



**Special Board Meeting  
November 21, 2024  
Idaho State Board of Education  
OSBE Conference Room  
650 West State Street,  
Suite 307  
Boise, ID 83720**

**Public Streaming:** <https://www.youtube.com/channel/UC7j4VGGyNzPa6g6a-zVTHnA>

**Thursday, November 21, 2024 – 1:00 pm (Mountain Time)**

**EXECUTIVE SESSION – (Closed to the Public)**

Action Item to go into Executive Session – No action taken in Executive Session

1. Convene into Executive Session pursuant to Idaho Code § 74-206(1)(f) “To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.”

**CONSENT**

1. Pending Rule – Docket No. 08-0111-2401, Registration of Postsecondary Educational Institutions and Proprietary Schools – Action item
2. Pending Rule – Docket No. 08-0113-2401, Rules Governing The Opportunity Scholarship Program – Action item
3. Pending Rule – Docket No. 08-0201-2401, Rules Governing Administration – Action item
4. Pending Rule – Docket No. 08-0202-2401, Rules Governing Uniformity – Action item
5. Pending Rule – Docket No. 08-0401-2401, Rules of The Idaho Digital Learning Academy – Action item
6. Pending Rule – Docket No. 47-0101-2401, Rules Governing Vocational Rehabilitation Services – Action item

**BUSINESS AFFAIRS AND HUMAN RESOURCES**

1. University of Idaho - Request for Capital Project and Development Agreement Approval; On-Campus Housing Improvements, University of Idaho (UI), Moscow, Idaho – Action item

**IDAHO DEPARTMENT OF EDUCATION**

1. Idaho Special Education Manual Repeal and Replace – Action item

## **POLICY, PLANNING AND GOVERNMENTAL AFFAIRS**

1. Pending Rule – Docket No. 08-0203-2401, Rules Governing Thoroughness – Action Item

## **INSTRUCTION, RESEARCH AND STUDENT AFFAIRS**

1. Review of Draft Board Resolutions on Diversity, Equity, and Inclusion; Governance; and Freedom of Expression in Higher Education – Information Item

If auxiliary aids or services are needed for individuals with disabilities, please contact the Board office at 208-332-1571.

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>PENDING RULE – DOCKET NO. 08-0111-2401, REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS</b>	Action Item
<b>2</b>	<b>PENDING RULE – DOCKET NO. 08-0113-2401, RULES GOVERNING THE OPPORTUNITY SCHOLARSHIP PROGRAM</b>	Action Item
<b>3</b>	<b>PENDING RULE – DOCKET NO. 08-0201-2401, RULES GOVERNING ADMINISTRATION</b>	Action Item
<b>4</b>	<b>PENDING RULE – DOCKET NO. 08-0202-2401, RULES GOVERNING UNIFORMITY</b>	Action Item
<b>5</b>	<b>PENDING RULE – DOCKET NO. 08-0401-2401, RULES OF THE IDAHO DIGITAL LEARNING ACADEMY</b>	Action Item
<b>6</b>	<b>PENDING RULE – DOCKET NO. 47-0101-2401, RULES GOVERNING VOCATIONAL REHABILITATION SERVICES</b>	Action Item

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**SUBJECT**

Pending Rule – Docket No. 08-0111-2401, Registration of Postsecondary Educational Institutions and Proprietary Schools

**REFERENCE**

August 2017	Board approved proposed rule Docket 08-0111-1701.
November 2017	Board approved pending rule Docket 08-0111-1701.
November 2019	Board approved omnibus pending rule, Docket 08-0000-1900 reauthorizing all non-fee administrative rules in IDAPA 08.
June 2021	Board approved omnibus temporary rule, Docket 08-0000-2100 reauthorizing all non-fee administrative rules in IDAPA 08.
October 2021	Board approved proposed Omnibus rule, Docket 08-0000-2100, incorporating proposed rules approved in August 2021.
November 2021	Board approved pending Omnibus rule, Docket 08-0000-2100.
August 2022	Board approved proposed rule Docket 08-0111-2201 in compliance with the Zero-Based Regulations requirements.
November 2022	Board approved pending rule Docket 08-0111-2201 in compliance with the Zero-Based Regulations requirements.
June 2024	Board approved temporary and proposed rule Docket 08-0111-2401, aligning accreditation language with the updated to federal terminology.

**APPLICABLE STATUTE, RULE, OR POLICY**

Section 67-5221(1) and 67-5226, Idaho Code  
Chapter 24, Title 33, Idaho Code Section(s) 33-105, 33-107, 33-2402, and 33-2403, Idaho Code.  
Idaho Administrative Code, IDAPA 08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools

**BACKGROUND/DISCUSSION**

The State Board of Education is granted authority to promulgate rules regarding Registration of Postsecondary Educational Institutions and Proprietary Schools. Guidance for the rulemaking process is provided by the Office of Administrative Rules Coordinator, Division of Financial Management through the Idaho Rule Writer's Manual.

IDAPA 08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools sets forth the registration requirements for postsecondary educational institutions that are required to register with the Board of Education

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under Section 33-2402, Idaho Code, and for the proprietary schools required to register with the Board under Section 33-2403, Idaho Code.

The proposed changes align this rule with the 2023 changes made by the U.S. Department of Education (US DOE) with regard to language around accreditation. The US DOE no longer uses the term “regional” when referencing accreditation, which is currently referenced in IDAPA subsection 08.01.11.100 titled Recognition of Accreditation Organizations. Removing the word “regional” ensures that Idaho’s rule is aligned with the update in federal terminology. Specifically, IDAPA 08.01.11.200.03.a exempts five private, nonprofit institutions located within the state of Idaho from paying a registration fee in order to operate in Idaho. This exemption applies to Brigham Young University – Idaho, College of Idaho, Northwest Nazarene University, New Saint Andrew College, and Boise Bible College. The exemption is based on the fact that these institutions were operating with physical locations in Idaho prior to the initial adoption of this rule and that they maintain Board recognized accreditation. Removing the word “regional” from subsection 08.01.11.100 ensures continuity of operations for these five institutions.

Furthermore, removing the additional requirements for Board recognition of accreditors removes regulations that have not been utilized to date and would be in excess of and less rigorous than the federal review process conducted by the US DOE which consists of evaluation by a formal accreditation group established by the US DOE and by the National Advising Committee on Institutional quality and Integrity.

The Board approved a temporary and proposed rule in June 2024. Subsequently, the notice was published in Vol 24-7 of the Administrative Bulletin of Negotiated Rulemaking.

The temporary rule went into effect on July 1, 2024, and will expire upon sine die of the 2025 legislative session.

**IMPACT**

If the Board approves the pending rule, it will move forward for review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code.

All approved pending rules become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date. As the changes are for the purpose of compliance, and the corresponding temporary rule will expire at sine die, it is requested that this rule be effective at sine die of the 2025 legislative session to ensure continuity of compliance.

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**ATTACHMENTS**

Attachment 1 – Notice of Pending Rule Docket No. 08-0111-2401 Registration of Postsecondary Educational Institutions and Proprietary Schools

Attachment 2 - Pending Rule Docket No. 08-0111-2401

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

No comments were received regarding the temporary and proposed rule. There were no changes to the proposed rule, and it is presented in Attachment 2 as it was approved by the Board in June of 2024. Staff recommends approval.

**BOARD ACTION**

I move to approve pending rule – Docket 08-0111-2401, as submitted in Attachment 2.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.01.11 - REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND  
PROPRIETARY SCHOOLS**

**DOCKET NO. 08-0111-2401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 33-105, 33-107, 33-2402, and 33-2403, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The proposed changes align this rule with the 2023 changes made by the U.S. Department of Education with regard to language around accreditation. The US DOE no longer uses the term "regional" when referencing accreditation. If the rule were to retain the word, five institutions currently operating in our state would no longer be exempted from paying a surety bond required by 33-2406, Idaho Code. Removing the outdated word ensures continuity of operations.

Furthermore, removing the additional requirements for Board recognition removes regulations that have not been utilized to date and would be in excess of the more robust national review process conducted by the US DOE which consists of evaluation by a formal accreditation group established by the US DOE and by the National Advising Committee on Institutional quality and Integrity.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2024 Idaho Administrative Bulletin, Vol. 24-7, pages 51-52.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nicholas Wagner at [rules@edu.idaho.gov](mailto:rules@edu.idaho.gov) or (208)-488-7586).

DATED this 21 day of November 2024.

*Nicholas Wagner / Administrative Rules Coordinator / Idaho State Board of Education / 650 W State St. / PO Box 83720 / Boise, Idaho and 83720-0037 / Phone: (208)488-7586, fax: (208)334-2632*

08.01.11 – REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS  
AND PROPRIETARY SCHOOLS

(BREAK IN CONTINUITY OF SECTIONS)

**100. RECOGNITION OF ACCREDITATION ORGANIZATIONS.**

For purposes of registration of postsecondary educational institutions and proprietary schools, the Board recognizes the ~~regional~~ accreditation organizations that are recognized by and in good standing with the United States Department of Education, and which accredit entire colleges or universities, and which do not accredit only courses or courses of study (such as specialized accreditation organizations). ~~Further, the Board may recognize other accreditation organizations on a case by case basis. A request for recognition of other accreditation organizations for purposes of registration should be made to the Board's Chief Academic Officer, who will review and evaluate the request with the input and advice of the Board's Committee on Academic Affairs and Programs (CAAP). The Board will make a final decision based on such evaluation and review.~~ (3-30-23)(7-1-24)T

(BREAK IN CONTINUITY OF SECTIONS)



**CONSENT**  
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**SUBJECT**

Pending Rule – Docket No. 08-0113-2401, Rules Governing the Opportunity Scholarship Program

**REFERENCE**

June 2021	Board approved omnibus temporary rule, Docket 08-0000-2100 reauthorizing all non-fee administrative rules in IDAPA 08.
October 2021	Board approved proposed Omnibus rule, Docket 08-0000-2100, incorporating proposed rules approved in August 2021.
November 2021	Board approved pending Omnibus rule, Docket 08-0000-2100.
August 2022	Board approved proposed rule Docket 08-0113-2201 in compliance with the Zero-Based Regulations requirements.
November 2022	Board approved pending rule Docket 08-0113-2201 in compliance with the Zero-Based Regulations requirements.
June 2023	Board approved temporary rule Docket 08-0113-2301, to update award deadlines to align with other scholarship programs.
August 2023	Board approved proposed rule Docket 08-0113-2302, accounting for future delays in FAFSA application and aligning dates to match awards with other statewide scholarships.
November 2023	Board Approved pending rule Docket 08-0113-2302, accounting for future delays in FAFSA application and aligning dates to match awards with other statewide scholarships.
August 2024	Board approved proposed rule Docket 08-0113-2401, updates to changes in id Idaho Code 33-4303 from HB500 and HB747(2024).

