
OSPI Special Education Technical Assistance Paper No. 1 (TAP 1) Revised

The Individuals with Disabilities Education Act: A Review of the Basics

Note: All TAPS are posted on OSPI's Web site at <http://www.k12.wa.us/SpecialEd/publications.aspx>.

Purpose

The purpose of this technical assistance paper (TAP) is to review some of the basic requirements of the Individuals with Disabilities Education Act of 2004 (IDEA), Part B and addressed in OSPI regulations governing special education, Chapter 392-172A WAC. This document references parents. When the term 'parent' is used, this includes one or more parents, surrogate parents and adult students whose rights have transferred to them. The following topics are addressed in this paper:

- I. The Provision of a Free Appropriate Public Education (FAPE)
- II. The Procedural Safeguards Notice
- III. Prior Written Notice
- IV. Individualized Education Program (IEP) Development
- V. Placement Decisions and Least Restrictive Environment (LRE) Requirements
- VI. Services for Transfer Students
- VII. Transfer of Educational Records
- VIII. Revocation
- IX. Conclusion

I. The Provision of a Free Appropriate Public Education (FAPE)

The IDEA is a federal special education law that entitles eligible students with disabilities to FAPE. FAPE is defined as being special education and related services that:

1. Are provided at public expense, under public supervision, and at no charge to the parent;
2. Meet the standards of the state education agency (OSPI), including all of the

requirements in the Code of Federal Regulations (34 C.F.R. Part 300);

3. Include preschool, elementary, and secondary schools in the state; and
4. Are provided in conformity with an individualized education program that meets federal and state special education regulations.

Meeting the standards of the state includes: (1) enrollment in a public school district; (2) eligibility for special education services with a current evaluation; and (3) receiving services provided by qualified personnel in accordance with a properly developed and current IEP.

II. The Procedural Safeguards Notice

Procedural safeguards provide a way for parents and educators to protect the rights of children in the event a decision is made which may deny the child an entitlement to a FAPE. Parents must be given a full explanation of what those rights include, and provided a copy of the Procedural Safeguards: (1) once every school year, and: (2) upon initial referral or request for evaluation; (3) upon receipt of the parent's first special education citizen complaint in a school year; (4) upon receipt of the parent's 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 a parent's request.

School districts must provide the *Notice of Procedural Safeguards* to parents in the parent's native language, (or using another mode of communication typically used by parent) unless it is clearly not realistic to do so. It is acceptable to provide an oral translation when the parent's mode of communication is not

a written language. If the native language or other mode of communication is not a written language, school districts must ensure the parent understands the notice and keep written documentation outlining their efforts to ensure parents understand their rights as outlined in the *Notice of Procedural Safeguards* document.

To assist school district personnel in explaining these rights to parents, OSPI has developed a model *Notice of Procedural Safeguards* document. This model document explains the following procedural safeguards (protections):

1. Independent educational evaluations;
2. Prior written notice;
3. Parental consent;
4. Access to education records;
5. Opportunity to present and resolve complaints through the due process hearing requests and state complaint procedures, including—
 - a. The time period in which to file a complaint;
 - b. The opportunity for the agency to resolve the complaint; and
 - c. The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decision timelines, and relevant procedures;
6. The availability of mediation;
7. The student's placement during the pendency of any due process hearing;
8. Procedures for students who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of students in private schools at public expense;
10. Hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;
11. State-level appeals (if applicable in the State); and
12. Attorneys' fees.

OSPI's model *Notice of Procedural Safeguards* contains a large amount of information. For this reason, school district personnel should allow time to ask parents whether they understand the safeguards and answer parent questions about the procedural safeguards.

Procedural Safeguards Notice

[English](#) (Word) -- Also available in Braille

[Cambodian](#) (PDF)

[Korean](#) (PDF)

[Russian](#) (PDF)

[Somali](#) (PDF)

[Spanish](#) (PDF)

[Ukrainian](#) (PDF)

[Vietnamese](#) (PDF)

III. Prior Written Notice

Prior written notice is a document outlining important school district decisions about a student's special education program. It is not a meeting invitation. School districts must provide parents with prior written notice **after** a district decision is made, but **before** the decision is carried out.

