due process hearing, the student remains in the placement the student was in when the request was filed, unless the parents and ESD agree to a different placement. See the discipline section of these procedures for placements when a disciplinary action is challenged.

##### **5.4.2. Resolution Session**

When parents file a request for a due process hearing, the ESD Special Education ESA Director will immediately schedule a resolution meeting. The meeting must occur within 15 days after a parent request for hearing or seven days if the hearing request involves an expedited hearing regarding discipline. The Special Education ESA Director will determine the appropriate staff that will attend the resolution meeting. The ESD will not bring an attorney to a resolution meeting unless the parent is bringing an attorney to the meeting.

Any resolution agreement reached will be documented in writing and is binding on the parties. The document will inform the parent of their right to void the agreement within three business days of signing the agreement.

#### **5.5. Discipline**

The ESD will comply with the provisions of WAC 392-172A-05140 through 05175 when disciplining students eligible for special education or who may be deemed to be eligible for special education.

##### **5.5.1. Purpose**

Under WAC 392-172A-05140 the purpose of the disciplinary procedures set forth in WAC 392-172A-05140 through 392-172A-05155 is to ensure that students eligible for special education services are not

improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145. The ESD shall take steps to ensure that its and each ESA Member district's special education employees, contractors, and other agents are knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in Chapter 392-400 WAC governing discipline for all students.

### **5.5.2. Authority of School Personnel**

Under WAC 392-172A-05145(1), the building administrator or ESA Member district superintendent may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of WAC 392-172A-05145(1), is appropriate for a student eligible for special education services, who violates a code of student conduct. The building special education team shall be consulted and included in the decision-making process when school personnel are considering a change of placement due to violations of the code of student conduct.

### **5.5.3. Disciplinary Removals**

The building administrator or ESA Member district superintendent, in consultation with the building special education team, may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155 (set forth below). See WAC 392-172A-05145(2)(a).

In emergency circumstances that prevent consultation with the building special education team, the building administrator or ESA Member district superintendent may remove the student from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement

under WAC 392-172A-05155 (set forth below). See WAC 392-172A-05145(2)(a). If a student is removed from his or her current placement by the building administrator or ESA Member district superintendent, the building administrator or ESA Member district administration will immediately notify the building special education team, who will ensure the ESD Special Education ESA Director is notified without unreasonable delay.

After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the ESD must provide services to the extent required under subsection WAC 392-172A-05145(4). See WAC 392-172A-05145(2)(b).

When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to WAC 392-172A-05145(5), school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as the ESA Member district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with WAC 392-172A-05145(4). See WAC 392-172A-05145(3).

### **5.5.4. Services for Students During Disciplinary Removals**

The ESD will provide services to eligible students who are removed from their current placements in compliance with WAC 392-172A-05145(4), as follows:

- (4) A student who is removed from the student's current placement pursuant to subsection (3) or (5) of [WAC 392-172A-05145] must:
  - (a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
  - (b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.
  - (c) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.

(d) The ESD is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

(e) After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, set forth below, the building administrator or ESA Member district superintendent, in consultation with at least one of the student's teachers and the building special education team, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(f) If the removal is a change of placement under WAC 392-172A-05155, set forth below, the student's IEP team determines appropriate services under (a) of this subsection.

#### **5.5.5. Manifestation Determination**

Pursuant to WAC 392-172A-05145(5)(a), within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the ESD, the parent, and relevant members of the student's IEP team (as determined by the parent and the ESD) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- (ii) If the conduct in question was the direct result of the ESA member district staff's failure to implement the IEP.

Pursuant to WAC 392-172A-05145(5)(b), the conduct must be determined to be a manifestation of the student's disability if the ESD, the parent, and relevant members of the student's IEP team determine that either of the conditions (i) or (ii), above, was met.

If the ESD, the parent, and relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the ESD must take immediate steps to remedy those deficiencies. See WAC 392-172A-05145(5)(c).

