

Special Education
... A service, not a place.

Notice of Special Education Procedural Safeguards for Students and Their Families

Requirements under Part B of the
Individuals with Disabilities Education Act,
the Federal Regulations, and the State
Rules Governing Special Education

Notice of Special Education Procedural Safeguards For Students and Their Families

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OSPI provides equal access to all programs and services without discrimination based on sex, race, creed, religion, color, national origin, age, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability. Questions and complaints of alleged discrimination should be directed to the Equity and Civil Rights Director at (360) 725-6162 or P.O. Box 47200 Olympia, WA 98504-7200.

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General Information

Introduction

The Individuals with Disabilities Education Act (IDEA) of 2004, concerning the education of students with disabilities requires schools to provide you, the parents of a student with a disability, or suspected disability, with a notice containing a full explanation of the rights available to you under IDEA and the U.S. Department of Education regulations. The Office of Superintendent of Public Instruction (OSPI) has state rules governing the provision of special education. These rules are found in Chapter 392-172A Washington Administrative Code (WAC). This document conforms to the U.S. Department of Education's Model Procedural Safeguards Notice, revised in June 2009.

Who This Notice is For

This notice is for parents, surrogate parents, and adult students. References to "you" or "parent" and "your child" also apply to surrogate parents and adult students. References in this notice to the "school district" or "district" include charter schools, and other public agencies, such as educational service districts and educational service agencies.

For More Information

Additional information about special education services and these procedural safeguards are available by contacting your local school district's special education director, the state's parent training and information center, Partnerships for Action Voices for Empowerment (Washington Pave), or through OSPI. OSPI maintains a Web page addressing special education at: <http://www.k12.wa.us/SpecialEd/default.aspx>. OSPI has program supervisors and a special education ombudsman to assist you with questions about your child's special education program. You may reach OSPI, Special Education at (360) 725-6075, TTY (360) 586-0126, or speced@k12.wa.us.

Procedural Safeguards Notice

34 CFR § 300.504; WAC 392-172A-05015

A copy of this notice must be given to you (1) once every school year, and: (2) upon initial referral or your request for evaluation; (3) upon a district's receipt of your first special education citizen complaint in a school year (4) upon a district's receipt of your first due process hearing request in a school year; (5) when a decision is made to take a disciplinary action that constitutes a change of placement; and, (6) upon your request.

This procedural safeguards notice includes a full explanation of all of the procedural safeguards related to the unilateral placement of your child at a private school at public expense, special education citizen complaint procedures, informed consent, the procedural safeguards contained in Subpart E of the Part B IDEA regulations, and confidentiality of information provisions contained in Subpart F of the Part B IDEA

regulations. Districts may choose to use this notice or develop their own procedural safeguards notice to parents.

Prior Written Notice

34 CFR §300.503; WAC 392-172A-05010

Your school district must provide you information in writing about important decisions that affect your child's special education program. This is called a prior written notice and it is a document that reflects decisions that were made at a meeting or by the district in response to a request made by you. The district is required to send you a prior written notice after a decision has been made, but before implementing the decision. These are decisions that are related to proposals or refusals to initiate or change the identification, evaluation, placement, or provision of a FAPE to your child.

A prior written notice must include:

- x What the district is proposing or refusing to do;
- x An explanation of why the district is proposing or refusing to take action;
- x A description of any other options considered by the IEP team and the reasons why those options were rejected;
- x A description of each evaluation procedure, assessment, record, or report used as a basis for the action;
- x A description of any other factors relevant to the action;
- x A description of any evaluation procedure the district proposes to conduct for the initial evaluation and any reevaluations;
- x A statement that parents are protected by the procedural safeguards described in this booklet;
- x How you can get a copy of this notice of procedural safeguards booklet; or include a copy of this notice of procedural safeguards booklet if one has not been provided to you; and,
- x Sources for you to contact to get help in understanding these procedural safeguards.