There is no exhaustive list outlining when prior written notice is required. WAC 392-172A-05010 states that prior written notice must be provided a reasonable time before the school district:

1. Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or
2. Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

When decisions are made at an IEP meeting about the provision of FAPE, prior written notice is given **after** the meeting to address decisions made at the meeting. Prior written notice is given regardless of whether:

- The parent attends the meeting;
- The change requested was made by the parent or the school district; or
- The school district is proposing, agreeing to, or denying a change.

If the IEP team decides to change a student's placement, the school district gives the parent prior written notice of the proposed placement change. Should a parent disagree with the school district's final placement offer, the parent may formalize their disagreement by requesting mediation, filing a citizen complaint, or requesting a due process hearing. However, the school district may implement the proposed placement change over the parent's objections unless a parent requests a due process hearing. In this case, the student's placement remains the same, until the due process decision is issued. This is called "stay put." Sometimes, when there is a dispute about the most recent placement, the Administrative Law Judge (ALJ) issues an order addressing stay put. This order remains in effect until the ALJ issues a decision.

As noted in the procedural safeguards section, prior written notice must be provided in a parent's native language or other mode of communication. Steps for ensuring that a parent understands prior written notice if the notice must be translated orally or other mode of communication are the same steps addressed in Section II above.

IV. Individualized Education Program (IEP)

Development

A student's first individualized education program (IEP) is developed within 30 calendar days of the student being determined eligible to receive special education services. Services identified on the initial IEP should be made available to the student as soon as possible following IEP development. The IEP identifies the special education, related services, and other supports needed to provide the student with a FAPE based on their unique needs. At the beginning of each year, school districts must have a current IEP in place for every student

determined eligible to receive special education from that agency.

Note: For students who participated in an early intervention program (Part C) and are found eligible for special education services (Part B), the team must have an IEP in place by their third birthday, to include the date services will begin if the student's birthday occurs during the summer.

IEP meetings

Each school district is responsible for scheduling and conducting meetings to develop, review, and revise an eligible student's IEP. The school district must hold an IEP meeting to develop an IEP for each student at least once a year. After the annual meeting, school districts or parents may schedule additional IEP meetings. If the school district denies a parent request for a meeting, they must provide the parent with prior written notice explaining their refusal (see Section III).

Parent participation at IEP meetings

The school district must take steps to make sure that one or both of the student's parents are present at each IEP meeting or are afforded the opportunity to attend. This means (1) notifying the parents of the meeting early enough to ensure that they will have the opportunity to attend; and (2) scheduling the meeting at a mutually agreed upon time and place. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parents and any responses received; and
- Detailed records of visits made to the

parent's home or place of employment and the results of those visits.

A meeting does not include:

- Informal or unscheduled conversations involving school district personnel about issues such as teaching methodology, lesson plans, or coordination of service provision.
- Preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

IEP meeting participants

School districts must ensure that the IEP team for each student eligible for special education includes:

1. The parent of the student;
2. Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment;
3. Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
4. A representative of the public agency who is: (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education; (b) knowledgeable about the general education curriculum; and (c) knowledgeable about the availability of resources of the school district.
5. An individual who can interpret the instructional implications of evaluation results, who may be one of the school district IEP team members identified above.
6. Other individuals who have knowledge or special expertise regarding the student, as determined by either the parent or the school district, including related services personnel as appropriate; and
7. Students must be invited to IEP meetings when post-secondary goals and transition services will be discussed. If the student

does not attend an IEP team meeting where secondary transition is discussed, the school district must ensure the student's preferences and interests are considered.

8. To the extent appropriate, and with parent consent, the public agency must invite a representative of any agency that is likely to be responsible for providing or paying for any transition services.
9. In the case of a student who was previously served under Part C, at the request of the parent, the school district must invite the Part C service coordinator or other representatives of Part C to the initial IEP team meeting to assist with the smooth transition of services.

Note: A school district may designate one of the district members of the IEP team to also act as the district representative if that member meets the qualifications for a district representative.

IEP team member meeting excusals

A school district member of the IEP team is not required to attend a meeting, in whole or in part, if both the parent and the school district agree in writing that the attendance of the member is not necessary because the member's area of instruction or provision of related services is not changing or being discussed at the meeting.