#### **5.5.6. Functional Behavioral Assessment and Behavior Intervention Plan**

Pursuant to WAC 392-172A-05145(6), if the ESD, the parent, and relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either:

- (a) Conduct a functional behavioral assessment, unless the ESD had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or
- (b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- (c) Except as provided in WAC 392-172A-05145(7), set forth below, return the student to the placement from which the student was removed, unless the parent and the ESD agree to a change of placement as part of the modification of the behavioral intervention plan.

#### **5.5.7. Removals for Possession of Weapons or Illegal Drugs or Infliction of Serious Bodily Injury**

Pursuant to WAC 392-172A-05145(7), school personnel may remove a student to an interim alternative educational setting for not more than forty-five school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

- (a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the ESA Member district;
- (b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the ESA Member district; or
- (c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the ESA Member district.



See WAC 392-172A-05145(9) for definitions of "controlled substance," "illegal drug," "serious bodily injury," and "weapon." The building special education team will be informed and consulted when students engage in incidents that may result in the student being removed and placed in an interim alternative educational setting. The building special education team will notify the Special Education ESA Director.

#### **5.5.8 Notification**

Pursuant to WAC 392-172A-05145(8), on the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the building special education team must notify the parents of that decision, and provide the parents the procedural safeguards notice.

#### **5.5.9. Interim Alternative Setting**

Pursuant to WAC 392-172A-05150, the student's IEP team will determine the interim alternative educational setting for services under WAC 392-172A-05145(3), (4) (e) and (7).

#### **5.5.10. Change of Placement Because of Disciplinary Removals**

WAC 392-172A-05155 provides:

For purposes of removals of a student eligible for special education from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

- (1) The removal is for more than ten consecutive school days; or
- (2) The student has been subjected to a series of removals that constitute a pattern:
  - (a) Because the series of removals total more than ten school days in a school year;
  - (b) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - (c) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.
- (3) The building special education team will determine on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (4) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

#### **5.5.11. Appeal of Placement Decisions and Manifestation Determinations**

The ESD will follow the procedures for appeals of placement decisions and manifestation determinations set forth in WAC 392-172A-05160, as follows:

- (1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05145(5), or the ESD, if it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.
  - (2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

- (b) In making the determination under (a) of this subsection, the administrative law judge may:
  - (i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or
  - (ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
- (c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the ESD believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.
- (3) Whenever a hearing is requested under subsection (1) of this section, the parents and the ESD involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:
  - (a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.
  - (b) Unless the parents and ESD agree in writing to waive the resolution meeting described in (b) (i) of this subsection, or agree to use the mediation process:
    - (i) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and
    - (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process hearing request.
  - (4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

#### **5.5.12. Placement During an Appeal Through a Due Process Hearing**

Pursuant to WAC 392-172A-05165, when either the parent or the ESD requests a due process hearing, and unless the parent and the ESD agree otherwise, the student must remain in the interim alternative educational setting pending the sooner of: (1) the decision of the administrative law judge; or (2) the expiration of the applicable ten-day time period specified in WAC 392-172A-05145(3) or the 45-day period specified in WAC 392-172A-05145 (7).

#### **5.5.13. Protections for Students Not Determined Eligible for Special Education**

Pursuant to WAC 392-172A-05170(1), a student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in Chapter 392-172A WAC, if the ESD had knowledge as determined in accordance with WAC 392-172A-05170(2) (see below) that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

WAC 392-172A-05170(2) provides:

- (2) Basis of knowledge. The ESD must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:
  - (a) The parent of the student expressed concern in writing to ESD supervisory or administrative personnel, or a teacher of the student, that the student is in need of special education and related services;
  - (b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or
  - (c) The teacher of the student, or other personnel of the ESD, expressed specific

concerns about a pattern of behavior demonstrated by the student directly to a member of the building special education team or the Special Education ESA Director or to other ESD Special Education ESA supervisory personnel.

Pursuant to WAC 392-172A-05170(3), the ESD will not be deemed to have knowledge under subsection WAC 392-172A-05170(2) if:

- (a) The parent of the student:
  - (i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or
  - (ii) Has refused services under this chapter; or
- (b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

Pursuant to WAC 392-172A-05170(4)(a), if the ESD does not have knowledge that a student is eligible for special education prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with the following from WAC 392-172A-05170(4)(b):

- (b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, the evaluation must be conducted in an expedited manner.
- (ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- (iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the ESD and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the provision of a free appropriate public education for students suspended or expelled from school.