Examples of when you will receive a prior written notice are:

- x The district wants to evaluate or reevaluate your child, or the district is refusing to evaluate or reevaluate your child.
- x Your child's IEP or placement is being changed.
- x You have asked for a change and the district is refusing to make the change.
- x You have given the district written notice tdistri0 is a doTD 675 0 e7 0 Tprogram.to parreevalserv9

Native Language

34 CFR §300.29; WAC 392-172A-01120

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

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

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

Electronic Mail

34 CFR §300.505; WAC 392-172A-05020

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

1. Prior written notice;
2. Procedural safeguards notice; and,
3. Notices related to a due process hearing request.

Parental Consent – Definition

34 CFR §300.9; WAC 392-172A-01040

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information relevant to the action for which you are giving consent;
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and,
3. You understand that the consent is voluntary on your part and you may revoke (withdraw) your consent at any time.

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

A district may not use due process to override your written revocation or use mediation procedures to obtain your agreement to continue to provide special education services to your child. After the district stops providing special education services to your child, your child is no longer considered to be eligible for special education services and is subject to the same requirements that apply to all students. You or others who are familiar with your child, including the school district, may refer the child for an initial evaluation at any time after you revoke consent for your child to receive special education.

Parental Consent for Reevaluations

If new testing is to be conducted as part of your child's reevaluation, your district must obtain your informed consent before it reevaluates your child, unless your district can demonstrate that:

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

If you refuse to consent to new testing as part of your child's reevaluation, the district may, but is not required to, pursue your child's reevaluation by using the mediation procedures to seek agreement from you or use the due process hearing procedures to override your refusal to consent to your child's reevaluation. As with initial evaluations, your district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation using mediation or due process procedures.

Documentation of Reasonable Efforts to Obtain Parental Consent

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

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

Other Consent Information

Your consent is not required before your district may:

Parent-Initiated Evaluations

If you obtain an IEE of your child at public expense or you provide the district with an IEE that you obtained at private expense:

1. Your district must consider the results of the IEE in any decision made with respect to the provision of a FAPE to your child, if it meets the district's criteria for IEEs; and,
2. You or your district may present the IEE as evidence at a due process hearing regarding your child.

Requests for Evaluations by Administrative Law Judges (ALJ)

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

District Criteria

If an IEE is at public expense, the criteria under which

Personally Identifiable

34 CFR §300.32; WAC 392-172A-01140

Personally identifiable means information that has:

1. Your child's name, your name as the parent, or the name of another family member;
2. Your child's address;
3. A personal identifier, such as your child's social security number or student number; or,
4. A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Notice to Parents

34 CFR §300.612; WAC 392-172A-05185

OSPI gives notice, through its regulations, to fully inform you about the confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of various population groups in Washington;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods Washington intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that districts must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and,
4. A description of all of the rights of parents and students regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major statewide identification, location, or evaluation activity (also known as "child find"), a notice must be published in newspapers or announced in other media, or both, with circulation adequate to notify parents throughout the state of the activity to locate, identify, and evaluate children in need of special education and related services.

Access Rights

34 CFR §300.613-617; WAC 392-172A-05190–05210

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

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

Opportunity for a Hearing, Hearing Procedures and Results of the Hearing

If your school district refuses to change the information in accordance with your request, it must inform you of that decision and advise you of your right to a hearing by the district.

You have the right to request a hearing to challenge the information in your child's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. The hearing to contest the information in education records must be conducted according to the district's hearing procedures under FERPA. This is not a special education due process hearing.

If, as a result of the hearing, the district decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must change the information accordingly and inform you of those changes in writing.

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

If you choose to put a statement in your child's records the statement must:

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

Consent for Disclosure of Personally Identifiable Information

34 CFR §300.622; WAC 392-172A-05225

Your written consent must be obtained before personally identifiable information is disclosed to others unless disclosure of the information contained in your child's education records is allowed without parental consent under FERPA. In general, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA. However, your consent, or the consent of your child if he or she has reached the age of majority, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. In addition, if your child attends a private school, your consent must be obtained before any personally identifiable information about your child is released between officials in the district where the private school is located and officials in the district where your child resides if you are not planning to enroll your child in your district of residence.