When the IEP meeting is to include a change to or discussion of the member's area of instruction or related services, the team member may only be excused from attending an IEP team meeting, in whole or in part, if:

1. The parent and the public agency consent in writing to the excusal; and
2. Prior to the meeting, the member provided the parents and other team members with written input to consider when developing the IEP.

Contents of the IEP

The following elements must be included in every student's IEP:

- A statement of the student's present levels

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- of academic achievement and functional performance, including:
- ✓ A description of 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, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
 - Measurable annual goals, including academic and functional goals designed to:
 - ✓ Meet the student's needs that result from the student's disability to enable him/her to be involved in and make progress in the general education curriculum;
 - ✓ Meet each of the student's other educational needs that result from the student's disability; and
 - ✓ For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.
 - A description of how the school district will measure the student's progress toward meeting his/her annual goals and when the school district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards).
 - A statement of the special education, related services, and supplementary aids and services, based on peer-reviewed research to the extent practical, to be provided to the student or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to:
 - ✓ Advance appropriately toward reaching his/her annual goals;
 - ✓ Be involved in and make progress in the general education curriculum, and participate in extracurricular and other nonacademic activities; and
 - ✓ Be educated and participate with other students, including nondisabled students when participating in the general education curriculum, extracurricular and other nonacademic activities.
 - 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.
 - A statement of any individual approved accommodations the student needs to measure the student's academic achievement and functional performance on state and district-wide assessments.
 - 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 explaining why:
 - ✓ The student cannot participate in the regular assessment; and
 - ✓ The particular alternate assessment selected is appropriate for the student.
 - Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.
 - Aversive interventions, if any, required for the student.
 - The projected date for the beginning of the services and modifications described above, as well as the anticipated frequency, location, and duration of those services and modifications.
 - Beginning not later than the first IEP to be in effect when the student turns sixteen (younger if determined appropriate by the IEP team) the IEP must include:
 - ✓ Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to:
 - Education/Training (required)
 - Employment (required)
 - Independent living (required if determined necessary by the IEP team)
 - ✓ The transition services, including courses of study needed to assist the student in reaching his/her postsecondary goals.
 - Beginning not later than one year before the student reaches the age of eighteen,

a statement that the student has been informed of the student's rights under the IDEA, if any, that will transfer to the student on reaching the age of majority, which is age 18 in Washington.

Model Forms: *While not required, OSPI's model forms help districts and families better understand special education requirements. These forms are located at <http://www.k12.wa.us/SpecialEd/Data/ModelStateForms.aspx>. From this link, scroll down for Model IEP Form and Model IEP Form with Transition Services.*

Amending the IEP

After the annual IEP meeting, changes to the IEP may be made at a subsequent IEP meeting. In addition, parents and the school district may agree that an IEP team meeting is not needed to amend the IEP. When such an agreement is reached, a written document to amend or modify the student's current IEP is developed. The school district must ensure that the student's IEP team is informed of the changes and that the providers responsible for implementing the changes to the IEP are informed of any responsibilities. A parent may also request that the IEP be revised to incorporate the changes. If so, the district must revise the IEP and provide the parent with a copy of the revised document.

IEP progress and accountability

Each school district must provide eligible students with the special education and related services identified on the student's IEP. If the student is not making the projected growth towards meeting his/her annual goals, it is expected that the IEP team will meet to review and, if necessary, revise the student's IEP. Progress towards annual goals should be sent to parents according to the periodic schedule identified in the IEP. Further, school districts must measure student progress using the methods described in the IEP.

V. Placement Decisions and Least Restrictive Environment (LRE) Requirements

Students must receive their special education services in the least restrictive environment (LRE). Meeting LRE requirements does not

mean every student will be educated full time in the general education classroom. Rather, LRE is determined individually based on the student's unique needs. The intent of this requirement is to maximize the student's opportunities to interact and learn with their typically developing peers, but not at the expense of the student's access to an appropriate education from which they can benefit. LRE is not a particular program. Nor is it "inclusion," "full-inclusion," or "mainstreaming." In other words, LRE is not the same for every student.

In addition, school districts are required to have a continuum of placements available for students. This includes but is not limited to self-contained settings within a school building, services in hospitals, and placements outside of a school district. School districts are not required to have a continuum available in every school building. For example, a school district might have a self-contained setting or preschool services in some but not all of the buildings.