#### **5.5.14. Referral to and Action by Law Enforcement and Judicial Authorities.**

Nothing in Chapter 392-172A WAC prohibits the ESD or ESA Member districts from reporting a crime committed by a student to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student eligible for special education. If the ESD reports a crime committed by a student eligible for special education, the ESD must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. See WAC 392-172A-05175.

### **6. Confidentiality and Records Management**

The ESD and each ESA Member district are responsible for maintaining the confidentiality of personally identifiable information pertaining to special education students, consistent with WAC 392-172A-05180 through 05245.

The ESD Special Education ESA Director will maintain, for public inspection, a current list of the names and positions of employees who have access to personally identifiable information of special education students, pursuant to WAC 392-172A-05230(4).

Pursuant to WAC 392-172A-05205, the ESD will provide parent and adult students, upon request, a list of the types and locations of educational records collected, maintained or used by the ESD for special education and related services.

Pursuant to WAC 392-172A-05230(3), the ESD will provide instruction to special education personnel who provide services in ESA Member districts and who collect or use personally identifiable information on the procedures to protect the confidentiality of personally identifiable information. The training will address the protections outlined in Chapter 392-172A WAC, State law, and federal regulations

implementing the Family Educational Rights and Privacy Act, FERPA, (34 C.F.R. Part 99).

Pursuant to WAC 392-172A-05190(1), the ESD and its ESA Member districts shall permit parents of students eligible for special education to inspect and review, during school business hours, any educational records relating to the student, which are collected, maintained, or used by the ESD or ESA Member district. The ESD shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The ESD shall respond, in no case, more than forty-five calendar days after the request has been made.

Pursuant to WAC 392-172A-05190(2), the right to inspect and review educational records under WAC 392-172A-05190 includes:

- (a) The right to a response from the ESD to reasonable requests for explanations and interpretations of the records;
- (b) The right to request that the ESD provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (c) The right to have a representative of the parent or adult student inspect and review records.

The ESD and ESA Member districts may presume that a parent has authority to inspect and review records relating to his or her student unless the ESD, ESA Member district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce. See WAC 392-172A-05190(3).

If an educational record includes information on more than one student, the parents (and/or adult student) may only inspect and review information relating to their own child.

School personnel receiving requests for educational records of special education students will immediately forward the request to the building special education team, who will notify the Special Education Director without unnecessary delay.

If parents believe that information in an educational record is inaccurate or misleading, or violates the privacy or rights of the student, they may request that the ESD amend the information. The ESD's Administrative Procedures, Z, Student Records, describes the process and timelines for challenges and hearings regarding student records.

The ESD follows the guidelines for records retention outlined in the Secretary of State's, *General Records Retention Schedule and Records Management Manual*. The ESD shall inform parents or adult students when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student. The information shall be destroyed at the request of the parent(s) or adult student, or will be provided to the parent or adult student upon their request. However, a permanent record of the student's name, address and phone number, his or her grades, attendance, record, classes attended, grade level completed and year completed will be maintained without time limitation. See WAC 392-172A-05235.

Records management is also governed by the ESD's Administrative Procedures N, Records Retention Schedule and X, Public Records Act.

## **7. Transitions of Birth-to-Three Children to Preschool**

Pursuant to WAC 392-172A-02080, the ESD will assist with the smooth and effective transition of children who participate in early intervention programs assisted under Part C and are eligible for services under Part B, to the ESD's preschool program. The ESD will comply with WAC 392-172A-02080(2) and (3), as follows:

- (2) ESD will participate in transition planning conferences arranged by the designee of the lead agency for Part C in the state. A transition planning conference will be convened for each child who may be eligible for preschool services at least ninety days prior to the child's third birthday.
- (3) By the third birthday of a child described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172A-02000(1).

The ESD 112 Birth-through-Two Services Coordinator is responsible for coordinating with the Regional Family Resource coordinator for timely execution of transition planning conferences.

