Assistive Technology

Ensuring Access to Assistive Technology Devices

Originally printed in the March 2011 Monthly Update

Assistive technology devices, like any other piece of equipment, have the potential for needing repairs or replacement. When students require an assistive technology (AT) device, a district is required to provide the device within a reasonable amount of time after implementing the IEP. And, the AT needs to be working properly. Having a plan in place to repair or replace devices will help district staff know how to respond to a broken device, and will let parents know that the district is working towards a solution. Some things to keep in mind:

- When developing a student’s IEP, the IEP team should discuss whether a specific device is required or a type of device is required. If a specific type of device is required, know if it will take more time to repair or replace that device, and consider having a backup plan in the event the device does not work properly.
- Know who to go to for repairs or replacements. Is there a district nearby that uses a similar or the same device? Is there someone in the area that can make repairs or provide parts? Will you need to go to the manufacturer directly?
- Know how much repairs or replacement devices will cost. Talk to your business manager to learn how the purchasing process works in your district, and to make sure that there are funds available for unexpected repair or replacement costs.
- Know how much time it will take to make repairs or replace a device, and keep parents informed. Have an alternative in place for the student for the time it will take to make repairs or replace a device.

The Special Education Technology Center (SETC) is one of OSPI’s state needs projects, and assists school districts and parents with the special technology needs of children with disabilities. The SETC can assist you with questions, planning, staff development, and has a lending library available for district use. Information about the SETC can be found on OSPI's website at: http://www.k12.wa.us/SpecialEd/stateneeds.aspx.

Who does assistive technology evaluations? What types of assessments are used?

Originally printed in the November 2011 Monthly Update

This depends on the student’s unique needs and the information obtained about the student’s ability to access his educational program. The information could come from a review of the existing data, evaluations by related services providers or others with knowledge about the student. The Special Education Technology Center (SETC) is one of OSPI’s state needs projects, and assists school districts and parents with the special technology needs of children with disabilities. The SETC can assist you with questions, planning, staff development, and has a lending library available for district use. Information about the SETC can be found on OSPI’s website at: http://www.k12.wa.us/SpecialEd/stateneeds.aspx. Depending on the student’s particular needs, the ESDs may also be a source for technology information.
Communication

Using Electronic Mail (E-mail) for Communication
Originally printed in the January 2013 Monthly Update

The use of e-mail can be an effective and efficient way to respond to requests or concerns of parents, teachers, administrators and others. It can also be used to schedule meetings and include multiple parties in a message rather than communicating separately with each individual who needs the same information. Further, e-mail can be used to confirm a conversation you have had with others in person or by phone, to avoid misinterpretation.

In most cases e-mails are public documents. As such, e-mails can be obtained through public records requests (with personally identifiable information removed if allowed by the public records rules). Depending on the content, e-mails may also be part of a student’s educational record and must be provided in response to a parent’s request for educational records. Finally, an e-mail belongs to the public agency, not you. When you use e-mail, consider whether you are comfortable with anyone other than the intended recipient seeing the message you send. Please use the following tips for sending and responding to e-mails:

- **Be professional.** In addition to the availability of e-mails through educational and public records requests, OSPI routinely requests all correspondence, including e-mails as part of a citizen complaint investigation. That information is provided to a complainant if the complainant is the parent, or another person with permission from the parent to view the e-mails. When the content contains personal information, or opinions about a person or their motives, the district risks communication breakdowns and loss of trust.

- **Make sure the e-mail is going to the intended recipient(s).** Most electronic systems provide an auto-select option among stored e-mail addresses. Without checking the address, the sender risks sending information to someone who should not be reviewing the information, especially when there is student identifiable information in the e-mail content.

- **Review the e-mail for context.** What one may view as a straightforward response may be viewed differently by another. This can also result in a breakdown of communication and loss of trust.

- **Take your time before hitting the send button.** If the e-mail is upsetting, wait to respond, or reread the proposed response more than once before sending it.

- **Decide whether the information is best conveyed by e-mail or by other means.** Sometimes responding in person, or making a telephone call can be a more effective way of communicating information

Finally, consider using real-life examples of what to do, and what not to do, as part of district-wide training on confidentiality. Most districts will have examples of appropriate and inappropriate e-mails.

Consent

Initial Consent for Special Education Services
Originally printed in the June 2011 Monthly Update

Districts know they must receive a parent's informed written consent before the district may begin providing a student with special education services. However, trying to obtain parent consent at an IEP meeting becomes difficult when parents do not agree with the IEP, or if the parent disagrees with proposed placement options after the IEP meeting. Consider the regulatory language regarding obtaining parent consent for initial services at WAC 392-172A-03000(d):
If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

- Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and
- Is not required to convene an IEP team meeting or develop an IEP.

Given this language, consider whether the evaluation group should address and obtain parent consent at the eligibility meeting. If done prior to IEP development this may assist both district staff and parents in understanding that informed consent is for the purpose of receiving special education services, and is not an agreement or disagreement about particular services, the delivery of services, or the IEP team's decisions about placement.

**Revocation of Consent for Special Education Services and its Effect on Other Federal Programs**

*Originally printed in the February 2014 update*

On December 8, 2008, the Office of Special Education Programs (OSEP) issued a final regulation allowing parents to revoke consent for continued special education services under the Individuals with Disabilities Education Act (IDEA). In its analysis of comments and changes to the federal regulation, OSEP did not address the effect of revocation on other federal programs such as Section 504 of the Rehabilitation Act of 1973 (Section 504) or the Americans with Disabilities Act (ADA). Instead, OSEP stated: “These final regulations implement provisions of the IDEA only. They do not attempt to address any overlap between the protections and requirements of the IDEA, and those of Section 504 and the ADA.” Federal Register, Vol. 73, No. 231, December 1, 2008, at 73013.

Before the revocation regulation was implemented, one of the regional offices of the Department of Education’s Office for Civil Rights wrote a guidance letter, Letter to McKethan (OCR 1996), addressing whether a parent’s refusal to provide consent for special education services under IDEA would also be a rejection of services under Section 504. OCR stated at that time that there were two groups of students who were "qualified students with a disability" under Section 504. The first group included students who qualify for regular or special education and related aids and services under Section 504 and, additionally, are eligible for services under the IDEA. The second group would include students who are qualified for purposes of Section 504 but who are not eligible the IDEA. The Letter to McKethan noted that for the students who qualified for services under Section 504 and IDEA, the implementation of an IEP developed under the IDEA would be how the Section 504 requirements were met. OCR then stated that by rejecting the services developed under the IDEA, the parent would essentially be rejecting what would be offered under Section 504.