Placement decisions are made by each student's IEP team. Unless the IEP requires something different, the student will receive special education services in the regular education classroom. The IEP team should consider whether the provision of supplementary aids and services can support placement in the general education environment before a more restrictive placement is chosen, such as special classes, separate schooling or other removal from the regular education environment. Early childhood placement settings may be located at Head Start, Early Childhood Education and Assistance Program (ECEAP), or child care facilities; home; or classrooms located in an elementary school.

Making the LRE placement decision

Placement decisions are made at least once a year. The student will be educated in the school that he or she would attend if nondisabled unless the student's IEP services require that the student receive services in another school. Four factors inform IEP team placement decisions:

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1. The student's IEP;
 2. Least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070;
 3. The likelihood of a reasonably high probability of assisting the student to attain his/her annual IEP goals; and
 4. Any potential harmful effects to the quality of services the student needs.

Nonacademic settings

Each school district must ensure that each eligible student participates with nondisabled students in nonacademic and extracurricular activities to the maximum extent appropriate to the needs of the student. The IEP team may determine that access is achieved through supplementary aides and services. Nonacademic and extracurricular activities include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referral to private 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.

VI. Services for Transfer Students

There should be no interruption in IEP services when a student moves from one school district to another. Because eligibility for special education services is not the same in all states and territories in which the IDEA applies, these regulations address both intra- and interstate transfers.

Transfer within the state of Washington (intrastate)

When a student transfers from one Washington State school district to another, the receiving school district must provide FAPE to the student, determined with parent consultation, to include services comparable to those described in the student's incoming IEP until the new school district decides to either:

1. Adopt the student's IEP from the previous school district; or

2. Develop, adopt, and implement a new IEP.

Transfer from outside the state of Washington (interstate)

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

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

When an evaluation from another state does not meet this state's eligibility standards, the evaluation of the student is an initial evaluation, and the school district must follow the needed steps for an initial evaluation and eligibility determination.

VII. Transfer of Educational Records

Parental consent is not required when sending educational records to a school district in which the student seeks or intends to enroll. The new school where the student enrolls must take steps to promptly obtain records from the sending district. The Family Education Rights Privacy Act requires school districts to provide an annual notification to parents regarding educational records. You can find a model notice on the U.S. Department of Education's web site at the [Family Policy Compliance Office](#). The annual notice must either tell parents that the school district provides educational records upon request to a school district where the student will enroll, or if this information is not contained in the annual notification, the sending school

district personnel must make an effort to inform the parents at their last known address that they are forwarding the educational records.

In addition, RCW 28A.225.330 requires school districts to promptly comply with requests from other school districts. School districts must provide information about the student to the requesting school district within two school days and provide copies of the records as soon as possible after providing the information. The law at RCW 28A.225.330 requires information to be provided to a requesting school district even when students have unpaid fines. The law also states that it is a violation of professional practices for a school principal or other chief administrator of a school building who fails to make a good faith effort to assure that building personnel comply with requests for educational records.

VII. Revocation (withdrawing consent to receive special education services.)

A parent may revoke (withdraw) consent for their child to continue receiving special education services. When a parent revokes consent, they are revoking consent for *all* special education services. Parents may not revoke consent for a particular service. A request from a parent to stop providing special education services must be made in writing. The school district must then give the parent prior written notice that includes the date when the school district will stop providing services. After the effective date on the prior written notice, the student will no longer be eligible for special education services and is no longer entitled to procedural protections afforded to students eligible for special education, including discipline related protections.

Any referral of a student after the student is no longer receiving special education services will be an initial referral for evaluation.

Note: A parent of an eligible student who is enrolled in a private school or is receiving home school services has the right to part time enroll their child for public school services. This

option should not be confused with revocation, which is withdrawing consent for *all* special education services. See Chapter 392-134 WAC.

X. Conclusion

This TAP is intended to provide guidance about requirements under IDEA, Part B. The TAP does not address every requirement contained in Chapter 392-172A WAC and it is not legal advice. The intent is to support and not replace careful study of IDEA and our state regulations implementing IDEA.

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State Superintendent of Public Instruction

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