## **8. Students Enrolled by Their Parents in Private Schools**

On October first of each year, the ESD shall conduct an annual count of the number of private elementary and secondary school students eligible for special education who are enrolled by their parents in a private school located within ESA Member district boundaries and who do not wish to enroll in a public school to receive special education and related services.

### **8.1. Proportional Share of Funds**

The ESD is required to spend a proportionate amount of federal special education Part B and Section 619 funds to provide special education and related services to private elementary or secondary school students. The ESD will provide these services in compliance with WAC 392-172-04000 through 04115.

### **8.2. Consultation Regarding Private School Students**

The ESD shall have timely and meaningful consultation with appropriate representatives and parents of private school students and make determinations pursuant to this section.

Pursuant to WAC 392-172A-04020, to ensure timely and meaningful consultation, the ESD must consult with private school representatives and representatives of parents of parentally placed private school students eligible for special education during the design and development of special education and related services for the students regarding the following:

- (1) The child find process, including:
  - (a) How parentally placed private school students suspected of having a disability can participate equitably; and
  - (b) How parents, teachers, and private school officials will be informed of the process.
- (2) The determination of the proportionate share of federal funds available to serve parentally placed private school students eligible for special education including the determination of how the ESD calculated the proportionate share of those funds.
- (3) The consultation process among the ESD, private school officials, and representatives of parents of parentally placed private school students eligible for special education, including how the process will operate throughout the school year to ensure that parentally placed students eligible for special education identified through the child find process can meaningfully participate in special education and related services.
- (4) How, where, and by whom special education and related services will be provided for parentally placed private school students eligible for special education, including a discussion about:
  - (a) The types of services, including direct services and alternate service delivery mechanisms; and
  - (b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and
  - (c) How and when those decisions will be made.
- (5) How, if the ESD disagrees with the views of the private school officials on the provision of services or the types of services, the ESD will provide to the private school officials a written explanation of the reasons why the ESD chose not to provide services directly or through a contract.

Pursuant to WAC 392-172A-04010(1), parents who have placed their children in private school are entitled to enroll their children part-time in their resident district for any course, activity or ancillary service, not provided by the private school under Chapter 392-134 WAC and pursuant to WAC 392-172A-01135. Parents who elect to enroll part-time in their resident district in order to receive special education and/or related services are served through an IEP and are counted for federal and State special education reimbursement.

In providing services to students eligible for special education who are enrolled by their parents in

private, including religious, elementary and secondary schools located in the ESA Member district boundaries, and who are **not** part-time enrolled for special education services under Chapter 392-134 WAC, the ESD will comply with WAC 392-172A-04010, which provides in relevant part:

- (2) To the extent consistent with the number and location of students eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the ESA Member school district boundaries, and who are not part-time enrolled for special education services under chapter 392-134 WAC, ESD must allow for the participation of those students by providing them with special education and related services, including direct services determined in accordance with WAC 392-172A-04035.
- (3) In accordance with WAC 392-172A-04010 and WAC 392-172A-04035 through 392- 172A-04070, a services plan must be developed and implemented for each private school student eligible for special education who has been designated by the ESD to receive special education and related services.
- (4) ESD must maintain in its records, and provide to the OSPI, the following information related to parentally placed private school students:
  - (a) The number of students evaluated;
  - (b) The number of students determined eligible for special education; and
  - (c) The number of students served through a services plan.

## **9. Funding and Use of Funds**

The ESD will apply annually for Federal Part B and State special education funding to assist in the provision of special education and any necessary related services. This funding is in addition to students' basic education funding and State special education funding.

### **9.1. Early Intervening Services (EIS)**

The ESD, shall annually determine whether to use Part B funds for Early Intervening Services (EIS), pursuant to WAC 392-172A-06085, to provide academic and behavioral support to students in the general education environment.

The ESD shall annually report to the OSPI the number of students receiving EIS and the number of students who received EIS and subsequently received special education and related services under Part B of IDEA 2004 during the preceding two-year period.