Safeguards for Personally Identifiable Information
34 CFR §300.623; WAC 392-172A-05230

Your school district must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at the school district must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding confidentiality under Part B of IDEA and FERPA.

of a FAPE to your child and whenever a due process hearing is requested. Mediation is voluntary and cannot be used to deny or delay your right to a due process hearing or to deny any other rights afforded under Part B of IDEA. The mediation sessions are scheduled in a timely manner at a location that is convenient to you and the district.

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

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

Impartiality of Mediator

Mediation is conducted by an

filing the complaint, and the school district, or other agency responding to the complaint. Citizen complaints must be filed within one year of the alleged violation.

Due process hearing requests may only be filed by you or your school district on any matter relating to the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child. The due process hearings are conducted by an administrative law judge (ALJ), employed by the Office of Administrative Hearings, which is an independent state agency. Due process hearings generally involve testimony of witnesses and introduction of evidence. Due process hearing requests must be filed within two years of the alleged violation (with some exceptions for misrepresent

The violation must not have occurred more than one year prior to the date that the complaint is received.

OSPI has developed an optional form that you may use to file a complaint. This form is available on OSPI's special education Web page. You are not required to use this form.

Complaint Investigations

OSPI must investigate and issue a written decision 60 calendar days after it receives a complaint, unless an extension of time is warranted. During the 60 days, OSPI (1) requires the district to provide a response to the complaint; (2) gives you or the complainant the opportunity to submit additional information about the allegations in the complaint; (3) may carry out an independent on-site investigation, if OSPI determines it is necessary; and (4) reviews all relevant information and makes an independent determination as to whether the district or other agency is violating a requirement related to Part B of IDEA.

Investigation, Extension, Written Decision

The 60 calendar-day time limit may be extended only if: (1) exceptional circumstances exist with respect to a particular complaint; or, (2) you and the school district voluntarily agree in writing to extend the time to resolve the complaint through mediation or other methods to resolve the dispute.

A written decision is sent to you or the person filing the complaint and to the school district. The written decision will address each allegation. For each allegation the written decision will state findings of fact, conclusions, the reasons for the decision, and any reasonable corrective measures deemed necessary to resolve the complaint if a violation has occurred.

Complaint Remedies

When OSPI finds a violation or a failure to provide appropriate services through its complaint process, the decision addresses:

1. How to remediate the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student(s); and,
2. Appropriate future provision of special education services for all students.

Special Education Citizen Complaints and Due Process Hearings

If a citizen complaint is received that is also the subject of a due process hearing or the complaint contains multiple issues, and one or more of those issues are part of a due process hearing, OSPI must set aside (not investigate) any part of the complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the

complaint that is not a part of the due process action must be resolved within complaint timelines.

If an issue raised in a complaint has been previously decided in a due process hearing involving the same parties, the hearing decision is binding and OSPI must inform the complainant that it may not investigate that issue.

OSPI must resolve a complaint alleging that a district has failed to implement a due process decision.

Due Process Hearing Procedures

5. A description of the nature of the problem, including facts relating to the problem; and,
6. A proposed resolution of the problem to the extent known and available to you or the district at the time.

Notice Required Before a Hearing on a Due Process Hearing Request

You or the district may not have a due process hearing until you or the district files a due process hearing request with the other party and provides OSPI with a copy of the request that includes the information listed above.

Sufficiency of a Hearing Request

In order for a due process hearing request to go forward, it must be considered sufficient. Sufficient means that the request meets the content requirements noted above under Filing . The due process hearing request will be considered sufficient unless the party who received the due process hearing request notifies the ALJ and the other party in writing, within 15 calendar days, that the receiving party believes the due process hearing request is not sufficient.

Within five calendar days of receiving the notification of insufficiency, the ALJ must decide if the due process hearing request meets the requirements listed above, and notify you and the district in writing immediately.

Amendment of a Hearing Request

You or the district may make changes to the hearing request only if:

1. The other party approves of the changes in writing and is given the chance to resolve the hearing request through a resolution meeting (if you, the parent has requested the due process hearing), described below; or,
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If you are the party requesting the hearing and you make changes to the due process hearing request, the timelines for the resolution meeting and the time period for resolution (See: Resolution Process) start again on the date the amended request is filed, or the date the ALJ grants the request.