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Code § 33-4303  
Idaho Administrative Code, IDAPA 08.01.13, Rules Governing the Opportunity Scholarship  
Idaho Code Title 67, Chapter 52, Idaho Administrative Procedures Act

**BACKGROUND/DISCUSSION**

Idaho Code § 33-4303 grants the State Board of Education authority to promulgate rules for the administration of the Opportunity Scholarship. Guidance for the negotiated rulemaking process is provided by the Office of Administrative Rules Coordinator, Division of Financial Management (DFM) through the Idaho Rule Writer's Manual.

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IDAPA 08.01.13, Rules Governing the Opportunity Scholarship Program sets out the eligibility and application requirements for the Opportunity Scholarship, as authorized by Section 33-4303, Idaho Code.

Amendments to the chapter are based on HB500 and HB747 (2024) that amended Idaho Code § 33-4303 which establishes the Opportunity Scholarship. IDAPA 08-0113 Rules Governing the Opportunity Scholarship must be amended to reflect the statutory changes. The changes reinstate community colleges as eligible recipients of Opportunity Scholarship funds and establish the number of credits hours scholarship recipients are required to successfully complete in a calendar year in order to renew their scholarship for a subsequent year at 30 credits.

The negotiated rulemaking process requires multiple opportunities for stakeholders and members of the public to provide feedback on the proposed rule.

The Board approved the proposed rule in August of 2024. Subsequently, the proposed rule was published in the October 2, 2024, Administrative Bulletin of Negotiated Rulemaking, Vol. 24-10. This publication marks the opening of a formal 21-day public comment period. The public comment period closed on October 23, 2024. No additional feedback was received.

Final revisions of the rule are presented to the Board for approval. If approved, the rule will be submitted to DFM as pending.

The final proposed rule language is presented as Attachment 2 – Pending Rule.

**IMPACT**

If the Board approves the pending rule, it will move forward for review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idah Code.

All approved pending rules become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**ATTACHMENTS**

Attachment 1 – Notice of Pending Rule Docket No. 08-0113-2401  
Attachment 2 - Pending Rule Docket No. 08-0113-2401

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

No comments were received regarding the proposed rule. There were no changes to the proposed rule, and it is presented in Attachment 2 as it was approved by the Board in June of 2024. Staff recommends approval.

**CONSENT**  
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**BOARD ACTION**

I move to approve pending rule – Docket 08-0113-2401, as submitted in Attachment 2.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.01.13 - RULES GOVERNING THE OPPORTUNITY SCHOLARSHIP PROGRAM**

**DOCKET NO. 08-0113-2401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Article IX, Section 2, Idaho Constitution and under Sections 33-105, 33-4303, and 33-4304, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

H500 and H747 (2024) amended Idaho Code § 33-4303. To remain compliant with the governing statute, IDAPA 08.01.13 must be revised to reflect several key changes. These changes include the following: updating the credit completion minimums for students seeking to renew an Opportunity Scholarship beyond the initial year of award; including a new initial eligibility requirement that restricts students from receiving both the Opportunity Scholarship and the Launch Grant simultaneously; and reinstating community colleges as eligible recipients of Opportunity Scholarship Funds.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2024, Idaho Administrative Bulletin, Vol. 24-10 pages 105-109.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nicholas Wagner at [rules@edu.idaho.gov](mailto:rules@edu.idaho.gov) or (208)-488-7586).

DATED this 21 day of November 2024.

*Nicholas Wagner / Administrative Rules Coordinator / Idaho State Board of Education / 650 W State St. / PO Box 83720 / Boise, Idaho and 83720-0037 / Phone: (208)488-7586, fax: (208)334-2632*

**08.01.13 – RULES GOVERNING THE OPPORTUNITY SCHOLARSHIP PROGRAM**

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. ELIGIBILITY.**

**01. Academic Eligibility.** To be eligible for an opportunity scholarship, an applicant must meet minimum academic eligibility criteria, as follows: (4-6-23)

**a.** A student who has not yet graduated from an eligible secondary school or its equivalent in the state of Idaho must have an unweighted minimum cumulative grade point of average of two point seven (2.7) or better on a scale of four point zero (4.0) to be eligible to apply for an opportunity scholarship. Cumulative grade point averages of more than one (1) decimal place shall be rounded to one (1) place. Home schooled students must provide a transcript of subjects taught and grades received signed by the parent or guardian of the student; or (4-6-23)

**b.** A student who has obtained a general equivalency diploma must have taken the ACT assessment and received a minimum composite score of twenty (20) or better, or the equivalent SAT assessment and received a one thousand ten (1,010) or better, to be academically eligible to apply for an opportunity scholarship; or (4-6-23)

**c.** A student currently enrolled in an eligible Idaho postsecondary educational institution must have a minimum cumulative grade point average of two point seven (2.7) or better on a scale of four point zero (4.0) at such institution in order to be academically eligible to apply for an opportunity scholarship. Cumulative grade point averages of more than one (1) decimal place shall be rounded to one (1) place. (4-6-23)

**d.** An Adult Learner must have a minimum cumulative grade point average of two point five (2.5) or higher on a scale of four point zero (4.0). Cumulative grade point averages of more than one (1) decimal place shall be rounded to one (1) decimal place. (4-6-23)

**02. Financial Eligibility.** The financial need of an applicant for an opportunity scholarship will be based upon the Student Aid Index, as identified by the free application for federal student aid (FAFSA) Submission Summary. (7-1-24)( )

**03. Additional Eligibility Requirements.** (4-6-23)

**a.** A student must not be in default on a student educational loan, or owe a repayment on a federal grant, and must be in good financial standing with the opportunity scholarship program. (4-6-23)

**b.** If a student has attempted or completed more than one hundred and twenty (120) postsecondary credits, then such student must identify a major, the required number of credits necessary for graduation in such major, and shall submit an academic transcript that contains all courses taken and all postsecondary credit received to the Board office. A student shall not be eligible for an opportunity scholarship if: (4-6-23)

**i.** The student has completed more than one hundred fifty percent (150%) of the courses and academic credit necessary to graduate in such major; or (4-6-23)

**ii.** Upon review of the student's academic transcript(s), the student cannot complete a degree/certificate in the major identified within two (2) semesters based on normal academic course load unless a determination by the executive director or designee has been made that there are extenuating circumstances and the student has a plan approved by the executive director or designee outlining the courses that will be taken and the completion date of the degree or certificate. (4-6-23)

**102. -- 201. (RESERVED)**

**202. APPLICATION PROCESS.**

**01. Applications.** An eligible student must complete and submit the opportunity scholarship program application to the Board electronically on or before the deadline set by the executive director each year. Adult Learner applications will be processed and awarded on a monthly basis up to the application deadline. An applicant without electronic capabilities may request a waiver of this requirement and, if granted, submit an application on the form established by the Board through the United States Postal Service that must be postmarked not later than the applicable application deadline. The FAFSA must be completed on or prior to the application deadline unless federal delays prohibit an applicant from completing the FAFSA prior to the deadline. (7-1-24)

**02. Announcement of Award.** Announcement of the award of initial scholarships will be made no later than ~~December 31~~June 1 of each year, with awards to be effective at the beginning of the first full term of the next fiscal year. Announcements must clearly state the award is part of the state's scholarship program and is funded through state appropriated funds. Additional award announcements may be made after this date based on the availability of funds. (7-1-24)(    )

**03. Communication with State Officials.** Applicants must respond by the date specified to any communication from officials of the opportunity scholarship program. Failure to respond within the time period specified will result in cancellation of the scholarship unless extenuating circumstances are involved and approved by the executive director or designee. (4-6-23)

**203. -- 299. (RESERVED)**

**300. SELECTION OF SCHOLARSHIP RECIPIENTS.**

**01. Selection Process.** Scholarship awards will be based on the availability of scholarship program funds. Opportunity scholarships will be awarded to applicants, based on ranking and priority, in accordance with the following criteria: (4-6-23)

**a.** Eligible students shall be selected based on ranking criteria that assigns seventy percent (70%) to financial eligibility, and thirty percent (30%) to academic eligibility. In the event that this weighted score results in a tie, an eligible student who submitted an application to the Board earlier in time will be assigned a higher rank. (4-6-23)

**b.** Notwithstanding Subsection 300.01.a. of these rules, the priority for the selection of recipients of opportunity scholarship awards shall be to scholarship recipients who received an opportunity scholarship award during the previous fiscal year, and have met all of the continuing eligibility requirements provided in these rules. (4-6-23)

**02. Monetary Value of the Opportunity Scholarship.** (4-6-23)

**a.** The monetary value of the opportunity scholarship award to a student shall be based on the educational costs for attending an eligible Idaho postsecondary educational institution, less the following: (4-6-23)

**i.** The amount of the assigned student responsibility, established by the Board annually; (4-6-23)

**ii.** The amount of federal grant aid, as identified by the FAFSA Submission Summary if known at the time of award determination; (7-1-24)

**iii.** The amount of other financial aid awarded the student, from private or other sources that is known at the time of award determination. (4-6-23)

**iv.** The eligible maximum award amount for Adult Learners enrolled in less than twenty-four (24) credit hours along with the requirements outlined in Section 302.1, or its equivalent in an academic year will be prorated as follows: (7-1-24)(    )

**(1)** Enrolled in six (6) to eight (8) credits or its equivalent per term - fifty percent (50%) of the maximum; (4-6-23)

(2) Enrolled in nine (9) to eleven (11) credits or its equivalent per term - seventy-five percent (75%) of the maximum; and (4-6-23)

(3) Enrolled in twelve (12) or more credits or its equivalent per term - one hundred percent (100%) of the maximum. (4-6-23)

b. The amount of an opportunity scholarship award to an individual student shall not exceed the actual cost of tuition and fees at the institution the student attends or will attend, or if the student attends or will attend an Idaho private postsecondary educational institution, the average tuition at Idaho's public four (4) year postsecondary educational institutions. (4-6-23)

c. The Board may determine monetary value without the FAFSA Submission Summary if the delay is due only to federal delay and may modify any final award or payment upon receipt of the FAFSA Submission Summary. (7-1-24)