Since OSEP finalized the regulations regarding revocation of consent for continued services, there have been two reported cases addressing this question:

In *Kimble v. Douglas County School District* RE-1 925 F. Supp.2d 1176 (D.Colo.2013), the court noted that there was little or no direction regarding the effect of revocation of parental consent for IDEA upon services that may be available under other federal laws. However, the court noted that IDEA states that nothing in the statute should be construed as restricting or limiting the rights, procedures, and remedies available under other federal laws protecting the rights of children with disabilities, including Section 504. See: 20 U.S.C. §1415. As such, the District was correct in following 504 procedures, after the parent revoked consent for services under IDEA.
In *D.F. by L.M.P. v. Leon County School Board* (N.D. Fla, January 2, 2014), a federal district court issued a decision denying the school district's motion to dismiss a parent’s case alleging that the district violated Section 504 and the ADA by failing to develop a 504 plan for her hearing impaired son after the parent revoked consent under IDEA. The court stated that there was no basis for asserting that by revoking consent under IDEA, the plaintiff necessarily forfeited the right to different services allegedly available under a different federal statute.

Given the lack of definitive guidance from OSEP or OCR on this topic, and given the increasing litigation addressing this issue, OSPI recommends that districts follow the process for determining eligibility under Section 504, or other federal laws, after a parent revokes consent for continued special education services. You can obtain more information on the requirements for determining a student's rights under Section 504 by contacting OSPI's Equity and Civil Rights Office at (360) 725-6162 or equity@k12.wa.us. Their web site is: [http://www.k12.wa.us/Equity/default.aspx](http://www.k12.wa.us/Equity/default.aspx). If you have specific questions about a particular situation in your district, please contact your district counsel.

---

**Calculation of Days**  
*Originally printed in the May 2011 Monthly Update*

As districts near the end of the school year, it is a good time to remember how to calculate days. Unless specified as a school day or business day, a day is a calendar day. When a requirement is related to calendar days, districts must meet these requirements even if school is not in session.

Examples:

- An IEP team must develop an IEP 30 days after a student is determined eligible. So if eligibility is determined on May 25, the IEP must be developed by June 24.
- A district receives a request for a due process hearing on June 15. The district must hold a resolution session with the parent within 15 days after receiving the request, or, by June 30. Prehearing conferences and other matters will occur during summer break, even if a continuance of the actual hearing date is granted at the request of one of the parties.
- Investigation timelines for citizen complaints are 60 days after we receive a complaint. This means that even during summer break, we will need a response from the district within 20 days.

Please note, when developing an IEP for a student who will be transitioning from Part C to Part B, the IEP needs to be developed by the student's third birthday. If an eligibility determination is reached less than 30 days prior to the student's third birthday, the timeline is shortened. If eligibility is determined more than 30 days prior to the student's birthday, the 30 day timeline applies.

**Counting Days for Suspensions**  
*Originally printed in the May 2014 Monthly Update*

The Special Education section receives a number of complaints that involve a student's behavior and subsequent removal from a class, an in-school suspension, or an out of school suspension. While districts typically consider full day suspensions when counting the number of days of removal for special education reporting purposes, districts sometimes fail to include and consider part day removals and in-school suspensions, or delays in the student’s return to school after a suspension. The accurate counting of days a student is removed for discipline is critical when determining whether a change of placement occurs due to the number of days of removals, and whether the removals constitute a pattern.
It is important to remember that the general education regulations in our state define suspensions and expulsions. A suspension is a removal from a single subject, class period, or full schedule of classes for a definite period of time. An expulsion is a removal from any single subject, class period, or full schedule of classes for an indefinite period of time. See WAC 392-400-205(2) and (5). In addition to special education discipline requirements, districts are also required to prepare annual reports of disciplinary removals that include both half-day and full day removals, for all students, including those eligible for special education.

The following items should be considered when documenting disciplinary removals.

1. Document the incident that resulted in the disciplinary action.
2. Document the amount of time the student was removed from classes/school in a student’s attendance record. The documentation should reflect when a student’s absence is due to a suspension.
3. Ensure both general education and special education procedural requirements are followed regarding disciplinary actions, including notification to parents.
4. Count the total number of school days, including half days, the student has been removed for disciplinary reasons.
5. Develop a system to review a student’s removals and records of discipline to determine if the removal may constitute a change of placement, and to notify special education staff at the administrative level.
6. If there is, or will be, a change of placement due to discipline, involve the parent and the relevant members of the student’s IEP team to schedule a manifestation determination meeting within 10 school days of the decision to change the student’s placement.

Example: In October, the student was removed from class due to inappropriate behavior, and spent the last half of her school day in the school office. In November, the student was suspended for three days. In December, the student was suspended for four school days right before the district’s winter break. The district then sent the parents a letter stating that the student was suspended until school resumed on January 2nd and the parents would need to attend a meeting to discuss the student’s suspensions for similar behavior, before the student could return to school. The district then scheduled a meeting with the parents for January 4th and the student returned to school the next day. How many days was the student suspended?

In this example, the student was suspended for half a day in October, three days in November, four days in December, and three days in January because the student was not allowed to return to school until January 5th, even though school resumed on January 2nd. In total, the student was suspended for 10 ½ days. The example also indicates the suspensions resulted in a change in placement because the removals constituted a pattern of removals. Therefore, the district would need to schedule a manifestation determination meeting within 10 school days of January 4th.

Additional resources:
- Discipline technical assistance paper: http://www.k12.wa.us/SpecialEd/pubdocs/TAP_2.pdf
Dispute Resolution

Implementing Agreements and Completing Corrective Actions in Citizen Complaints and Due Process Decisions

Originally printed in the February 2012 Monthly Update

The following dispute resolution options are recognized under the Individuals with Disabilities Education Act (IDEA): Mediation Agreements; Resolution Agreements; Citizen Complaints; and, Due Process Hearings. Implementation of decisions issued in a citizen complaint or a due process hearing are reviewed by OSPI. Allegations that a district has not implemented a resolution or mediation agreement may also be raised in a citizen complaint. Failure to implement due process hearing and citizen complaint decisions can result in further corrective actions or other sanctions, which can include fund withholding. Districts should have internal systems in place to address implementation of agreements and decisions. The following are suggested ways to make sure that a district is addressing implementation of dispute resolution options:

Mediation and Resolution Agreements:

- Review the agreement and determine who needs to be informed of the agreement and any actions that are needed. This can include both special education and general education staff with responsibility for implementing the IEP.
- Make sure that all dates for implementation are calendared when there is more than one activity to be completed.
- Follow-up with documentation to the parent regarding step(s) taken to implement the agreement and completed activities.
- If needed, review the events that led to the request for mediation or request for hearing that resulted in an agreement. If there are steps that the district can take to address any of the procedural issues, consider follow-up written guidance, or staff training that can prevent the same issues from recurring for other students.