District Response to a Due Process Hearing Request

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

1. An explanation of why the district proposed or refused to take the action raised in the due process hearing request;

2. A description of other options that your child's I

The 45-calendar-day timeline for issuing a final decision begins at the end of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Unless you and the district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If the district is not able to obtain your participation in the resolution meeting after making reasonable efforts and documenting those efforts, the district may, at the end of the 30-calendar-day resolution period, request that the ALJ dismiss your due process hearing request. The school district must document its attempts to arrange a mutually agreed upon time and place for the resolution meeting. The record of documentation includes attempts, such as:

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

If the district fails to hold the resolution meeting within 15 calendar days of you providing your due process hearing request to the district and OSPI, or the district fails to participate in the resolution meeting, you may ask an ALJ to order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-Calendar-Day Resolution Period

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

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the district agree in writing that no agreement ~~exists~~ you7

Written Settlement Agreement

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

1. Signed by you and a representative of the district who has the authority to bind the district; and
2. Enforceable in any Washington State Superior court of competent jurisdiction or in a district court of the United States.

Agreement Review Period

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

Impartial Due Process Hearing

34 CFR §300.511; WAC 392-172A-05080–05095

General

Whenever a due process hearing request is filed, you or the district involved in the dispute must have an opportunity for an impartial due process hearing.

Administrative Law Judge (ALJ)

The hearing will be conducted by a qualified independent ALJ, who is employed by the Office of Administrative Hearings (OAH).

At a minimum, an ALJ:

Subject Matter of Due Process Hearing

The party that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process hearing request, unless the other party agrees.

Timeline for Requesting a Hearing

You or the district must file your due process hearing request within two years of the date you or the district knew, or should have known, about the issues addressed in the hearing request.

Exceptions to the Timeline

The above timeline does not apply if you could not file a due process hearing request because:

1. The district specifically misrepresented that it had resolved the problem or issue that you are raising in your hearing request; or
2. The district withheld information from you that it was required to provide to you

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

Parental Rights at Hearings

You must be given the right to:

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

Timelines and Convenience of Hearings

34 CFR §300.515; WAC 392-172-05110

Not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings and 100 days after the date of ratification

Construction Clause

Award of Fees

Attorneys' fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

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

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or state-level review, at any time more than 10 calendar days before the proceeding begins;
2. The offer is not accepted within 10 calendar days; and,
3. The court or ALJ finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

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

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting required under due process hearing procedures is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

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

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the

Discipline Procedures for Students Eligible for Special Education

There are special education protections afforded to your child when he or she is disciplined. These protections are in addition to discipline procedures that apply to all students. These protections also apply to students who have not yet been found eligible for special education if the district should have known that the student would be eligible.

Authority of School Personnel 34 CFR §300.530; WAC 392-172A-05145

Case-By-Case Determination

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

General

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

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

Additional Authority

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

Services

The services that must be provided to your child, when he or she has been removed from his or her current placement may be provided in an interim alternative educational setting.

A district is not required to provide services to your child if he or she has been removed from his or her current placement for 10 school days or less in that school year, unless it provides services to students without disabilities who have been similarly removed.

If your child has been removed from his or her current placement for more than 10 school days your child must:

1. Continue to receive educational services, so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his or her IEP; and,
2. If your child's behavior was not a manifestation of his or her disability, he or she must receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

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

If the removal is a change of placement (see definition below), your child's IEP team determines the appropriate services to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his or her IEP.

Change of Placement Because of Disciplinary Removals 34 CFR §300.536; WAC 392-172A-05155

Your child's removal from his or her current educational placement is a Change of Placement if:

1. The removal is for more than 10 school days in a row; or,
2. Your child has been subjectm o r e

The school district determines whether a pattern of removals constitutes a change of placement on a case-by-case basis and, if ch

Special Circumstances

School personnel may remove your child to an interim alternative educational setting (determined by the student's IEP team), regardless of whether or not your child's behavior was a manifestation of his or her disability, for up to 45 school days, if he or she:

1. Carries a weapon (see the definition below) to school or has a

2. The manifestation determination described above.

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

See the Due Process Hearing Procedures section for more information on filing a due process hearing request.