### 301. OPPORTUNITY SCHOLARSHIP AWARD.

01. **Payment.** Payment of opportunity scholarship awards will be made in the name of the recipient and will be sent to a designated official at the eligible Idaho postsecondary educational institution in which the recipient is enrolled. The official must transmit the payment to the recipient within a reasonable time following receipt of the payment. (4-6-23)

02. **Duration.** Scholarships will be awarded on an annual basis and payments will correspond to academic terms, semesters, quarters, or equivalent units. In no instance will the entire amount of a scholarship be paid in advance to, or on behalf of, a scholarship recipient. The scholarship may cover up to four (4) educational years, or eight (8) semesters or equivalent for attendance at an eligible Idaho postsecondary educational institution. Awards are contingent on annual appropriations by the legislature and continued eligibility of the student. (4-6-23)

03. **Eligibility.** If a student receives an opportunity scholarship payment and it is later determined that the student did not meet all of the Opportunity Scholarship Program eligibility requirements, then the student is considered in overpayment status, and must return program funds in accordance with the eligible Idaho postsecondary educational institution's refund policy. (4-6-23)

~~04. **New Scholarships for Community College.** The Board may not award any new scholarship, excluding renewals, to any student attending community college on or after July 1, 2023. (7-1-24)~~

### 302. CONTINUING ELIGIBILITY.

01. **Requirements.** ~~For an eligible student that has previously received an opportunity scholarship award to renew such award for the next year, the eligible student shall maintain progress towards on-time degree completion so that such student is on schedule to obtain an associate degree within two (2) years or a baccalaureate degree within four (4) years from the time such student initially received an opportunity scholarship award. **Credit Hours.** To remain eligible for renewal of an opportunity scholarship, the scholarship recipient attending a four (4) year eligible postsecondary institution must have completed a minimum of twenty four (24) credit hours or its equivalent each academic year that the student received an opportunity scholarship award and the scholarship recipient attending a two (2) year public postsecondary institution who accepted an award offer or renewed an award offer on or before June 30, 2023, must have completed a minimum of eighteen (18) credit hours or its equivalent each academic year that the student received an opportunity scholarship award. Notwithstanding these provisions, a scholarship recipient who has received the Opportunity Scholarship as an Adult Learner may retain eligibility by completing twelve (12) or more credit hours or its equivalent each academic year the student received the Opportunity Scholarship award. All students may use the summer term to meet the annual credit accumulation requirements. (7-1-24)( )~~

~~02. **Renewal Application.** In order to be considered for a continuing scholarship for each succeeding year, a scholarship recipient must complete a renewal application by March 1. and update and submit the FAFSA on~~

~~or prior to March 1.~~ ( )

**032. Academic Progress.** To remain eligible for renewal of an opportunity scholarship, the scholarship recipient must have maintained a minimum cumulative grade point average of two point seven (2.7) on a scale of four point zero (4.0), and must be maintaining satisfactory academic progress toward their identified postsecondary credential as determined by the institution they are enrolled in. Students receiving an Opportunity Scholarship award as an Adult Learner must make satisfactory progress on their graduation plan established with the eligible institution at the time of admission. (4-6-23)

**043. Eligibility Following Interruption of Continuous Enrollment.** A scholarship recipient whose continuous enrollment is interrupted for more than four (4) months but less than two (2) years for any reason but who intends to re-enroll in an eligible Idaho postsecondary educational institution must file a letter of intent to withdraw no later than thirty (30) days prior to the first day of the academic term of the discontinued attendance to the Office of the State Board of Education. Failure to do so may result in forfeiture of the scholarship. The Board's Executive Director or designee will review each request for interruption and notify the individual of approval or denial of the request. In addition, the individual must file a statement with the Board declaring intent to re-enroll as a full-time undergraduate student in an academic or career technical program in an eligible Idaho postsecondary educational institution for the succeeding academic year no later than thirty (30) days prior to the first day of the academic term in which the individual intends to re-enroll within two (2) years of the approval of the request to withdraw. Failure to do so will result in forfeiture of the scholarship unless an extension has been granted. An extension of interruption of continuous enrollment period may be granted for eligible students due to military service in the United States armed forces, medical circumstances, or other circumstances approved by the executive director. All requests for extension must be made thirty (30) days prior to the start of the succeeding academic year. (4-6-23)

303. -- 399. (RESERVED)

#### 400. RESPONSIBILITIES OF ELIGIBLE IDAHO POSTSECONDARY EDUCATIONAL INSTITUTIONS.

**01. Statements of Continuing Eligibility.** An eligible Idaho postsecondary educational institution participating in this Opportunity Scholarship Program must submit statements of continuing student eligibility to the Board by the 30th day after the end of the spring semester or equivalent term. Such statements must include verification that the scholarship recipient is still enrolled, ~~attending part time, if an Adult Learner, and full time for all other scholarship recipients, maintaining satisfactory academic progress, is meeting the continued eligibility requirements as described in Section 302.01,~~ and has not exceeded the award eligibility terms. (4-6-23)( )

**02. Other Requirements.** An eligible Idaho postsecondary educational institution must: (4-6-23)

**a.** Be eligible to participate in Federal Title IV financial aid programs, and must supply documentation to the Board verifying this eligibility, and prompt notification regarding any changes in this status; (4-6-23)

**b.** Have the necessary administrative computing capability to administer the Opportunity Scholarship Program on its campus, and electronically report student data records to the Board; (4-6-23)

**c.** Provide data on student enrollment and federal, state, and private financial aid for students to the Board within set timelines, and (4-6-23)

**d.** Agree to permit periodic Opportunity Scholarship Program audits to verify compliance with Idaho law and these rules related to the program. (4-6-23)

**03. Adult Learner Evaluation.** ~~Upon admission, scholarship recipients receiving an award as an Adult Learner will be administered prior learning assessments to determine eligibility for credit for prior learning, including credit for prior experiential learning. As part of this adult learner evaluation process is that~~ an eligible institution will work with the student to develop a graduation plan for the program they are entering that includes



estimated completion dates.

(4-6-23)

**(BREAK IN CONTINUITY OF SECTIONS)**

**CONSENT**  
**NOVEMBER 21, 2024**

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**SUBJECT**

Pending Rule – Docket No. 08-0201-2401, Rules Governing Administration

**REFERENCE**

August 2019	Board considered and rejected a proposed rule, Docket 08-0201-1901, setting reporting requirements for enrollment FTE and directed staff to bring back a temporary rule at the conclusion of planned visits in each of the regions to gather feedback.
October 2019	Board approved temporary rule establishing the enrollment FTE in a substantially similar format as presented at the Regular August Board meeting.
August 2020	Board postponed action on a temporary and proposed rule that would allow FTE student enrollment to be used to calculate average daily attendance for funding purposes.
December 2020	Board approved pending rule Docket 08-0201-2001, establishing FTE enrollment reporting methodology and approved temporary rule Docket 08-0201-2002 allowing FTE enrollment to be used to calculate average daily attendance.
November 2020	Board approved amendment to temporary and pending rules updating the FTE enrollment methodology.
June 2021	Board approved omnibus temporary rule, Docket 08-0201-2100 reauthorizing all non-fee administrative rules in IDAPA 08.
August 2021	Board approved proposed rule, Docket 08-0201-2102
November 2021	Board approved pending rule, Docket 08-0201-2102
June 2024	Board approved temporary and proposed rule docket 08-0201-2401, incorporating required data point collections by OSBE.

**APPLICABLE STATUTE, RULE, OR POLICY**

Section 67-5221(1) and 67-5226, Idaho Code  
Section 33-133, Idaho Code  
Idaho Administrative Code, IDAPA 08.02.01, Rules Governing Administration

**BACKGROUND/DISCUSSION**

The State Board of Education is granted authority to promulgate rules regarding Administration. Guidance for the rulemaking process is provided by the Office of Administrative Rules Coordinator, Division of Financial Management through the Idaho Rule Writer's Manual.

**CONSENT**  
**NOVEMBER 21, 2024**

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IDAPA 08.02.01, Rules Governing Administration sets forth uniform and thorough standards and governance by the State board of Education for the establishment and maintenance of a general, uniform and thorough system of public instruction.

H521 amended Section 33-911, Idaho Code such that it will now be necessary to identify whether a student is in attendance at a physical facility in order to properly calculate the distribution of facility funds. A “physically on campus” data point will be added to ISEE.

H422 repealed and replaced Section 33-5207, Idaho Code. The new section amends several aspects of funding distributions for charter schools. Particularly in cases where a student may be dual enrolled in more than one school, it will be necessary to determine which school is responsible for the provision of special education services. Adding a “responsible district/school” data point to ISEE will facilitate the state’s ability to determine a school’s eligibility for funding requests and hold schools accountable for the provision of special education services.

These data points must be identified in IDAPA 08.02.01.251.01. Updates in the rule to allow for the collection of the data points will give the board the ability to properly assist the Idaho Department of Education (IDE) with calculating various funding streams.

The Board approved the temporary and proposed rule in June 2024. Subsequently, the notice was published in Vol 24-7 of the Administrative Bulletin of Negotiated Rulemaking.

The temporary rule went into effect on July 1, 2024, and will expire upon sine die of the 2025 legislative session.

**IMPACT**

If the Board approves the pending rule, it will move forward for review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idah Code.

All approved pending rules become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date. As the changes are for the purpose of ensuring that reporting required by 2024 legislation can be properly supported, and the corresponding temporary rule will expire at sine die, it is requested that this rule be effective at sine die of the 2025 legislative session.

**ATTACHMENTS**

- Attachment 1 – Notice of Pending Rule Docket No. 08-0201-2401
- Attachment 2 - Pending Rule Docket No. 08-0201-2401

**CONSENT**  
**NOVEMBER 21, 2024**

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**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

No comments were received regarding the temporary and proposed rule. There were no changes to the proposed rule, and it is presented in Attachment 2 as it was approved by the Board in June of 2024. Staff recommends approval.

**BOARD ACTION**

I move to approve pending rule – Docket 08-0201-2401, as submitted in Attachment 2.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.02.01 – RULES GOVERNING ADMINISTRATION**

**DOCKET NO. 08-0201-2401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 33-101, 33-105, 33-107, 33-116, 33-117, 33-308, 33-320, 33-310B, 33-512, 33-513, 33-905, 33-1279, 33-1403, 33-1405, 33-2004 and Chapter 10, Title 33, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

To ensure conformity with recent changes to legislation made by H422 (2024) and H521 (2024), “Responsible District/School” and “Physically on Campus” two additional data points will need to be collected through the Idaho System of Educational Excellence (ISEE) data collection system. These data points must be identified in subsection 251.01. Updates in the rule to allow for the collection of the data points will give the board the ability to properly assist the IDE with calculating various funding streams.