Citizen Complaints:

- Review the decision. If there are corrective actions in the decision, they will address any student specific corrective actions and/or any district specific actions that are designed to prevent the violations from recurring.
- Inform any staff of the complaint decision and any steps that are needed to complete the corrective actions. This can include both special education and general education staff with responsibility for implementing the IEP.
- Make sure that any required corrective actions are calendared and completed before the dates for implementation and documentation required for OSPI.
- Make sure that corrective actions are being implemented. If there is a legitimate need for an extension, notify OSPI of the request and the reasons, to see if an extension for one or more corrective actions can be granted.
- Provide documentation of corrective actions to the OSPI contact person within required timelines.
- Implement any student specific and district specific required actions.
- Provide all final documentation to OSPI.
Due Process Hearing Decisions:

- Review the decision and determine who needs to be informed of the decision and actions that are needed as part of the order. This can include both special education and general education staff with responsibility for implementing the IEP.
- In addition to any student specific actions, review the conclusions to determine whether there are procedural violations, because the district must also take steps to address these procedural violations to prevent the same issues from recurring for other students.
- Implement the order. Make sure the steps outlined in the order are calendared and completed before the dates required for implementation in the due process decision.
- Provide staff training, written guidance, or take other steps to address procedural violations noted in the decision.
- Document steps taken to implement the decision.
- Address both student specific and district systemic actions taken to address the decision in the iGrants form package 267-Federal IDEA B application.

Resolution Meetings for Due Process Hearing Requests

Originally printed in the April 2011 Monthly Update

When parents request a due process hearing, districts must have a meeting scheduled within fifteen days of receiving the parent’s notice of a hearing request. When the due process hearing request involves discipline, the timeline for the resolution meeting is seven days from the district’s receipt of the request. OSEP has been very clear that the initial meeting must meet the timeline, even if the parent has indicated they cannot or will not participate within that time frame. Districts do not have to convene the resolution meeting if: 1) the parents and district have a written agreement to waive the resolution meeting; or 2) the parents and district have agreed in writing to mediate. This is important because meeting timelines for convening resolution meetings is one of the compliance indicators and can affect a district’s determination regarding timely compliance.

OSEP states that the district should schedule and convene the meeting within the fifteen day (or seven day for discipline) timeframe. For non-discipline related hearing requests, the district can schedule a second meeting or continue to try to resolve the issues identified in the due process request within the 30 day time frame.

Districts should take the following steps when the district receives the parent’s due process hearing request:

- Check the calendar so that you can determine meetings dates within the time frame.
- Identify which team members will attend the resolution meeting and identify potential dates.
- Notify the parents of potential dates and invite them to the resolution meeting. (You may not have an attorney present at this meeting unless the parent is inviting an attorney to the meeting.)
- Notify the ALJ assigned to your case of the resolution meeting date.
- Notify the ALJ assigned to your case if you and the parents have a written agreement to waive the resolution meeting or a have written agreement to mediate. Waiving the resolution meeting affects the timelines for the beginning of the 45 day hearing.
- If the parents will not participate in the resolution agreement (and there is no agreement to waive the resolution meeting) notify the ALJ. This also can affect the timeline for the beginning of the 45 day hearing.
- Notify the ALJ if after the resolution meeting (or mediation) the parties cannot reach agreement. This also can affect the timeline for the beginning of the 45 day hearing.
Finally, if the parties do reach a written agreement through the resolution process, notify the ALJ that the dismissal is based on a written resolution agreement.

More information on resolution meetings, and forms for use to document waivers and agreements are on OSPI’s website in the dispute resolution section. Please look for “Information on Resolution Sessions”.

---

**Educational Representatives**

The Individuals with Disabilities Education Act IDEA provides that when a student reaches the age of 18, parents of the adult student continue to receive any notices required under IDEA, but all other rights accorded to parents under the IDEA transfer to the student. See: WAC 392-172A-05135(1). This means that the adult student is now responsible for making educational decisions. However, some students may not be capable of making their own educational decisions when they turn 18. Unless a parent has been appointed the adult student’s legal guardian, or an educational representative is designated by the district to represent the student for educational purposes, the district needs to recognize the adult student as the decision maker.

Therefore, prior to a student turning 18*, the student’s IEP team should discuss whether the parents believe the student will be capable of providing informed consent to make educational decisions when the student turns 18. If the parents believe that the student will not be capable of providing informed consent to make educational decisions when the student turns 18, and the parents do not plan to pursue a legal guardianship when the student becomes an adult, the IEP team should discuss the procedures for appointment of an educational representative by the district. See WAC 392-172A-05135(4&5).

Parents who want to be appointed an adult student’s educational representative must provide the school district with annual written certification from two separate professionals who have conducted a personal examination or interview with the student and have determined the student is incapable of providing informed consent to make educational decisions. The two professionals must state in writing that the student is incapable of providing informed consent to make educational decisions, and that the professional has informed the student of this decision. The two professionals must be either:

- A medical doctor licensed in the state where the doctor practices medicine;
- A physician's assistant whose certification is countersigned by a supervising physician;
- A certified nurse practitioner;
- A licensed clinical psychologist; or
- A guardian ad litem appointed for the student.

Once the district has received written certification from two professionals, the school district can appoint the student’s educational representative for one year. After the one year time period, the educational representative must obtain new written certification from two professionals and provide this to the school district in order to be appointed the student’s educational representative for another year. The student or others with knowledge about the student may challenge the certification at any time.

Usually, it will be the student’s parents (or another adult relative of the student) who pursue the appointment of an educational representative. However, there may be occasions when the district
members of the student’s IEP team believe the student is incapable of providing informed consent to make educational decisions. In such cases, the district needs to pursue the appointment of an educational representative following the same steps discussed above.

*OSPI recommends that IEP teams discuss guardianships for adult students and educational representatives at the same IEP meeting in which parents and the student are informed of a student’s rights under the IDEA that will transfer to the student upon turning 18. See WAC 392-172A-03095(k).

---

**Enrollment**

**Information on Part Time Enrollment**

*Originally printed in the October 2011 Monthly Update*

We receive many calls from parents and districts with questions about part-time enrollment. The regulations addressing part-time enrollment are available at WAC 392-134. Districts are encouraged to familiarize themselves with these regulations. Based on the regulations, parents who have enrolled their child in a private school, or who are homeschooling their child are entitled to enroll to take any course, receive any ancillary service, and take or receive any combination of courses and ancillary services which is made available by a public school to full-time students who are residents of the district. When the student is enrolled in a private school, the ability to part-time enroll is for any course, ancillary service, or activity not offered in the private school. Districts may also choose to allow part-time enrollment of non-resident students by following the non-resident attendance laws (Choice).

The following are questions we have received:

*If a parent wishes to part-time enroll their child for only one of the services available to them, don't they have to access all of the special education services or provide us with a revocation of special education services?*

No. Under the part-time enrollment rules, a parent is entitled to enroll the student to take any course, receive any ancillary service or a combination of courses or services. Again, when the student is enrolled in a private school, the student can enroll in courses or receive ancillary services not offered by the private school. Districts should describe in the IEP the services the student would receive if full time enrolled, and then address the special education services, including any supplemental supports and accommodations the student will receive during his or her part-time attendance.

*What is the difference between part-time enrollment and services to private school students using proportional share?*

When a student is part-time enrolled, the services to be delivered are described in the student’s IEP. Those courses and services are provided on the public school grounds, or a site under the control of the public school. Transportation to the public school is not required, unless it is needed as a related service. Districts may not require unilaterally enrolled private school students to part-time enroll to receive special education services. Part-time enrollment is at the election of a parent.