Authority of Administrative Law Judge (ALJ)

An ALJ must conduct the due process hearing and make a decision. The ALJ may:

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

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

Whenever you or the district requests a due process hearing, the request must meet the requirements described under the headings Due Process Hearing Request Procedures and Due Process Hearings , except as follows:

1. The due process hearing is expedited, and must occur within 20 school days of the date the hearing is requested. The ALJ must issue a decision within 10 school days after the hearing.
2. Unless you and the district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days the date you filed the due process hearing request with OSPI and the district. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process hearing request.
3. OSPI has established a 2 business day timeline for production of evidence when you or the district files an expedited due process hearing request (for discipline).

You or the school district may initiate a civil action, contesting the decision in an expedited due process hearing the same way as they contest decisions in non-disciplinary special education due process hearings (see Appeals , above).

Placement During Due Process Expedited Hearings
34 CFR §300.533; WAC 392-172A-05165

When you or the district has filed a due process hearing request related to disciplinary matters, unless you and the district agree to a different arrangement, your child must remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time

Conditions That Apply if There is No Basis of Knowledge

If a district does not have knowledge that your child is eligible for special education, prior to taking disciplinary measures against your child, as described above under the sub-headings Basis of Knowledge for Disciplinary Matters and Exception, your child may be subjected to the disciplinary measures that are applied to students without disabilities who engaged in the same types of behaviors.

However, if you or the district requests an evaluation of your child during the time period in which he or she is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

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

If your child is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the district, and information provided by you, the district must provide special education and related services to your child and follow the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities 34 CFR §300.535; WAC 392-172A-05175

Part B of IDEA does not:

1. Prohibit a school district from reporting a crime committed by your child who is eligible for special education to appropriate authorities; or,
2. Prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by your child.

Transmittal of Records

If a district reports a crime committed by your child, the district:

1. Must ensure that copies of your child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and,
2. May transmit copies of your child's special education and disciplinary records only to the extent permitted by FERPA.

Requirements for Unilateral Placement by Parents of Students in Private Schools at Public Expense CFR § 300.148; WAC 392-172A-04115

If you believe your school district cannot provide a FAPE for your child and you choose to enroll your child in a private school without the district's agreement, there are specific

steps that you must follow in order to request reimbursement from the district for the private school.

Reimbursement for Private School Placement

If your child previously received special education and related services from a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the district, a court or an ALJ may require the district to reimburse you for the cost of that enrollment if the court or ALJ finds that the school district had not made a FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. The court or an ALJ may find your placement to be appropriate, even if the placement does not meet the state standards that apply to education provided by districts.

Limitation on Reimbursement

The cost of reimbursement as described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the district of that information;
2. If, prior to your removal of your child from the public school, the district provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make your child available for the evaluation; or,
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) the school prevented you from providing the notice; (b) you had not received notice of your responsibility to provide the notice described above; or (c) compliance with the requirements above would likely result in physical harm to your child; and,
2. May, in the discretion of the court or an ALJ, not be reduced or denied for your failure to provide the required notice if: (a) you are not literate or cannot write in English; or (b) compliance with the above

Resources

If you have questions about the procedural safeguards, please contact your school district or OSPI for additional information:

OSPI
P.O Box 47200
Olympia, Washington 98504
(360)725-6075
speced@k12.wa.us
<http://www.k12.wa.us/SpecialEd/default.aspx>
<http://www.k12.wa.us/SpecialEd/Families/Assistance.aspx>

These publicly funded organizations may be able to provide additional information about special education services in Washington State:

- x Partnerships for Action Voices for Empowerment (PAVE)
6316 So. 12th St.
Tacoma, WA 98465
(800) 5-PARENT (v/tty)
e-mail: pave@wapave.org
Web site: <http://www.wapave.org/>

- x The Office of the Education Ombuds
155 N.E. 100th St. #210
Seattle, WA 98125
(866) 297-2597
e-mail: OEInfo@gov.wa.gov
Web site: <http://www.governor.wa.gov/oeo/>