Specifically, recent legislation requires that the board update data elements to subsection 08.02.01.251.01. Additional data points will include identification of the “Responsible District” for each student and an indicator of whether the student is “Physically on Campus”. The former will allow the board to identify which district is primarily responsible for a student when they are dual-enrolled or reported in multiple locations, and the latter allows the board to collect validation data on whether a student is attending physically on campus to support the requirements of participation in certain facility funding streams.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2024 Idaho Administrative Bulletin, Vol. 24-7, pages 53-54.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nicholas Wagner at [rules@edu.idaho.gov](mailto:rules@edu.idaho.gov) or (208)-488-7586).

DATED this 21 day of November 2024.

*Nicholas Wagner / Administrative Rules Coordinator / Idaho State Board of Education / 650 W State St. / PO Box*

*83720 / Boise, Idaho and 83720-0037 / Phone: (208)488-7586, fax: (208)334-2632*

**DRAFT**

08.02.01 – RULES GOVERNING ADMINISTRATION

(BREAK IN CONTINUITY OF SECTIONS)

251. DATA COLLECTION.

LEA's will report the required information for state and federal reporting and decision-making. The reporting will be done in accordance with the requirements established in Chapter 10, Title 33, Idaho Code, or as needed for state and federal purposes. Each LEA is required to verify and assure the accuracy of the data submitted on a timeframe established by the state board of education or its designee. (3-15-22)

01. State Data System. In accordance with the provisions of Section 33-133, Idaho Code, the following data elements will be added to the state data system: (3-15-22)

- a. Grade Point Average (GPA); ~~and~~ ~~(3-15-22)~~(7-1-24)T
- b. Chronic Absenteeism. (3-15-22)
- c. Student address. (3-15-22)
- d. Responsible District/School. (7-1-24)T
- e. Physically on Campus. (7-1-24)T

(BREAK IN CONTINUITY OF SECTIONS)

**CONSENT**  
**NOVEMBER 21, 2024**

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**SUBJECT**

Pending Rule – Docket No. 08-0202-2401, Rules Governing Uniformity

**REFERENCE**

August 2020	Board approved proposed rule amending IDAPA 08.02.02 adding the advanced professional endorsement and aligning CTE educator certification with 2020 legislative changes.
November 2020	Board approved pending rule amending IDAPA 08.02.02 adding the advanced professional endorsement and aligning CTE educator certification with 2020 legislative changes.
June 2021	Board approved temporary omnibus rules, Dockets 08-0000-2100 and 55-0000-2100.
August 2021	Board approved proposed rules Dockets 08-0201-2101, 08-0202-2102, and 08-0203-2101.
October 2021	Board approved proposed omnibus rule, Docket 08-0000-2100, incorporating proposed rules approved in August 2021.
November 2021	Board approved pending omnibus rule, Docket 08-0000-2100.
August 2022	Board approved proposed rule docket 08-0202-2201 incorporating amendments required through zero-based rulemaking and amendments requested by education stakeholders and the Department of Education staff.
November 2022	Board approved pending rule docket 08-0202-2201 incorporating amendments required through zero-based rulemaking and amendments requested by education stakeholders and the Department of Education staff.
August 2024	Board approved proposed rule docket 08-0202-2401, incorporating/updating apprenticeship program and teacher certification.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Constitution Article IX, Section 2  
Sections 33-1612 and 33-1203, Idaho Code  
Idaho Code Title 67, Chapter 52, Idaho Administrative Procedures Act  
Idaho Administrative Code, IDAPA 08.02.02, Rules Governing Uniformity

**BACKGROUND/DISCUSSION**

The State Board of Education is granted authority to promulgate rules regarding Uniformity. Guidance for the rulemaking process is provided by the Office of Administrative Rules Coordinator, Division of Financial Management through the Idaho Rule Writer's Manual.



**CONSENT**  
**NOVEMBER 21, 2024**

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IDAPA 08.02.02, Rules Governing Uniformity, sets out provisions for establishing a uniform system of public education. These requirements include, educator certification requirements, educator preparation program requirements, educator ethics requirements, performance evaluation framework, transportation standards, etc.

The negotiated rulemaking process requires multiple opportunities for stakeholders and members of the public to provide feedback on the proposed rule.

The amendment to Idaho Code § 33-1203 that resulted from SB1069 (2023) provided for a board-approved apprenticeship program to be developed. SB1069 also allowed for teacher certifications to be issued to teachers based on completion of four years of college training or the completion of a board approved apprenticeship program. The current language in IDAPA only addresses the four years of college training and needs to be updated to address the additional pathway allowed by this amendment to Idaho Code § 33-1203. A board workgroup developed the program during 2023, the approval by the board was granted in December of 2023 and the U.S. Department of Labor granted approval in February of 2024. Now that the parameters of the program are established, this rule needs to be amended to align with the program exit requirements before apprentices (who will enter the program in fall of 2024) become eligible to exit. The changes also update the apprenticeship subsection 014 to clarify the federally established minimum age for participation in apprenticeships and aligns the rule with the language in Idaho Code § 33- 1203.

The Board approved the proposed rule in August 2024. Subsequently, the rule was published in the October 2, 2024, Administrative Bulletin of Negotiated Rulemaking, Vol. 24-10. This publication marks the opening of a formal 21-day public comment period. The public comment period closed on October 23, 2024. No additional feedback was received.

Final revisions of the rule are presented to the Board for approval. If approved, the rule is submitted to the Division of Financial Management as pending.

The final proposed rule language is presented as Attachment 2 – Pending Rule.

**IMPACT**

If the Board approves the final proposed rule language, it will be submitted to DFM as a pending rule and will then move forward for legislative consideration.

Pending rules become effective at the end of the legislative session in which they are submitted if they are approved by the Legislature.

**CONSENT**  
**NOVEMBER 21, 2024**

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If the Board does not approve the final proposed rule language, the existing rule will remain in effect, and no pending rule will move forward for legislative consideration.

**ATTACHMENTS**

Attachment 1 – Notice of Pending Rule Docket No. 08-0202-2401

Attachment 2 - Pending Rule Docket No. 08-0202-2401

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

No comments were received regarding the proposed rule. There were no changes to the proposed rule, and it is presented in Attachment 2 as it was approved by the Board in June of 2024. Staff recommends approval.

**BOARD ACTION**

I move to approve pending rule – Docket 08-0202-2401, as submitted in Attachment 2.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-2401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under Sections 33-105, 33-107, 33-116, and 33-1612, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The amendment to Idaho Code § 33-1203 that resulted from S1069 (2023) provided for a board-approved apprenticeship program to be developed. S1069 also allowed for teacher certifications to be issued to teachers based on completion of four years of college training or the completion of a board approved apprenticeship program. The current language in IDAPA only addresses the four years of college training and needs to be updated to address the additional pathway allowed by this amendment to Idaho Code § 33-1203. A board workgroup developed the program during 2023, the approval by the board was granted in December of 2023 and the U.S. Department of Labor granted approval in February of 2024. Now that the parameters of the program are established, this rule needs to be amended to align with the program exit requirements before apprentices (who will enter the program in fall of 2024) become eligible to exit. The changes also update the apprenticeship subsection 014 to clarify the federally established minimum age for participation in apprenticeships and aligns the rule with the language in Idaho Code § 33- 1203.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2024, Idaho Administrative Bulletin, Vol. 24-10 pages 110-125.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nicholas Wagner at [rules@edu.idaho.gov](mailto:rules@edu.idaho.gov) or (208)-488-7586).

DATED this 21 day of November 2024.

*Nicholas Wagner / Administrative Rules Coordinator / Idaho State Board of Education / 650 W State St. / PO Box 83720 / Boise, Idaho and 83720-0037 / Phone: (208)488-7586, fax: (208)334-2632*

08.02.02 – RULES GOVERNING UNIFORMITY

(BREAK IN CONTINUITY OF SECTIONS)

007. DEFINITIONS.

01. Accredited Institution. For purposes of educator certification, the Idaho state board of education recognizes accreditation organizations recognized and in good standing with the United States department of education pursuant to IDAPA 08.01.11, registration of postsecondary educational institutions and proprietary schools, section 100, or an alternative or non-traditional model approved by the State Board of Education.

02. Clinical Experience. Guided, hands-on, practical applications and demonstrations of professional knowledge of theory to practice, skills, and dispositions through collaborative and facilitated learning in field-based assignments, tasks, activities, and assessments across a variety of settings. Clinical experience includes field experience and clinical practice as defined in this section. (3-15-22)

032. Clinical Practice. Student teaching or internship opportunities that provide candidates with an intensive and extensive culminating field-based set of responsibilities, assignments, tasks, activities, and assessments that demonstrate candidates' progressive development of the professional knowledge, skills, and dispositions to be effective educators. Clinical practice includes student teaching and internship. (3-15-22)

043. Credential. The general term used to denote the document on which all of a person's educational certificates and endorsements are listed. The holder is entitled to provide educational services in any and/or all areas listed on the credential. (3-15-22)

054. Endorsement. Term used to refer to the content area or specific area of expertise in which a holder is granted permission to provide services. (3-15-22)

065. Field Experience. Early and ongoing practice opportunities to apply content and pedagogical knowledge in Pre-K-12 settings to progressively develop and demonstrate knowledge, skills, and dispositions. (3-15-22)

076. Individualized Professional Learning Plan. An individualized professional development plan based on the Idaho framework for teaching evaluation as outlined in Section 120 of these rules to include interventions based on the individual's strengths and areas of needed growth. (3-15-22)

087. Institutional Recommendation. Signed form or written verification from an accredited institution with a state board approved educator preparation program stating that an individual has completed the program, received a basic or higher rating in all components of the approved Idaho framework for teaching evaluation, has an individualized professional learning plan, has demonstrated the ability to produce measurable student achievement or student success, has the ability to create student learning objectives, and is recommended for state certification. Institutional recommendations must include statements of identified competency areas and grade ranges. Institutional recommendation for administrators must additionally include a competency statement indicating proficiency in conducting accurate evaluations of instructional practice based upon the state's framework for evaluation as outlined in Section 120 of these rules. (4-6-23)

098. Internship. Full-time or part-time supervised clinical practice experience in Pre-K-12 settings where candidates progressively develop and demonstrate their knowledge, skills, and dispositions. (3-15-22)