When a student will be receiving equitable services under IDEA’s unilateral enrollment proportional share process, the services or other supports are described in a services plan. Services may occur at the site of the public or private school, depending upon the decisions made about the location of services through the consultation process. The district must provide transportation, if the student needs to be transported to participate in the proportional share services. The cost of transportation may be included in calculating whether the district is meeting its proportional share costs.
Can a parent use part-time enrollment to change his or her Least Restrictive Environment (LRE)?

No. The part-time enrollment provisions do not change the determination of LRE.

A final note: Do not confuse a student who is homeschooled with a student who is participating in an alternative education program. Some district alternative programs are provided to parents who have been providing home school services to students. When a student is attending a district’s alternative program, the student may be once again full-time enrolled in a district. It is critical that district alternative education program administrators coordinate with their district special education administrators.

Evaluations/Reevaluations

Evaluations and IEPs from Outside Agencies
*Originally printed in the March 2014 Monthly Update*

Our office has received several questions regarding the efficacy of evaluations for special education eligibility and the development of IEPs by in-state agencies or programs other than school districts or state designated educational service agencies (ESAs). The following questions and responses are intended to clarify OSPI’s position in this regard.

**Question:** Under Part B of IDEA 2004, does an agency other than a school district have the authority to evaluate students turning three years of age through 21 for the purpose of determination of special education eligibility?

**Response:** No. Only local education agencies (i.e. school districts and approved charter schools) or approved educational service agencies (ESAs) have the authority to conduct evaluations for determination of a student’s eligibility for special education and related services under Part B of the IDEA (WAC 392-172A-01010(2)). A parent of a child, a school district, or a public agency, as well as other individuals, who have knowledge about a student, may initiate a request (or referral) for an initial evaluation (WAC 392-172A-03005). The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for special education and related services (WAC 392-172A-03010). The school district in which the student resides has responsibility for conducting the evaluation in accordance with WAC 392-172A-03020 through -03080. If a student were to be presented to a school district for enrollment with an evaluation completed by an outside agency, the district should treat this “evaluation” as an initial referral, and begin the timelines for parent notification of the referral, and collecting and reviewing existing school, medical, and other information the school district and parent may have.

**Question:** If a student is found eligible for special education and related services under Part B of IDEA, does an agency other than the school district in which the student is enrolled have the authority to develop and implement an Individualized Education Program (IEP)?

**Response:** No. Only local education agencies (i.e. school districts and approved charter schools) or approved educational service agencies (ESAs) have the authority to develop IEPs under Part B of the IDEA as defined in WAC 392-172A-03090. School districts have direct responsibility for ensuring that the IEP team for each student eligible for special education includes the parent(s), not less than one general education teacher of the student, not less than one special education teacher of the student, a district representative, an individual who can interpret the instructional implications of the current evaluation, and at the discretion of the parent and district, other individuals who have information or special expertise regarding the student including related service personnel (WAC 392-172A-03095). IEP teams have responsibility for developing, reviewing, and revising as appropriate, a properly
formulated IEP. If a student were to be presented for enrollment in a school district with an IEP completed by an outside agency, the district should also treat this “IEP” as an initial referral, and begin the timelines for parent notification of the referral, and collecting and reviewing existing school, medical, and other information the school district and parent may have.

Reevaluation – Agreements that a Reevaluation is Unnecessary

Washington’s state special education regulations (WAC 392-172A), which follow federal regulations state that reevaluations should occur:

- Not more than one time a year unless the parent and district agree otherwise; and
- At least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

This raises the question, “When is an evaluation unnecessary?” The answer to this lies in the first section of the reevaluation timeline regulations at WAC 392-172A-03015. The regulation indicates reevaluations are required: when a school district determines that the educational or related services needs, including improved academic achievement and functional performance of a student, warrant a reevaluation; or, if a parent or teacher requests a reevaluation.

The decision that a reevaluation is unnecessary is a decision made jointly by a parent and a district. It is not a unilateral decision by one member of an evaluation group, or a decision made only by a parent. Things to consider when making this determination should include:

- How is the student doing both academically and functionally? Are there new or different behaviors? Is the student attending school regularly? Are there academic areas that are showing improvement or lack of improvement?
- What do the student’s teachers or other providers have to say about the student’s performance?
- Is the Student’s performance on state or district wide assessments consistent with past performance?
- How long has it been since the district last conducted a reevaluation?

Districts should not confuse a decision that an evaluation is unnecessary, with a decision that additional assessments are not needed to complete a reevaluation. Remember, reevaluations do not always require additional assessments; there may be enough data generated through progress reporting, state and district assessments, observations, parent input, and other information to complete a reevaluation.

If the parent and district agree that an evaluation is unnecessary, the district needs to document the date of agreement and provide the parent a prior written notice. The date of the agreement will be considered the date from which the next three-year reevaluation will be due, if a reevaluation is not initiated sooner. When parents and districts agree that an evaluation is unnecessary, circumstances may change after an agreement is reached. If circumstances change at any point within the agreement period, a reevaluation should be initiated.


Reevaluations and Proceeding without Parent Consent

Originally printed in the June 2013 Monthly Update

Districts are allowed to proceed with a reevaluation of a student without obtaining written informed parent consent in two instances: 1) when the reevaluation group determines that it does not need to conduct additional assessments in order to complete a reevaluation; and, 2) when the school district can demonstrate that it made reasonable efforts to obtain the parent’s written informed consent and the parent has failed to respond to those reasonable attempts.

When proceeding with a reevaluation because the evaluation group does not believe that it needs additional assessments, the district needs to provide the parents with a prior written notice explaining that the district believes that it does not need additional assessments and, as part of the notice, inform the parents that they have the right to request additional assessments to complete the reevaluation. If the parent believes additional assessments are needed, the district needs to obtain the parent’s written informed consent.

When proceeding with a reevaluation because the parent has failed to respond to the district’s efforts to obtain written informed consent, the district must ensure that it has made reasonable efforts, which are the same methods used to invite parents to an IEP or placement meeting. The district must also document that the parent failed to respond, and notify the parent using prior written notice that the district intends to proceed with the reevaluation. The prior written notice must include the date the district will proceed with the reevaluation.

The following examples would not meet the reasonable efforts test:
1) Sending only one request to the parent;
2) Using only one form of communication to obtain the consent;
3) Informing the parent in the initial request for consent, or prior written notice, that the district will proceed with the evaluation if the parent does not respond within a specified time.

Consider reviewing this information with the staff responsible for obtaining consent, and consider using the same type of documentation used for inviting parents to IEP meetings.

Graduation

Planning for Graduation

Originally printed in the May 2012 Monthly Update

Although some students are ready to graduate now, it is not too early to begin thinking about graduation for those students who are currently freshmen or sophomores. Below are some tips to assist IEP teams as they update annual IEPs for students.