### **9.2. Students Covered by Public or Private Insurance**

Pursuant to WAC 392-172-07005, the ESD may use Medicaid or other public insurance benefits programs in which a student participates, and/or the parents' private insurance proceeds to provide or pay for services required to provide a FAPE.

However, the ESD will not:

- A. Require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;
- B. Require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim;
- C. Use a parent or student's benefits under a public insurance programs if that use would:
  1. Decrease available lifetime coverage or any other insured benefit;
  2. Result in the family paying for services required after school hours that would otherwise be covered by the public insurance program;
  3. Increase premiums or result in discontinuation of insurance; or
  4. Risk loss of eligibility for home and community-based waivers, based on aggregated health-related expenditures.

The ESD may access a parent's private insurance proceeds to provide FAPE to an eligible student only if the parent provides informed consent to the ESD. Whenever the ESD proposes to access the parent's

private insurance proceeds, the ESD will:

1. Obtain parent consent in accordance with Chapter 392-172A WAC each time the district wishes to access benefits for a new procedure; and
2. Inform the parents that their refusal to permit the district to access their insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost to the parents.

Before first accessing a parent's or student's public benefits, for the first time and annually after the first notification, the ESD will provide written notification using the prior written notice provisions under WAC 392172A-05010(3) that includes:

1. A statement of the parental consent provisions;
2. A statement of the "no cost" provisions;
3. A statement that the parents may withdraw their consent to disclose personally identifiable information to the agency responsible for administering the state's public benefits or insurance, and
4. A statement that a parent's withdrawal or refusal to consent does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

After providing the required notification, the ESD will obtain written informed consent from the parent allowing the district to disclose information from the student's educational records to the agency responsible for administering the state's public benefits or insurance programs. The consent will specify:

1. The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to the student;
2. The purpose of the disclosure;
3. The agency to which the disclosure will be made; and
4. That the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to apply for services under the act.

To avoid financial cost to parents who would otherwise consent to use private insurance, or public benefits if the parent would incur a cost such as deductible or co-pay, the district may use its Part B funds to pay the cost the parents would incur.

The ESD 112 ESA administrator is responsible for providing the required notices and request for consent to parents under this section.

### **9.3. Use of Funds**

The ESD will use special education funds in accordance with WAC 392-172A-06010, as follows:

- (1) Part B funds provided to the ESD:
  - (a) Must be expended in accordance with the applicable provisions of this chapter;
  - (b) Must be used only to pay the excess costs of providing special education and related services to special education students, consistent with this chapter; and
  - (c) Must be used to supplement state, local and other federal funds and not to supplant those funds.
- (2) The excess cost requirement prevents ESD from using funds provided under Part B of the act to pay for all of the costs directly attributable to the education of a student eligible for special education.
- (3)
  - (a) ESD meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students eligible for special education before funds under Part B of the act are used.
  - (b) The excess cost amount is determined in accordance with the definition of excess costs in WAC 392-172A-01075. That amount may not include capital outlay or debt service.
- (4) The combined minimum average amounts determined in accordance with the definition of

excess costs in ESA Member school districts for elementary or secondary school students, as the case may be, will be used.

Under WAC 392-172A-06035:

- (1) Funds provided under Part B of the act may be used for the following activities:
  - (a) For the costs of special education and related services, and supplementary aids and services, provided in a general education class or other education-related setting to a special education student in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.
  - (b) To develop and implement coordinated early intervening educational services in accordance with WAC 392-172A-06085.
  - (c) To establish and implement cost or risk sharing funds, consortia, or cooperatives, to pay for high cost special education and related services.
- (2) ESD may use funds received under Part B of the act to purchase appropriate technology for record keeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students eligible for special education, that are needed for the implementation of those case management activities.

The ESD will comply with WAC 392-172A-06015 through 06030 with respect to maintenance of effort.

## **10. Staff Qualifications and Development**

### **10.1. Qualifications**

All employees of the ESD funded in whole or part with State or federal excess special education funds will meet the standards established by the State Board of Education (SBE) and defined in WAC 392-172-A-02090.