1099. Local Education Agency (LEA). An Idaho public school district or charter school pursuant to Section 33-5203(8), Idaho Code. (3-15-22)

11. Mentoring Program. A state board approved mentoring program means any mentoring program implemented by a school district or public charter school that substantially conforms to the mentorship standards

adopted by the State Board of Education. ( )

**129. Paraprofessional.** A noncertificated individual who is employed by a local education agency to support educational programming. Paraprofessionals must work under the direct supervision of a properly certificated staff member for the areas they are providing support. Paraprofessionals cannot serve as the teacher of record and may not provide direct instruction to a student unless the paraprofessional is working under the direct supervision of a teacher. (3-15-22)

**a.** To qualify as a paraprofessional the individual must have a high school diploma or general equivalency diploma (GED) and: (3-15-22)

**i.** Demonstrate through a state board approved academic assessment knowledge of and the ability to assist in instructing or preparing students to be instructed in the academic areas they are providing support in; or (4-6-23)

**ii.** Have completed at least two (2) years of study at an accredited postsecondary educational institution; or (3-15-22)

**iii.** Obtained an associate degree or higher level degree; demonstrate through a state board approved academic assessment knowledge of and the ability to assist in instructing or preparing students to be instructed in the academic areas they are providing support in. (4-6-23)

**b.** Individuals who do not meet these requirements will be considered school or classroom aides. (3-15-22)

**c.** Duties of a paraprofessional include, but are not limited to, one-on-one tutoring; assisting in classroom management; assisting in computer instruction; conducting parent involvement activities; providing instructional support in a library or media center; acting as a translator in instructional matters; and providing instructional support services. Non-instructional duties such as providing technical support for computers, personal care services, and clerical duties are generally performed by classroom or school aides, however, this does not preclude paraprofessionals from also assisting in these non-instructional areas. (3-15-22)

**131. Pedagogy.** Teaching knowledge and skills. (3-15-22)

**142. Portfolio.** An organized collection of artifacts that demonstrates an individual's performance, growth, and/or reflection regarding their professional practice, in alignment with the applicable professional standards used for evaluation. (3-15-22)

**153. Practicum.** Full-time or part-time supervised, industry-based experience in an area of intended career technical education teaching field to extend understanding of industry standards, career development opportunities, and application of technical skills. (3-15-22)

**164. Semester Credit Hours.** Two (2) semester credit hours are equivalent to three (3) quarter credit hours. (3-15-22)

**175. Student Learning Objective (SLO).** A measurable, long-term academic growth target that a teacher sets at the beginning of the year for all student or for subgroups of students. SLOs demonstrate a teacher's impact on student learning within a given interval of instruction based upon baseline data gathered at the beginning of the course. (3-15-22)

**186. Student Teaching.** Extensive, substantive, and supervised clinical practice in Pre-K-12 schools for candidates preparing for an instructional certificate. (4-6-23)

**197. Teacher of Record.** The teacher who is primarily responsible for planning instruction, delivering or supervising the instruction provided to a class of students, assessing student performance, and designating final grades. (4-6-23)

~~008. 011. (RESERVED)~~

~~012. Accredited Institution. For purposes of educator certification, an accredited school, college, university, or other educator training institution is considered by the Idaho state board of education to be one that is accredited by a regional accrediting association recognized by the state board of education or an alternative or non-traditional model approved by the state board of education. ( ) (3-15-22)~~

~~008. -- 012. (RESERVED)~~

**013. CERTIFICATION OF TEACHERS TRAINED IN FOREIGN INSTITUTIONS.**

An educator having graduated from a foreign institution educator preparation program shall be treated as an out of state applicant for certification purposes and may be issued a nonrenewable, three (3) year interim certificate. The applicant must provide transcripts and any/or credentials that have been translated and evaluated by an approved evaluation service. ( ) (4-6-23)

**014. CERTIFICATES ISSUED TO APPLICANTS ~~FROM REGIONALLY ACCREDITED INSTITUTIONS.~~**

Idaho certificates may be issued to applicants completing any of the following Idaho State Board of Education approved routes; accredited educator preparation programs, non-tradition educator preparation program, educator registered apprenticeship programs, a board approved non-traditional or non-public preparation program, an alternative authorization pathway, or the from regionally accredited institutions recognized by the state board of education meeting requirements for certification or equivalent of Idaho certification requirements in other states when they substantially meet the requirements for a standard Idaho educator certificate. ( ) (4-6-23)

**015. IDAHO EDUCATOR CREDENTIAL.**

All standard educator certificates are valid for five (5) years and are renewable, subject to the applicable renewal requirements set by the state board of education and any applicable conditions applied to an individual's certificate by the professional standards commission. (3-15-22)

**01. Standard Instructional Certificate.** Standard instructional certificates may be issued to completers of traditional routes pursuant to section 33-1203, Idaho code, completers of board approved educator registered apprenticeship programs, or individuals who meet interim certificate requirements. A Standard Instructional Certificate makes an individual eligible to teach all grades and subjects attached to the certificate and valid endorsements. Completers of traditional routes shall meet the following requirements, subject to the grade ranges and subject areas of the valid endorsement(s) attached to the certificate. A standard instructional certificate may be issued to any person who has a baccalaureate degree or higher from an accredited college or university and who meets the following requirements or successfully completes an interim certificate requirements: ( ) (4-6-23)

**a. Minimum Credit Hours.** Earned a minimum of twenty (20) semester credit hours in the philosophical, psychological, methodological foundations, instructional technology, and in the professional subject matter of education, which shall include demonstration of competencies as specified in the Idaho comprehensive literacy plan; and ( ) (3-15-22)

**b. Student Teaching.** Complete a minimum of ten (10) undergraduate or six (6) graduate semester credit hours, of student teaching; and (3-15-22)

**c.** Complete a state board approved educator preparation program and receive an institutional recommendation from the program specifying the grade ranges and subjects for which the applicant is eligible to receive an endorsement; (4-6-23)

**i.** To receive endorsement in two (2) fields of teaching, preparation must consist of completion of at least thirty (30) semester credit hours in one (1) field of teaching, and completion of at least twenty (20) semester credit hours in a second field of teaching. (3-15-22)

ii. To receive endorsement in (1) field of teaching, preparation must consist of completion of at least forty-five (45) semester credit hours in a single subject area; (3-15-22)

d. Meet or exceed the state qualifying score on the state board approved content area and pedagogy assessments. (4-6-23)

e. **Renewal.** Six (6) semester credit hours are required every five (5) years to renew. The renewal credit may be waived if the applicant holds a current, valid certificate from the National Board for Professional Teaching Standards at the time of renewal. Credits must be earned during the validity period of the certificate. ( )

**02. Standard Pupil Service Staff Certificate.** Persons who serve as school counselors, school psychologists, school social workers, and school nurses are required to hold the Standard Pupil Service Staff Certificate, with the respective endorsement(s) for which they qualify. Persons who serve as a speech-language pathologist, school audiologist, occupational therapist, or physical therapist may be required, as determined by the local educational agency, to hold a Standard Pupil Service Staff Certificate with respective endorsements for which they qualify. (4-6-23)

a. School Counselor Endorsement. To be eligible for a School Counselor endorsement, a candidate must have satisfied the following requirements. (3-15-22)

i. Hold a master's degree and provide verification of completion of an approved program of graduate study in school counseling, including sixty (60) semester credits, from a college or university approved by the Idaho State Board of Education or the state educational agency of the state in which the program was completed. The program must include successful completion of seven hundred (700) clock hours of supervised field experience, seventy-five percent (75%) of which must be in a K-12 school setting. This K-12 experience must be in each of the following levels: elementary, middle/junior high, and high school. Previous school counseling experience may be considered to help offset the field experience clock hour requirement; and (3-15-22)

ii. An institutional recommendation is required for a School Counselor endorsement. (3-15-22)

b. School Counselor – Basic Endorsement. (3-15-22)

i. Individuals serving as a school counselor pursuant to Section 33-1212, Idaho Code, shall be granted a School Counselor – Basic endorsement. The endorsement is valid for five (5) years or until such time as the holder no longer meets the eligibility requirements pursuant to Section 33-1212, Idaho Code. (3-15-22)

ii. Individuals who received their endorsement pursuant to Section 33-1212, Idaho Code, prior to July 1, 2018, will be transitioned into the School Counselor – Basic endorsement. Renewal date will remain the same as the initial credential. (3-15-22)

c. School Psychologist Endorsement. The renewal credit requirement may be waived if the applicant holds a current and valid National Certification for School Psychologists (NCSP) offered through the National Association of School Psychologists (NASP). To be eligible for a school psychologist endorsement, a candidate must complete a minimum of sixty (60) graduate semester credit hours which must be accomplished through one (1) of the following options: (3-15-22)

i. Completion of an approved thirty (30) semester credit hour master's degree in education or psychology and completion of an approved thirty (30) semester credit hour School Psychology Specialist Degree program, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a local education agency under the supervision of the training institution and direct supervision of a certificated school psychologist; (3-15-22)

ii. Completion of an approved sixty (60) semester credit hour, master's degree program in School Psychology, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a local education agency under the supervision of the training institution and direct supervision of a certificated school psychologist;