- As part of transition planning, discuss and determine the student’s expected graduation date. This is a critical part of planning based on the student and his or her needs. For AYP purposes, this date needs to be reported by the student’s ninth grade year. More information regarding this requirement is found on Title I’s web page addressing AYP Questions and Answers. Please note, this was updated July 2011. You may want to double check requirements as the state receives more information regarding its submitted flexibility waiver.
- Make sure that you know the high school assessment requirements for students, which vary depending on the year they entered ninth grade. In order to obtain a Certificate of Academic Achievement (CAA) or a Certificate of Individual Achievement (CIA) the student must meet the requirements in effect the year he or she entered ninth grade. Information about the requirements for each entering grade is found at:
• Most districts have more credit and course requirements than the minimum set by the state board. Make sure that the student is on track to meet district credit and course requirements by his or her expected graduation date.
• Don’t forget the high school and beyond plan and the culminating project. While the transition plan may satisfy the requirements for the high school and beyond plan, it may depend on a particular district’s requirements.
• Some students may not be able to meet certain credit requirements due to their disabilities. Each district is required to have procedures to exempt students from requirements in these situations. Be familiar with the procedures to determine whether it is appropriate to exempt students from certain requirements, and think about how other courses or transition experiences would address a student’s unique needs. The regulation addressing exemptions for eligible students is at http://apps.leg.wa.gov/WAC/default.aspx?cite=180-51-115. Please note, a district may not waive high school assessment requirements.
• Plan graduation requirements in coordination with a student’s expected graduation. If a student is expected to remain in school until he or she turns 21, the student should be still working to complete graduation requirements during their final year of services (Once a student meets graduation requirements, he/she is no longer eligible for special education services.) Please see: http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172A-02000 and http://apps.leg.wa.gov/rcw/default.aspx?cite=28A.230.120.
• If a student will be no longer eligible for special education services because he or she is graduating with a regular diploma or because he or she will be exceeding age requirements, make sure that the team prepares a prior written notice regarding the eligibility change and prepares the student’s summary of performance. http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172A-03030. A reevaluation is not required in these two instances. The Office of Special Education Programs issued a letter confirming that a reevaluation is not required for testing that is solely to address the criteria of another agency. See: http://www2.ed.gov/policy/speced/guid/idea/letters/2009-3/moffett082409eligibility3q2009.pdf.
Graduation resources, including a graduation toolkit, are posted on the OSPI’s website, which can be accessed at: http://k12.wa.us/GraduationRequirements/default.aspx.

Individualized Education Program (IEP)

Accommodations
Originally printed in the December 2011 and January 2012 Monthly Updates

Students who are eligible for special education may need accommodations that allow them to participate in state-wide testing and in their general education settings. These accommodations can be provided across settings and in general education classes. IEP teams determine what accommodations are needed as part of the IEP development process. When determining what accommodations a student may need teams should consider the following questions:

What accommodations are needed to allow the student to access his or her general education program?

Often, teams agree to the list of accommodations that parents request. Sometimes, IEPs contain so many accommodations that implementation can be difficult. Teams should look at the accommodations to determine which ones are appropriate for the student. The participation of a general education teacher is critical in assisting the team in determining what accommodations are appropriate, and in determining the settings for particular accommodations.
Are the listed accommodations clear to providers, parents, and students?

When determining accommodations, the team should be clear about the extent of the accommodation. Does preferential seating mean near the front of the class? What does "as needed" mean and who determines who needs it, the provider or the student? If providing extra time for homework assignments, what does that mean? Does it mean to the end of the year, within a week? Is extra time needed for any homework assignment, or is it needed for certain types or lengths of assignments.

Developing accommodations that are appropriate to the student and being specific about the implementation requirements assists all providers to meet their responsibilities for implementing IEPs. Make sure that providers are aware of the accommodations specific to their classroom, and make sure they understand their obligations to implement the IEP. Again, general education teacher involvement in IEP development and their input into the needs of particular students will assist in addressing the accommodations a student needs.

Completing Annual IEPs
Originally printed in the February 2011 Monthly Update

Meeting annual IEP timelines is important. Equally important is parent participation in the IEP team process. For a majority of IEP team meetings, the annual meeting is the one time all team members meet with the parent. It is an opportunity for all team members to provide input. OSPI receives questions about requirements for completing annual IEPs when parents disagree with the IEP. Here are the following suggestions:

What to do:

- Schedule the meeting in advance of the annual due date, especially when the team is aware that there may be disagreements.
- Ensure that all team members can attend, and that the meeting is scheduled at a mutually agreeable time and place with the parent. If after scheduling a meeting, a team member cannot attend, be sure to follow the procedures for excusal, or if there is not consent/agreement by the parent and district, then reschedule the meeting. If the district cannot convince the parent to participate, either personally or by other means, and it has documented its efforts to obtain participation, the district can hold the meeting.
- If after the meeting, there are still areas on the IEP needing to be addressed, schedule another meeting.
- If after the meeting or meetings, the district believes it has offered FAPE, prepare the prior written notice to be provided to the parent, including proposals and refusals, and state the date the IEP will be implemented.

What not to do:

- Do not call the parent a day or two before the annual due date, to inform them that their only option is to meet right away, and that the meeting will go forward without their participation.
- Do not call the parent a day or two prior to the meeting to inform them that not all team members can attend, but that the case manager will be sure that everybody signs the IEP.
- Do not ask the parent to review and sign the IEP without a meeting with assurances that the “entire” team will meet later.
- Do not tell a parent that without their signature noting their participation, the district cannot provide the student with services.
IEP Amendments
Originally printed in the May 2011 Monthly Update

After an IEP team develops a student's annual IEP, the parent and the school district can agree to make changes through an amendment. These changes can be made by the entire IEP team, or if the parent agrees, the amendment can be made without the entire IEP team present. If the IEP is modified using an amendment, either the district can note those changes on an amendment form, or it can revise the current copy of the IEP with the amendments incorporated into a revised document. A parent can request that the entire IEP be modified. Keep the following tips in mind when using an amendment process.

- Amendments do not extend the annual date of the IEP.
- Amendments are not retroactive.
- Do not amend the IEP and then ask the parent if they agree to an amendment. Either convene the entire IEP team, or obtain the parents agreement to amend the IEP without the entire IEP team BEFORE amending the IEP.
- Make sure that the document, whether an amendment form, or a revised IEP with the amendments contained in the entire document, clearly explains what areas are amended, including changes to the summary of services, if needed.
- Make sure that all team members are aware of the amendment, and make sure that all providers are aware of any changes to their responsibilities.

LRE for Online Classes
Originally printed in the November 2013 Monthly Update

Many districts are now offering one or more online courses for students. Some districts offer programs where all, or the majority of courses are offered online. When a student is eligible for special education, the student's IEP addresses the amount of time in a general education setting to determine the least restrictive environment for the student.

LRE is defined in WAC 392-172A-0205 as follows:

Subject to the exceptions for students in adult correctional facilities, school districts 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.

If an online course is designated as a general education course, and the course includes students who are non-disabled, time in the general education online course is considered a general education setting.
Parent Participation
Originally printed in the March 2013 Monthly Update

Frequently, complaints brought by parents include allegations that they were not afforded an opportunity to participate in their child’s Individualized Education Program (IEP) team meetings, other meetings, or allowed to review information in their child’s education records. Districts may be taking steps to involve the parent with whom the student resides, but they may not always remember to include the other parent, when there is a separation, or divorce. In addition, some parents may be involved in dependency proceedings, but still may wish to act as the parent during shelter care and dependency proceedings.