Pursuant to WAC 392-172-A-02090(1)(g), special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

All employees will hold such credentials, certificates, or permits as are now or hereafter required by the SBE for the particular position of employment, and shall meet such supplemental standards as are now or hereafter established by the ESD.

#### **10.1.1. Special Education Teachers**

Pursuant to WAC 392-172-A-02090(1)(b), all special education teachers providing, designing, supervising, evaluating or monitoring the provision of special education shall possess "substantial professional training." "Substantial professional training" shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI.

Pursuant to WAC 392-172-A-02090(2), ESD will take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain highly qualified teachers, they are unable to do so. Under WAC 392-172-A-02090(2), the following options are available in these situations:

- (a) Teachers who meet state board criteria pursuant to WAC 181-82-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the Office of the Superintendent of Public Instruction.
- (b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the ESD must keep written documentation on the following:
  - (i) The ESD must make one or more of the following factual determinations:



(A) The ESD was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the ESD with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by the ESD that one or more of these criteria can be documented and the ESD determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the ESD can so assign the teacher to special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course work which are applicable to an endorsement in special education. The following requirements apply:

(A) The teacher and appropriately assigned ESD personnel shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(C) Such teaching assignments shall be approved by a formal vote of the ESD board for each teacher so assigned; and

(D) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board as required by WAC 181-16-195.

Teachers placed under the options described in WAC 392-172-A-02090(2) do not meet the definition of highly qualified.

#### **10.1.2. Other Certificated Service Providers**

Pursuant to WAC 392-172-A-02090(1)(c), other certificated related services personnel providing specially designed instruction or related services, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

#### **10.1.3. Early Childhood Service Providers**

Pursuant to WAC 392-172-A-02090(1)(d), employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early childhood special education assignment must be given first to employees having early childhood special education endorsement.

#### **10.1.4. Braille Instruction**

Pursuant to WAC 392-172-A-02090(1)(e), certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

#### **10.1.5. Paraprofessionals and Aides**

Pursuant to WAC 392-172-A-02090(1)(f), paraprofessional staff and aides shall present evidence of skills and knowledge necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate, as provided pursuant to WAC 392-172-A-02090(1)(g). Paraprofessional staff in Title One school-wide programs shall meet ESEA standards for paraprofessionals.

### **10.2. Personnel Development**

In order to provide a staff development program to improve the quality of instructional programs, the following procedures will be employed:

- Training will be provided annually to all personnel who may be providing support to a student as defined in the student's emergency response protocol under a student's IEP;
- Training will be provided annually to all personnel collecting or using personally identifiable information regarding the procedures and protection of confidentiality.
- In-service training schedules will be developed based upon the indicators identified in the State's Performance Plan and the specific needs of the ESD Special Education ESA surrounding these indicators.
- Topical training activities are available for regular general and special education staff, staff of other agencies and organizations and private school staff providing services for special education student through ESD 112 Instructional Services.
- Training for classified staff in the state recommended core competencies is available through ESD 112 Instructional Services.

#### **11. Public Documents Relating to the ESD's Eligibility**

The ESD's application for special education funding and any required policies, procedures, evaluations, plans, and reports are readily available to ESA Member districts, parents and other members of the public through the ESD and the OSPI. A notice regarding the availability of such documents will be placed on the ESD web site and/or in ESA Member district's newsletters and/or student handbooks.

#### **12. Provision to the OSPI of Necessary Information and Data for the State's Performance Goals**

Pursuant to WAC 392-172A-6000(4), the ESD will provide the OSPI with information that addresses the progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

#### **13. Provision of Instructional Materials to Blind Persons or Persons with Print Disabilities**

The ESD will provide instructional materials to blind persons or persons with print disabilities, in compliance with Chapter 392-172A WAC.

#### **14. Compliance with Corrective Actions as a Result of Monitoring or Dispute Resolution Processes**

The ESD will comply with any/all directives from the OSPI to take corrective actions as a result of monitoring. The ESD will comply with any/all orders issued as a result of the due process and/or complaint procedures set forth in Chapter 392-172A WAC, or other law or regulation applicable to students with disabilities.