(3-15-22)

iii. Completion of an approved sixty (60) semester credit hour, School Psychology Specialist degree program which did not require a master's degree as a prerequisite, with laboratory experience in a classroom, which may include professional teaching experience, student teaching or special education practicum, and completion of a minimum twelve hundred (1,200) clock-hour internship within a local education agency under the supervision of the training institution and direct supervision of a certificated school psychologist; and (3-15-22)

iv. Earn a current and valid National Certification for School Psychologists (NCSP) issued by the National Association of School Psychologists (NASP). (3-15-22)

d. Interim Certificate – School Psychologist Endorsement. This certificate will be issued to those who do not meet the educational requirements but hold a master's degree or higher in psychology and are working toward a standard pupil service staff certificate with school psychologist endorsement. This certificate will be issued for three (3) years while the applicant is meeting the educational requirements or obtaining the applicable experience leading to certification. If the educational requirements cannot be met within the three (3)-year time frame of the certificate, the employing LEA may request one (1)-time renewal of this interim certificate for the applicant. (3-15-22)

e. School Nurse Endorsement. To be eligible for a school nurse endorsement, a candidate must complete one (1) of the following options: (3-15-22)

i. Possess a valid professional nursing (RN) license issued by the Idaho State Board of Nursing, and a baccalaureate degree in nursing, education, or a health-related field from an accredited institution. (3-15-22)

ii. Possess a valid professional nursing (RN) license issued by the Idaho State Board of Nursing; have two (2) years of full-time (or part-time equivalent) school nursing, community health nursing, or any other area of pediatric, adolescent, or family nursing experience. (3-15-22)

f. Interim Certificate - School Nurse Endorsement. This certificate will be issued to those who do not meet the educational and/or experience requirements but who hold a valid professional nursing (RN) license in Idaho. This non-renewable certificate will be issued for three (3) years while the applicant is meeting the educational or experience requirements. (3-15-22)

g. Speech-Language Pathologist Endorsement. To be eligible for a speech-language pathologist endorsement, a candidate must possess a master's degree from an accredited college or university in a speech/language pathology program approved by the State Board of Education. The renewal credit requirement may be waived if the applicant holds a current and valid Certificate of Clinical Competence in Speech-Language Pathology offered through the American Speech-Language-Hearing Association and/or a current and valid speech-language pathologist license issued by the appropriate Idaho state licensing board. (3-15-22)

h. Interim Certificate - Speech-Language Pathologist Endorsement. This certificate will be issued to those who do not meet the educational requirements but hold a baccalaureate degree in speech-language pathology and are pursuing a master's degree. This certificate will be issued for three (3) years while the applicant is meeting the educational requirements. If the educational requirements cannot be met within the three (3)-year timeframe of the certificate, the employing LEA may request one (1)-time renewal of this interim certificate for the applicant if the applicant holds a valid occupational license or is supervised by a speech-language pathologist with a standard pupil service certificate. (3-15-22)

i. Audiology Endorsement. To be eligible for an audiology endorsement, a candidate must possess a master's degree from an accredited college or university in an audiology program approved by the State Board of Education. The renewal credit requirement may be waived if the applicant holds a current and valid Certificate of Clinical Competence in Audiology offered through the American Speech-Language-Hearing Association and/or a current and valid audiologist license issued by the appropriate Idaho state licensing board. (3-15-22)

j. School Social Worker Endorsement. To be eligible for a school social worker endorsement, a



candidate must meet the following requirements: (3-15-22)

i. A master's degree in social work (MSW) from a postsecondary institution accredited by an organization recognized by the State Board of Education. The program must be currently approved by the state educational agency of the state in which the program was completed; and (3-15-22)

ii. An institutional recommendation from a state board approved program; and (3-15-22)

iii. The successful completion of a school social work practicum in a preschool through grade twelve 12 (Pre-K-12) setting. Post-LMSW extensive experience working with children and families may be substituted for the completion of a school social work practicum in a Pre-K-12 setting; and (3-15-22)

iv. A current and valid social work license pursuant to chapter 32, title 54, Idaho Code, and the rules of the State Board of Social Work Examiners. (3-15-22)

k. Occupational Therapist Endorsement. To be eligible for an occupational therapist endorsement, a candidate must have a current and valid occupational therapy license issued by the Occupational Therapy Licensure Board of Idaho. The candidate must maintain current and valid occupational therapy licensure for the endorsement to remain valid. (3-15-22)

l. Physical Therapist Endorsement. To be eligible for a physical therapist endorsement a candidate must have a current and valid physical therapy license issued by the Idaho Physical Therapy Licensure Board. The candidate must maintain current and valid physical therapy licensure for the endorsement to remain valid. (3-15-22)

**03. Standard Administrator Certificate.** Persons who serve as superintendent, director of special education, secondary school principal, or principal of an elementary school with eight (8) or more teachers (including the principal), or are assigned to conduct the summative evaluation of certified staff are required to hold an Administrator Certificate. The certificate may be endorsed for service as school principal, superintendent, or director of special education. Assistant superintendents are required to hold the Superintendent endorsement. Assistant principals or vice-principals are required to hold the School Principal endorsement. Directors of special education are required to hold the Director of Special Education endorsement. Possession of an Administrator Certificate does not entitle the holder to serve as a teacher at a grade level for which the educator is not qualified or certificated. (3-15-22)

a. School Principal Endorsement. To be eligible for the School Principal endorsement, a candidate must meet the following requirements: (3-15-22)

i. Hold a master's degree from an accredited college or university. (3-15-22)

ii. Have four (4) years of full-time certificated experience working with students, while under contract in an accredited school setting. (3-15-22)

iii. Complete an administrative internship in a state-approved program, or have one (1) year of experience as an administrator. (3-15-22)

iv. Provide verification of completion of a state-approved program of at least thirty (30) semester credit hours of graduate study in school administration for the preparation of school principals at an accredited college or university. This program shall include the demonstration of proficiency in conducting instructional and pupil service staff evaluations based on the statewide framework for evaluation, and competencies in the Idaho Standards for School Principals. (3-15-22)

v. Receive an institutional recommendation for a School Principal endorsement. (3-15-22)

b. Superintendent Endorsement. To be eligible for the Superintendent endorsement, a candidate must meet the following requirements: (3-15-22)

- i. Hold an education specialist or doctorate degree or complete a comparable post-master's sixth year program at an accredited college or university. (3-15-22)
- ii. Have four (4) years of full-time certificated/licensed experience working with students while under contract in an accredited school setting. (3-15-22)
- iii. Complete an administrative internship in a state board approved program for the superintendent endorsement or have one (1) year of out-of-state experience as an assistant superintendent or superintendent. (3-15-22)
- iv. Provide verification of completion of an approved program of at least thirty (30) semester credit hours, of post-master's degree graduate study for the preparation of school superintendents at an accredited college or university. This program in school administration must include demonstration of proficiency in conducting instructional and pupil service staff evaluations based on the statewide framework for evaluation, and demonstration of competencies in the Idaho standards for superintendents and the Idaho Standards for School Principals. (3-15-22)
- v. Receive an institutional recommendation for a Superintendent endorsement. (3-15-22)
- c. Director of Special Education Endorsement. To be eligible for the Director of Special Education endorsement, a candidate must meet the following requirements: (3-15-22)
  - i. Hold a master's degree from an accredited college or university; (3-15-22)
  - ii. Have four (4) years of full-time certificated/licensed experience working with students Pre-K-12, while under contract in a school setting; (3-15-22)
  - iii. Provide verification of a state board approved program of graduate study of school administration for the preparation of directors of special education at an accredited college or university. This program shall include demonstration of proficiency in conducting instructional and pupil service staff evaluations based on the statewide framework for evaluation, and demonstration of competencies in the Idaho Standards for Directors of Special Education and the Idaho Standards for School Principals. Coursework shall include knowledge and competence in understanding the Individuals with Disabilities Education Act, utilizing the Idaho Special Education Manual, special education funding and fiscal accountability, results-driven leadership and accountability in special education, and instructional, behavioral, and management strategies for supporting students in the least restrictive environment. (3-15-22)
  - iv. Have completed an administrative internship in the area of administration of special education; and (3-15-22)
  - v. An institutional recommendation is required for Director of Special Education endorsement. (3-15-22)

**04. Career Technical Certification Requirements.** Teachers of career technical courses or programs in secondary schools must hold an occupational specialist certificate and an endorsement in an appropriate occupational discipline. All occupational certificates must be approved by the Division of Career Technical Education regardless of the route an individual is pursuing to receive the certificate. (3-15-22)

**a. Standard Degree Based Career Technical Certificate.** Persons who hold a degree based career technical certificate are eligible to teach in a career technical area, subject to the grade range(s) and subject area(s) of the valid endorsement(s) attached to the certificate. All degree based career technical certificates require candidates to meet the Idaho Core Teaching Standards. The degree based career technical certificate is valid for five years. A degree based career technical certificate may be issued to any person who has a baccalaureate degree from an accredited college or university and meets the following requirements: (3-15-22)

- i. Earned a minimum of twenty (20) semester credit hours in the philosophical, psychological, methodological foundations, instructional technology, and in the professional subject matter of education, which shall include demonstration of competencies as specified in the Idaho Comprehensive Literacy Plan; (3-15-22)

ii. Earned a minimum of twelve (12) semester credit hours in career technical education foundation coursework to include principles and philosophies of career technical education, evaluation and assessment in career technical education, leadership and career technical student organization leadership, career guidance and transition, occupational analysis and curriculum development, and lab safety; (3-15-22)

iii. Accumulated one thousand (1,000) clock hours of related industry experience, or practicum as approved by the higher education institution, in the respective field of specialization; (3-15-22)

iv. Completed a total of at least ten (10) undergraduate semester credit hours or six (6) graduate semester credit hours of student teaching; (3-15-22)

v. Completed a state board approved educator preparation program and received an institutional recommendation specifying the grade ranges and subjects for which the person is eligible to receive an endorsement; (3-15-22)

(1) To receive endorsement in two (2) fields of teaching, preparation must consist of at least thirty (30) semester credit hours in one (1) field of teaching and completion of at least twenty (20) semester credit hours in a second field of teaching. (3-15-22)

(2) To receive endorsement in one (1) field of teaching, preparation must consist of completion of at least forty-five (45) semester credit hours in a single subject area. (3-15-22)

vi. Met or exceeded the state qualifying score on the state board-approved content area and pedagogy assessments. (3-15-22)

vii. The renewal credits required in Section 060 may be waived if the applicant holds a current, valid certificate from the National Board for Professional Teaching Standards at the time of renewal. Credits must be earned during the validity period of the certificate. (4-6-23)

**b.** Career Technical Education Program Administrator Certificate. The career technical education program administrator certificate is required for an individual serving as an administrator, director, or manager of career technical education programs in Idaho public schools. Individuals must meet one (1) of the two (2) following prerequisites to qualify for the career technical education program administrator certificate. The certificate is valid for five (5) years and must meet the renewal requirements pursuant to Section 060 of these rules to renew. (4-6-23)

i. Qualify for or hold an advanced occupational specialist certificate or hold an occupational endorsement on a degree based career technical certificate; provide evidence of a minimum of four (4) years teaching, three (3) of which must be in a career technical education discipline; hold a master's degree; and complete at least fifteen (15) semester credits of administrative course work to include required credits in. education finance, administration and supervision of personnel, and legal aspects of education. Remaining coursework may be selected from: administration and supervision of occupational programs; instructional supervision; administration internship; curriculum development; curriculum evaluation; research in curriculum; school community relations; communication; teaching the adult learner; coordination of work-based learning programs; and/or measurement and evaluation. (3-15-22)

ii. Hold a superintendent or principal endorsement on a standard administrator certificate and provide evidence of either a minimum of four (4) years teaching, three (3) of which must be in a career technical discipline; or successful completion of a Division of Career Technical Education career technical education leadership institute; or completion of course work including credits in: principles and foundations of career technical education, career technical student organizations, occupational analysis, curriculum design, one or more externships with career technical education industry advisor partners totaling 100 hours, and ongoing participation in technical advisory committee meetings associated with the school's career technical education programs. (4-6-23)