The definition of a parent is found at WAC 392-172A-01125. The definition includes biological or adoptive parent(s), a foster parent, a guardian, an individual acting in the place of the biological or adoptive parent, or a surrogate parent. The regulation also states that if a biological or adoptive parent is attempting to act as the parent, and when more than one party meets the definition of a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the student. That legal authority can include a judicial decree or other court order.

When there are two biological or adoptive parents, both parents must be given opportunities to attend IEP and other meetings, and review educational records, unless there is a court order that restricts that person’s participation. While court orders may specifically designate decision making authority in one parent, that may not preclude the other parent’s involvement in the child’s education.

You may wish to consider the following suggestions when determining how parents have the opportunity to participate in your district:

- If a parent says that the other parent has limitations on their access to participation or educational decision making, ask that the parent provide you with relevant court documents and review those orders. Likewise, if a foster parent and biological parent are both attempting to act as a parent, request the court documents and review them. Are there limits on educational decision making? Are there any orders that restrict a parent’s right to participate or review educational records?
- If more than one parent should be involved in meetings, make sure that both are afforded an opportunity to participate, including the use of alternative participation means if necessary.
- Always check with your legal counsel if there are questions about participation, access to educational records, or decision making authority.


Present Levels of Academic Achievement and Functional Performance
Originally printed in the September 2012 Monthly Update

OSPI reviews individualized education programs (IEPs) through complaints, safety net applications, and other program monitoring activities. Sometimes, the present levels statement simply repeats information from the student’s prior evaluations and does not address current information. The following is guidance for staff in preparing a student’s present levels of academic achievement and functional performance.

A student’s IEP must include a statement regarding the student’s present levels of academic achievement and functional performance. This statement must also describe how the student’s
disability affects the student’s involvement in the general education curriculum, or appropriate activities for preschool students. Although IDEA does not define the terms “academic achievement,” “current” or “functional performance”, the Office of Special Education Programs (OSEP) has concluded that academic achievement generally refers to the student’s performance in academic areas, while functional performance generally refers to the student's performance in non-academic areas such as daily living activities, social skills, behavioral skills, communication and motor skills. See 71 Fed. Reg., pages 46661 and 46662. “Current” has typically been interpreted to mean relevant data and information that can inform a current or annual IEP at the present time.

For an initial IEP, the team is likely to develop the statement of present levels through the information obtained from the initial evaluation that specifically addresses the student's current academic and functional performance. It will also include information from individuals who have knowledge about the student’s current functioning, including parent input, classroom performance, or other data not addressed in the evaluation.

For IEP's developed after the initial IEP, the present levels will also be obtained from a variety of sources: current or “real time” information from teachers and other providers, including classroom based assessments or other data used to report progress towards annual goals, state and district-wide tests, more recent reevaluations, observations of the student, parent, and student information.

Present levels are used to address the baselines for measurable annual goals, the need for related services, and other supports including modification and accommodations on an annual basis. In other words, they address both where the student is presently performing academically and functionally, and how the student’s disability affects the student’s ability to access general education curriculum at the time in which the IEP is developed.

When preparing present levels of functional and academic performance:

• **Do gather current information about the student.** How are the student's grades? Are there social or behavioral concerns that affect the student’s ability to progress in the general education curriculum? Is the student making progress towards his or her annual goals? Are there disciplinary or other issues affecting the student’s performance?

• **Don’t repeat information from prior years or evaluations, unless the purpose is to show a trend for present levels.** Is the parent’s gestational history relevant? Do achievement scores from three years ago add any information to the present levels?

Remember, the statement of the student’s present level of performance is to describe current information about the student. It serves as a present level description in order to develop the remainder of the student’s IEP. When using electronic forms, please make sure to edit prior information as necessary so that IEP teams can plan and implement services based on updated, current, and relevant information.

**Progress Reporting**  
*Originally printed in the April 2011 Monthly Update*

IEP teams must address how a district will measure a student’s progress towards meeting annual goals and when the district will provide periodic reports on the progress the student is making towards meeting his or her annual goals. Many districts provide progress reporting at the same time the district issues progress and grade reports to all students. However, the general education progress report, or report card alone, is not a progress report that describes the progress a student is making towards an annual goal. Progress reporting is an important component that informs parents and IEP teams whether an IEP may need to be adjusted prior to the annual date to address lack of expected progress, or to address more than expected progress.
At the IEP team meeting:

- For each goal, determine when the district will provide progress reporting and what the district is using to measure progress. Document this in the IEP.
- Make sure that the periodic reporting is no less frequent than identified in your district’s procedures.

After the IEP meeting:

- Use the data and methods described in the IEP provide progress reporting to address how the student is or is not making progress.
- Keep the data that is used to address progress.
- Make sure that progress reporting occurs consistent with the frequency described in the IEP.

Using progress reporting in the manner it is intended can resolve future disputes over the provision of special education services to address annual goals, and the appropriateness of the services.

Role of the General Education Teacher

Originally printed in the February 2013 Monthly Update

_The role of the general education teacher in a student’s individualized education program (IEP) meetings and implementation of the student’s IEP._

General education teachers play an important role in the development and implementation of a student's individualized education program (IEP). Many students who are eligible for special education services spend at least part of their school day with general education teachers. Therefore, it is the general education teachers who will often have additional knowledge about the student, including their struggles and successes. General education teachers can also play an important role in ensuring the student’s IEP is implemented.

Role of General Education Teachers in IEP Meetings:

If a student who qualifies for special education is, or will be participating in a general education setting, at least one of the student’s general education teachers is required to be a member of the student’s IEP team. The general education teacher’s role on the IEP team is to assist the team in determining how to enable the student to benefit from the general education experience and participate with their non-disabled peers to the maximum extent possible. This could include positive behavioral interventions and supports, or other strategies that are successful for the student in the general education setting. Not only will the general education teacher be able to provide additional insight about the student at an IEP team meeting, the general education teacher also has an opportunity to learn more about the student from the other IEP team members.

Role of General Education Teachers in IEP Implementation:

Once the IEP has been developed, the student’s general education teachers will need to ensure that they are familiar with their responsibilities to implement the student’s IEP in the general education classroom. This may include implementation of individual accommodations, providing instruction that has been designed by the student’s special education teacher, and/or maintaining data on the student for progress reporting purposes. The district must ensure that the each of the student’s general education teachers (even those who may not have attended the IEP meeting) have access to the student’s current IEP, including any amendments. The district must also ensure that the general education teachers are informed of their specific responsibilities related to implementing the student’s IEP, and the specific accommodations, modifications or supports that must be provided to the student in accordance with the student’s IEP.
Before attending an IEP meeting, general education teachers should:

- Be familiar with the student’s participation in the general education classroom. What strategies and/or accommodations have helped the student to be successful? What strategies and/or accommodations have not helped or should be modified to better help the student? Has the student consistently used the accommodations recommended in his or her IEP?