**c.** Industry-Based Occupational Specialist Certificate. Persons who hold an occupational specialist career technical certificate are eligible to teach in a career technical program pathway(s), subject to the grade

range(s) and pathway areas(s) of the valid endorsement(s) attached to the certificate. All occupational specialist career technical certificates require candidates to meet the core teaching standards of the Idaho Standards for Initial Certification of Professional School Personnel. An occupational specialist career technical certificate may be issued to an experienced industry expert entering the teaching profession and meeting the following eligibility requirements: (3-15-22)

i. Possess either a high school diploma or General Educational Development (GED) certificate; meet provisions of Idaho Code; and, verify technical skills through work experience, industry certification or testing as listed below. When applicable, requirements of occupationally related state agencies must also be met. Since educational levels and work experiences vary, applicants may be determined qualified under any one (1) of the following three (3) options: (3-15-22)

(1) Have three (3) years or six thousand (6,000) hours of recent, gainful employment in the occupation for which certification is requested, at least half of which must have been during the immediate previous five (5) years; or (3-15-22)

(2) Have a baccalaureate degree in the specific occupation or related area, plus one (1) year or two thousand (2,000) hours of recent, gainful employment in the occupation for which certification is requested, at least half of which must have been during the immediate previous five (5) years; or (3-15-22)

(3) Hold or have held an industry certification in a field closely related to the content area in which the individual seeks to teach as approved by the Division of Career Technical Education. (3-15-22)

ii. Limited Occupational Specialist Certificate. This certificate is issued to individuals who are new to teaching in Idaho public schools or new to teaching in career technical education in Idaho public schools. The certificate is an interim certificate and is valid for three (3) years and is non-renewable. Applicants must meet all of the minimum requirements established in Subsection 015.06.a. of these rules. Individuals on a limited occupational specialist certificate must complete one (1) of the two (2) following pathways during the validity period of the certificate: (3-15-22)

(1) Pathway I - Coursework: Within the three-year period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily complete the pre-service training prescribed by the Division of Career Technical Education and demonstrate competencies in principles/foundations of occupational education and methods of teaching occupational education. Additionally, the instructor must satisfactorily demonstrate competencies in two (2) of the following areas: career pathways and guidance; analysis, integration, and curriculum development; and measurement and evaluation. (3-15-22)

(2) Pathway II – Cohort Training: Within the first twelve (12) months, the holder must enroll in the Division of Career Technical Education sponsored education pedagogy training and complete all requirements within the three-year validity period of the interim certificate. (3-15-22)

iii. Standard Occupational Specialist Certificate. (3-15-22)

(1) This certificate is issued to individuals who have held a limited occupational specialist certificate and completed one (1) of the pathways for renewable certification. (3-15-22)

(2) The Standard Occupational Specialist Certificate is valid for five (5) years and must meet the renewal requirements pursuant to Section 060 of these rules to renew. Credit equivalency will be based on verification of forty-five (45) hours of participation at approved technical conferences, institutes, or workshops where participation is prorated at the rate of fifteen (15) hours per credit; or one hundred twenty (120) hours of approved related work experience where hours worked may be prorated at the rate of forty (4) hours per credit; or any equivalent combination thereof. (4-6-23)

iv. Advanced Occupational Specialist Certificate. This certificate is issued to individuals who are eligible for the Standard Occupational Specialist Certificate; and provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of Division of Career Technical Education approved

education or content-related course work in addition to the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits. The Advanced Occupational Specialist Certificate is valid for five (5) years and must meet the renewal requirements pursuant to Section 060 of these rules to renew. (4-6-23)

**05. Postsecondary Specialist Certificate.** A Postsecondary Specialist certificate will be granted to a current academic faculty member whose primary employment is with any accredited Idaho postsecondary institution. To be eligible to teach in the public schools under this postsecondary specialist certificate, the candidate must supply a recommendation from the employing institution (faculty's college dean). The primary use of this state-issued certificate is for distance education, virtual classroom programs, and public and postsecondary partnerships. (3-15-22)

a. To renew this certificate, the renewal application must be accompanied with a new written recommendation from the postsecondary institution (faculty's college dean level or higher). (3-15-22)

b. The candidate must meet the following qualifications: (3-15-22)

i. Hold a baccalaureate degree or higher in the content area being taught; (3-15-22)

ii. Be currently employed by the postsecondary institution in the content area to be taught; and (3-15-22)

iii. Complete and pass a criminal history background check as required by Section 33-130, Idaho Code. (3-15-22)

**06. American Indian Tribal Language Certificate.** The five (5) federally recognized tribes of Idaho shall provide to the State Department of Education the names of those highly and uniquely qualified individuals who have been designated to teach tribal language(s) in accordance with Section 33-1280, Idaho Code. To be eligible for an American Indian Tribal Languages certificate an applicant designated to teach tribal language(s) shall submit a complete application. If approved the certificate shall be issued for five years and is renewable. (3-15-22)

**07. Junior Reserved Officer Training Corps (Junior ROTC) Instructors.** (3-15-22)

a. ~~Junior ROTC Instructor Certificate.~~ To be eligible for a five (5) year renewable Junior ROTC Instructor certificate, an applicant shall submit a complete application and provide a letter of recommendation from their hiring school district or public charter school and a copy of their certificate or letter of completion from an copy of their certificate(s) or letter of completion of an armed forces Junior ROTC training program. (\_\_\_\_)(3-15-22)

b. ~~If approved the certificate shall be issued for five years and is renewable.~~ Interim Certificate – Junior ROTC Instructor. A three (3) year interim certificate shall be issued to those who are enrolled in the Junior ROTC Instructor training program. The applicant shall submit a complete application, a letter of recommendation from their hiring school district or public charter school, and a copy of their Junior ROTC Instructor initial qualification letter issued by an armed forces Junior ROTC training program. (\_\_\_\_)(3-15-22)

**08. Additional Renewal Requirements.** In addition to specific certificate or endorsement renewal requirements, applicants must meet the following renewal requirements as applicable: (3-15-22)

a. Administrator certificate renewal. In order to recertify, holders of an administrator certificate must complete a course consisting of a minimum of three (3) semester credits in the Idaho framework for teachers' evaluation pursuant to Section 33-1204, Idaho Code. Credits must be earned through an approved educator preparation program and include a laboratory component. The laboratory component must include in-person or video observation and scoring of teacher performance using the statewide framework for teacher's evaluation. The approved course must include the following competencies: (3-15-22)

i. Understanding professional practice in Idaho evaluation requirements, including gathering accurate evidence and artifacts, understanding and using the state framework for evaluation rubric with fidelity,

proof of calibration and interrater reliability, ability to provide effective feedback for teacher growth, and understanding and advising teachers on individualized learning plan and portfolio development. (3-15-22)

ii. Understanding student achievement and growth in the Idaho evaluation framework, including understanding how measurable student achievement and growth measures impact summative evaluation ratings and proficiency in assessment literacy. (3-15-22)

**016. IDAHO INTERIM CERTIFICATE.**

A three (3) year interim certificate may be issued to applicants who hold a valid certificate or license from another state or other entity that participates in the National Association of State Directors of Teacher Education and Certification (NASDTEC) Interstate Agreement pursuant to Section 33-4104, Idaho Code, or who are engaged in or completed a non-traditional route or alternative authorization to certification as prescribed herein. An interim certificate gives the holder the same rights and responsibilities as an individual with a standard certificate. (4-6-23)

**01. Interim Certificate Not Renewable.** Interim certification is only available on a one (1) time basis except under extenuating circumstances approved by the State Department of Education or Division of Career Technical Education. An applicant must meet the requirements of the ~~applicable alternate authorization route or non-traditional route~~ interim certificate to obtain a standard Idaho Educator Credential during the term of the interim certificate. ( ) (3-15-22)

**02. Non-Traditional Route to Teacher Certification.** An individual may acquire interim certification through a state board approved non-traditional route to teacher certification program. The non-traditional route may be used for first-time certification, subsequent certificates, and additional endorsements. (3-15-22)

**a.** Individuals who possess a baccalaureate degree or higher from an institution of higher education accredited by an entity recognized by the state board of education may receive an interim instructional certificate. To receive the interim certificate, the individual must: (3-15-22)

i. Complete or enroll in a state board approved program; and (3-15-22)

ii. Pass the state board approved pedagogy and content area assessment. (3-15-22)

**b.** Standard certification. Upon completion of the non-traditional route the applicant must complete a two (2) year state board approved teacher mentoring program and receive two (2) years of Idaho evaluations with a summative rating of proficient or better. (4-6-23)

**03. Idaho Comprehensive Literacy Course.** All Idaho teachers working on an interim certificate (alternate authorizations, nontraditional routes, reinstatement, or coming from out of state), must complete a state board approved Idaho Comprehensive Literacy course or assessment as a one-time requirement for standard instructional certificate. (3-15-22)

**04. Teaching For Mathematical Thinking.** All Idaho teachers or administrators with an interim certificate (alternate authorizations, nontraditional routes, reinstatement, or coming from out of state), with an All Subjects (K-8) endorsement, any mathematics endorsement, Exceptional Child Education endorsement, Blended Early Childhood/Early Childhood Special Education endorsement, or Administrator certificate must complete the state board approved Teaching for Mathematical Thinking course as a one-time requirement for full certification. ( ) (4-6-23)

**05. Reinstatement of a Certificate Expired for One (1) Year or Less.** An individual with an Idaho certificate expired for one (1) year or less who did not meet the six (6)-credit renewal requirement may apply for reinstatement and be issued an interim certificate. During the validity period of the interim certificate, the applicant must complete any outstanding credits to meet the renewal requirement to be eligible for a five (5)-year renewable certificate. ( )

**065. Reinstatement of ~~Expired a~~ Certificate Expired For Over One (1) Year.** An individual

~~holding with an expired~~ Idaho certificate expired for over one (1) year may apply for reinstatement and be issued an interim certificate. During the validity period of the interim certificate, the applicant must meet the following requirements to ~~obtain standard certification during the term of the interim~~ be eligible for a five (5)-year renewable certificate: \_\_\_\_\_ ( ) (3-15-22)

a. Two (2) years of Idaho evaluations, as applicable to the type of certification, with a summative rating of proficient or better; (4-6-23)

b. Measured annual progress on specific goals identified on the applicant's Individualized Professional Learning Plan; (3-15-22)

c. Completion of the six (6) credit renewal requirement; and ( ) (4-6-23)

d. Completion of the Idaho Comprehensive Literacy Course or Teaching for Mathematical Thinking as provided herein. (3-15-22)