During the IEP meeting, general education teachers should:

- Offer information that assists in developing a meaningful IEP that meets the student’s needs. Are team members recommending accommodations that the student does not need, or have not been effective? Are there other accommodations that have not been considered by the IEP team that would assist the student in accessing the general education curriculum?
- Ask questions and clarify anything in the IEP that impacts their instruction as well as their responsibility for IEP implementation. If teachers are not clear about their responsibilities, address items you are unsure of during the meeting.

After an IEP meeting, general education teachers should:

- Make sure that they understand their responsibilities for implementing the IEP, and know who to contact with questions.
- Be able to address how they are providing instruction and accommodations for the student or providing other services, if they are responsible for those services. They need to make sure that they are coordinating instruction with the student’s special education teacher, and that the special education teacher is designing and monitoring the specially designed instruction if that instruction is provided by the general education teacher.
- Make sure that they have data to support how they are implementing the services for which they are responsible. Progress reporting in relationship to the student's annual IEP goals is an important element of IEP implementation.

What is the requirement for annual IEPs? Is it the meeting date or the effective date?

Originally printed in the November 2011 Monthly Update

Based on the regulations at 392-172A-03105(3):

Each public agency must ensure that 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.

IEPs must be reviewed and revised annually, or sooner through an IEP meeting. Additionally, district’s should provide prior written notice to parents addressing the decisions a reasonable time before implementation (to preserve a parents right to “stay put” in a due process proceeding). Best practice would be to schedule the IEP team meeting with enough time prior to the expiration of the IEP and on or before the anniversary of the IEP meeting to ensure that the IEP team has enough time to review and revise the IEP. Example: Last IEP meeting was held on January 4. Implementation of the IEP began January 10. The IEP is effective January 10 through January 9 of the following year.
What is the requirement for designating a student’s course of study?

Originally printed in the November 2011 Monthly Update

IEP teams are required to address: the transition services including courses of study needed to assist the student in reaching his or her post-secondary goals. See: 392-172A-03090(1)(j)(ii). So depending on the post-secondary goals, what are the courses of study needed to address his or her post-secondary goals related to education, training, employment, and if appropriate independent living skills? Does the student need to participate in vocational training? Is the student planning to attend a four-year college? The post-secondary goals need to be reviewed annually in order to determine the courses of study for the student. This is not necessarily a recital of the “classes” in which a student will be enrolled. It should address the types of courses the student will need to meet his post-secondary goals. Please see OSEP’s revised questions and answers related to IEPs and secondary transition.

**Medicaid**

Special Education Medicaid Reimbursement Entries

Originally printed in the January 2014 Monthly Update

Please share the following information concerning Medicaid reimbursement with your business office and Special Education accounting personnel.

The Special Education office has received several inquiries regarding the reporting of Special Education Medicaid Reimbursement. Guidance is found in the *Accounting Manual for Public School Districts*, page 7-61 posted at [http://www.k12.wa.us/safs/INS/ACC/1314/1314_SDAM_Complete.pdf#Chapter7](http://www.k12.wa.us/safs/INS/ACC/1314/1314_SDAM_Complete.pdf#Chapter7).

The Washington Health Care Authority no longer provides the full local portion of Medicaid reimbursement payments for school districts. The state pays 40% of the local match needed for Medicaid reimbursement, the balance is paid by the district. The district cannot be reimbursed for any Medicaid eligible services prior to paying the district’s portion of the match through the Intergovernmental Transfer (IGT) process. The Center for Medicaid Services (CMS) will not allow the state to disburse any of the Medicaid reimbursement to a district unless the full amount of the match is on hand at the state. Therefore, districts must provide the remaining 60% of the local match to the Health Care Authority before they can receive reimbursement through the IGT.

The payment to HCA for Medicaid reimbursement is recorded as follows:

<table>
<thead>
<tr>
<th>General Ledger Account</th>
<th>Subsidiary Ledger Account Required</th>
<th>Account Title</th>
<th>Applicable Fund</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>330</td>
<td>No</td>
<td>Due From Other Governmental Units</td>
<td>GF</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>240</td>
<td>No</td>
<td>Cash on Deposit</td>
<td>GF</td>
<td></td>
<td>30</td>
</tr>
</tbody>
</table>

To record the payment to the HCA for Medicaid reimbursement. This would be done through a warrant or a wire transfer.
For every $100 of Medicaid reimbursement, $50 is from the federal Department of Health and Human Services (paid through the state Health Care Authority), $20 is from the state Health Care Authority and $30 is from the district.

**The Medicaid reimbursement from HCA is recorded as follows:**

<table>
<thead>
<tr>
<th>General Ledger Account</th>
<th>Subsidiary Ledger Account Required</th>
<th>Account Title</th>
<th>Applicable Fund</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>240</td>
<td>No</td>
<td>Cash on Deposit</td>
<td>GF</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>330</td>
<td>No</td>
<td>Due From Other Governmental Unit</td>
<td>GF</td>
<td></td>
<td>30</td>
</tr>
<tr>
<td>960</td>
<td>4321</td>
<td>Revenue</td>
<td>GF</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>960</td>
<td>6321</td>
<td>Revenue (Medicaid Reimbursement)</td>
<td>GF</td>
<td>50</td>
<td></td>
</tr>
</tbody>
</table>

To record the receipt of payment from the HCA.

Districts should not record Special Education Medicaid match payments to Programs 21 or 24.

Questions regarding this topic should be directed to Mary Ellen Parrish at (360) 725-6075 or Paul Stone in the School Apportionment and Financial Services at (360) 725-6303.

---

**Private Placement**

**Parentally Placed Private School Children**

*Originally printed in the September 2011 Monthly Update*

**Annual Count of Eligible Parentally Placed Private School Children:** Under the IDEA 2004, school districts/ESAs are responsible for conducting an annual count of special education eligible students unilaterally placed by their parents in approved private, non-profit elementary or secondary (K-12) schools located within the district/ESA. This count must occur annually on a **district selected date between October 1 and December 1** selected by the district (WAC 392-172A-04015). This student count is part of the calculation that the district will use to determine the amount of IDEA Part B funding that must be expended on special education services to parentally placed private school children in the next school year.

Districts are to count children who:
- Are enrolled in grades K-12; and,
- have been evaluated and found eligible for special education and related services (1) but **are not** receiving services OR (2) **are receiving** a service(s) not offered by the private school through either (a) a services plan or (b) an IEP with part-time/dual enrollment in the school district.

The district should maintain a record of students and schools included on the count, as well as the count date. The results of this count are reported in the following year's federal fund application (form package 267) as part of the proportionate share calculation.

**Consultation with Private Schools under IDEA:** The US Department of Education updated its publication titled *Individuals with Disabilities Education Act (IDEA): Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools* in March 2011. Districts may find the following description (pgs. 5-6) of the IDEA consultation process from this document helpful as they design this year’s process.
“Consultation is essential for ensuring that LEAs provide parentally placed private school children with disabilities an opportunity for equitable participation in programs assisted or carried out under IDEA. LEAs are required to consult with both private school representatives and parent representatives of parentally placed private school children with disabilities. The consultation process should occur throughout the school year so that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services as determined as a result of the consultation process.”

Consultation meetings should include a discussion of the following topics:

- **The child find process**, including:
  - how children suspected of having a disability can participate equitably; and
  - how parents, teachers, and private school representatives will be informed of the process.
- **The determination of the proportionate share** of federal IDEA funds, including how that share was calculated.
- **How, where, and by whom special education and related services will be provided** including a discussion of:
  - the types of services, including direct services and alternate service delivery mechanisms;
  - how special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children with disabilities; and
  - how and when these decisions will be made.
- **The consultation process** among the school district, private school representatives, and representatives of parents of parentally placed private school children with disabilities, including how the process will operate throughout the school year to ensure meaningful participation of these children in special education and related services.
- How the LEA will provide a written explanation to the private school representatives if the LEA disagrees with their views on the provision of services or the types of services.

At the conclusion of the consultation process for the school year, the district/ESA must obtain a written affirmation from the private school representatives who participated in the consultation process that timely and meaningful consultation occurred over the school year. OSERS advises in the Private School Q&A that, “Some have asked if signing an attendance sheet at a meeting is all that is needed to document adequately that timely and meaningful consultation has occurred. Though these attendance sheets provide an accounting of who has attended meetings, the sheets themselves do not provide evidence that ongoing consultation has occurred. Therefore, the written affirmation signed by the representatives of the participating private schools should reflect that those officials have indeed participated in timely and meaningful consultation that has continued throughout the school year. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA” (Question A-3).

Additional information about the IDEA consultation process can also be found throughout the Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools.
Do IEP teams need to offer an IEP to a student attending a private school before developing a services plan?

 Originally printed in the November 2011 Monthly Update

No. Parents give consent for the receipt of special education services, not consent for the specific amount or type of services on an IEP. If this is a newly eligible student who is enrolled in a private school, the evaluation group should obtain consent for the receipt of special education services after the eligibility determination. This way, the district knows who has provided consent for services, and can use this information to calculate the number of eligible students for proportional share purposes. The parent can elect to enroll the student full-time or part-time in the resident district (or follow non-resident enrollment procedures if the parent wishes to enroll the student in a non-resident district.) Those students not enrolled by parent election in a public school are the students who will be considered for services using a service plan, through the district’s consultation process.

Use of Proportional Share Funds for Unilaterally Enrolled Private School Students

 Originally printed in the December 2013 Monthly Update

The special education section of OSPI has received questions about how proportionate share funds can be used for students who are eligible for special education services and who are unilaterally enrolled in private schools. The US Office of Special Education Programs issued guidance on the use of funds in its guidance titled, “Questions and Answers on Serving Children with Disabilities in Private Schools” (Revised April 2011). Question D-4 addresses this question as follows:

Question: Must the proportionate amount of Part B funds be used only for direct services to parentally placed private school children with disabilities? Is it permissible to use funds for this population on other services, such as consultative services, materials, equipment, or training?

Answer: Under 34 CFR §300.133(a), each LEA must spend a proportionate amount of Part B funds on providing special education and related services (including direct services) to parentally placed private school children with disabilities. The regulations specify that the LEA makes the final decisions about the services to be provided to eligible parentally placed private school children with disabilities, based in part on input provided through the consultation process by appropriate private school representatives and representatives of parents of parentally placed private school children with disabilities. See 34 CFR §300.137(b)(2). These decisions cannot be made in advance of or in the absence of timely and meaningful consultation with private school representatives and with representatives of parents of parentally placed private school children with disabilities.

IDEA does not require an LEA to spend the proportionate share only for direct services. Rather, through the consultation process described in 34 CFR §300.134, a determination must be made about how the available amount of funds will be utilized so that the parentally placed private school children with disabilities designated to receive services can benefit from the services offered. Depending on the discussions during the consultation process, local circumstances, and the amount of funds available to expend on services for this population of children, an LEA could determine, after timely and meaningful consultation, that it will provide its population of parentally placed private school children with disabilities with indirect services. See 34 CFR §300.134(d)(1). These services could include consultative services, equipment, or materials for eligible parentally placed children with disabilities or training for private school teachers and other private school personnel. Under 34 CFR §300.138(c)(2), special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, must be secular, neutral, and non-ideological.
Related Service Providers

Requirements for Contracted Related Services Providers
*Originally printed in the April 2013 Monthly Update*

The Special Education Section of OSPI and the Professional Educator Standards Board (PESB) received inquiries about whether Educational Staff Associate (ESA) certification is required when a school district contracts with a private state licensed related service provider, such as an occupational therapist, physical therapist, psychologist, or speech language pathologist, to provide services to eligible students. After reviewing the requirements for ESA, and current special education regulations regarding personnel qualifications, OSPI and PESB have determined that ESA certification is not required in order for a district to contract with a private related services provider that is not an employee of the school district. While a school district may choose to require ESA certification or other conditions as part of a personal services contract, they are not required to do so.

Surrogate Parents

Surrogate Parent Appointment - Resources
*Originally printed in the April 2012 Monthly Update*

Under the Individuals with Disabilities Education Act (IDEA), districts are required to appoint a surrogate parent for a student who is referred or is eligible for special education when: no parent can be identified; a district cannot locate a parent, despite making reasonable efforts to locate the parent; a student is a ward of the state and does not have a foster parent; or, the student is an unaccompanied homeless youth. When a surrogate parent is required, districts need to ensure that the assignment of a surrogate parent is made within 30 days of determining the need, and they need to make sure that the surrogate parent has the knowledge and skills to adequately represent the student’s educational interests. In addition, the surrogate may not: be a group care worker or DSHS worker; be an employee of OSPI or the school district; or, have personal or professional interests that would conflict with the interests of the student.

Districts may want to have a list of surrogate parents identified so that they can make an appointment within the timelines specified for appointment. OSPI has developed a PowerPoint that can be used to providing training to staff or surrogate parents, and has developed a document for a district to adapt for its use to assist in ensuring the surrogate parent has the knowledge and skills needed to adequately represent the student. Districts are encouraged to use these materials to educate staff on the requirements, and to use as a resource for potential surrogate parents. These materials are available at: [http://www.k12.wa.us/SpecialEd/publications.aspx](http://www.k12.wa.us/SpecialEd/publications.aspx) under the Surrogate Parent Resources section. Remember that the extent of the information or training required will depend upon the proposed surrogate parent’s familiarity with general and special education procedures. If you have questions about the materials, please contact Pam McPartland at Pamela.McPartland@k12.wa.us or (360) 725-6075.
Transportation

The beginning of the school year raises transportation issues for school districts. When teams address whether the student needs transportation as a related service, some of the considerations are:

- The ability of a student to safely access the regular route and bus.
- Any special procedures required by the student, and the effect of needed procedures to access the regular route and bus.
- Pick-up and drop off locations for a student.
- Communication with the transportation department.

OSEP issued a question and answer document addressing transportation in November 2009.