~~e. Individuals holding an expired certificate that was in good standing at the time the certificate expired, may have the certificate reinstated within one (1) year of the time the certificate expired by completing any outstanding professional development requirements that were pending at the time the certificate expired. (4-6-23)~~

**076. Codes of Ethics.** All laws and rules governing standard certificated staff with respect to conduct, discipline, and professional standards shall apply to all certified staff serving in an Idaho public school, including those employed under an interim certificate. (3-15-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

**021. ENDORSEMENTS.**

Holders of an Instructional Certificate or Occupational Specialist Certificate must have one (1) or more endorsements attached to their certificate as applicable to the type of certification. Instructional staff are eligible to teach in the grades and content areas of their endorsements. Idaho educator preparation programs shall prepare candidates for endorsements in accordance with these certification requirements and the standards approved by the board. An official statement from the college of education of competency in a content area or field is acceptable in lieu of required credits if such statements are created in consultation with the department or division of the accredited college or university in which the competency is established and are approved by the director of teacher education of the recommending college or university. Statements must include the number of credits the competency evaluation is equivalent to. To add an endorsement to a certificate, an individual must complete the credit hour requirements as established by the state board of education and meet or exceed the state qualifying score on a board approved content, pedagogy or performance assessment. (4-6-23)

**01. Clinical Experience Requirement.** All standard endorsements require supervised clinical experience in the relevant content area, or a State Department of Education or Division of Career Technical Education approved alternative clinical experience as applicable to the area of endorsement. (4-6-23)

**02. Alternative Authorization - Teacher to New Endorsement.** This alternative authorization allows a local education agency to request additional endorsement for a candidate. This authorization is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress on one (1) of the following options: (4-6-23)

a. Option I -- An official statement of competency in a teaching area or field from the college of education of an accredited college or university is acceptable in lieu of courses if the statement is created in consultation with the department or division in which the competency is established and is approved by the director of teacher education of the recommending college or university. (3-15-22)

b. Option II -- Master's degree or higher. ~~By earning a graduate degree in a content specific area, A candidates may add an endorsement in that same content area to a valid instructional certificate. Successful completion of by successfully completing~~ a one (1) year, state board approved mentoring program ~~must be~~

~~completed during within the first year to maintain the endorsement of authorization.~~ ( ) (4-6-23)

c. Option III -- Content area assessment and mentoring. A candidate may add an endorsement by successfully completing a state board-approved content areas assessment and a one-year, state board-approved mentoring program within the first year of authorization. (3-15-22)

d. For all candidates moving to an initial certification in a career technical education endorsement area, the candidate will be required to complete or have completed coursework in principles and foundations of career technical education and career technical student organizations, training in occupational analysis and curriculum design, and a minimum of two hundred (200) internship/externship hours in the career technical education endorsement area. (4-6-23)

**03. National Board Certification.** An applicant holding an instructional certificate and current national board certification may add an endorsement in a corresponding content-specific area. (3-15-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

**042. ALTERNATIVE AUTHORIZATION.**

Alternative authorization allows a local education agency to request certification for a candidate. This authorization grants an interim certificate that allows individuals to serve as the teacher of record while pursuing standard certification. ~~Evidence of satisfactory progress toward standard certification must be provided each year.~~ Individuals who hold a current instructional certificate may obtain additional endorsements through an alternative authorization as prescribed in Subsection 021 of these rules. ( ) (4-6-23)

**01. Alternative Authorization -- Teacher to New Certification.** This alternative authorization allows a local education agency to request additional certification for a candidate who already holds a current Idaho certificate in good standing to add an additional type of certificate in a new certification area. (4-6-23)

a. ~~Prior to application, the candidate must hold a baccalaureate degree or higher and a current and valid Idaho certificate.~~ The local education agency must attest to the candidate's ability to fill the position. ( ) (3-15-22)

b. The candidate must participate in a state board- approved educator preparation program. (3-15-22)

i. The candidate will work toward completion of a state board-approved educator preparation program. ~~The candidate must complete a minimum of nine (9) semester credits annually to maintain continued eligibility for the interim certificate;~~ and ( ) (4-6-23)

ii. The participating educator preparation program shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences toward program completion requirements. (4-6-23)

**02. Alternative Authorization -- Content Specialist.** This alternative authorization allows a local education agency to request an interim instructional certificate for an individual who possesses distinct content knowledge and skills to teach in a content area. ( ) (4-6-23)

a. Initial Qualifications. (3-15-22)

i. A candidate must hold a baccalaureate degree or have completed all of the requirements of a baccalaureate degree except the student teaching portion; and (3-15-22)

ii. Prior to entering the classroom, the local education agency shall ensure the candidate is qualified to teach in the content area. The candidate shall meet or exceed the state qualifying score on the appropriate state board-approved content or pedagogy assessment, including demonstration of content knowledge through a combination of employment, experience, and education. (3-15-22)

b. State Board Approved Educator Preparation Program. (3-15-22)



i. Prior to authorization, a consortium comprised of a state board-approved educator preparation program representative, a local education agency representative, and the candidate shall determine the preparation needed and develop a plan to meet the Idaho Standards for Initial Certification of Professional School Personnel. The educator preparation program shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life or work experiences. The plan must include a state board-approved mentoring program. While teaching under the alternative authorization, the mentor shall provide a minimum of one (1) classroom observation per month, which will include feedback and reflection. ~~The plan must include annual progress goals that must be met for continued eligibility;~~ ( ) (4-6-23)

ii. ~~The candidate must complete a minimum of nine (9) semester credit hours or its equivalent of accelerated study in education pedagogy prior to the end of the first year of authorization.~~ The number of required credits will be specified in the ~~consortium~~ developed plan; and ( ) (3-15-22)

iii. ~~At the time of authorization, During the validity period of the interim certificate, the candidate must enroll in and work toward completion of complete the plan. The candidate must complete a minimum of nine (9) semester credits or equivalent annually to maintain eligibility for the interim certificate. The candidate must complete the plan to move to a standard instructional certificate, to receive an institutional recommendation for a standard instructional certificate.~~ ( ) (4-6-23)

c. Career Technical Education Industry-based Route Plan. Local education agencies with candidates seeking a limited occupational specialist certification may request approval, with an approved division of career technical education alternative authorization route plan, to meet the program of study requirements. (4-6-23)

**03. Alternative Authorization - Pupil Service Staff.** This alternative authorization allows a local education agency to request an interim certificate ~~certification and endorsement~~ for a candidate when a position requiring the Pupil Service Staff Certificate cannot be filled. ( ) (4-6-23)

a. Initial Qualifications. The applicant must complete the following: (3-15-22)

i. Prior to application, a candidate must hold a baccalaureate degree or higher; and (3-15-22)

ii. The local education agency must attest to the ability of the candidate to fill the position. (3-15-22)

b. Educator Preparation Program. (3-15-22)

~~i. The number of required credits will be specified in a plan developed by the Educator Preparation Program; and ( )~~

~~ii. During the validity period of the interim certificate, the candidate must complete the plan to receive an institutional recommendation for a standard pupil service staff certificate.~~

~~i. At the time of authorization, the candidate must enroll in and work toward completion of a state board approved educator preparation program through a participating college or university and the local education agency. The educator preparation program must include annual progress goals. (4-6-23)~~

~~ii. The candidate must complete a minimum of nine (9) semester credits or equivalent annually to maintain eligibility for the interim certificate. (4-6-23)~~

iii. The participating educator preparation program will provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. ( ) (3-15-22)

~~iv. The candidate must meet all requirements for the endorsement/certificate as provided herein. ( ) (3-15-22)~~

(BREAK IN CONTINUITY OF SECTIONS)

**100. OFFICIAL VEHICLE FOR APPROVING EDUCATOR PREPARATION PROGRAMS.**

**01. The Official Vehicle for the Approval of Traditional Educator Preparation Programs.** Traditional educator preparation programs will be accredited by an accrediting body that approves educator preparation programs and is recognized by the state board of education and meets the board approved Idaho Standards for the Initial Certification of Professional School Personnel. The Idaho Standards for the Initial Certification of Professional School Personnel will be posted on the state board of education and state department of education websites. All standards will include an implementation date. (4-6-23)

**02. Non-Traditional Educator Preparation Program.** To be considered for approval each non-traditional educator preparation program must include the following components: (3-15-22)

- a. Assessment of pedagogy and content knowledge; and (3-15-22)
- b. Alignment to the Idaho Standards for the Initial Certification of Professional School Personnel. (3-15-22)

**03. Continuing Approval.** Approved educator preparation programs will be reviewed for continued approval on a timeline and in a format established by the state board of education. Program reviews will take into consideration the instructional methodology used by the approved program. (3-15-22)

~~**04. Payment Responsibilities for Educator Preparation Program Reviews.** The Professional Standards Commission is responsible for Idaho educator preparation program reviews, including assigning responsibility for paying for program reviews. To implement the reviews, it is necessary that: (3-15-22)~~

~~a. The Professional Standards Commission pay for all state review team expenses for on-site teacher preparation reviews from its budget. (3-15-22)~~

~~b. Requesting institutions pay for all other expenses related to on-site educator preparation program reviews, including all standards review. (3-15-22)~~

(BREAK IN CONTINUITY OF SECTIONS)

**CONSENT**  
**NOVEMBER 21, 2024**

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**SUBJECT**

Pending Rule – Docket No. 08-0401-2401 Rules of the Idaho Digital Learning Academy

**REFERENCE**

April 20, 2006	Board approved proposed rule amendment to IDAPA 08.04.01. Rules of the Idaho Digital Learning Academy.
November 1, 2006	Board approved Pending Rule – Docket No. 08-0401- 0601, Idaho Digital Learning Academy
August 10, 2017	Board proposed approved amendments to 08-0401-1701, including physical address, technical corrections, and updating provisions related to student work and ethical conduct.
November 15, 2017	Board approved Pending Rule Docket No. 08-0401-1701, Idaho Digital Learning Academy.
August 23, 2023	Board approved proposed rule amendments to include streamlining and simplification as necessitated by Executive Order 2020-01, Zero Based Regulation.
November 11, 2023	Board approved Pending Rule Docket No. 08-0401-2301, Idaho Digital Learning Academy.
August 21, 2024	Board approved proposed rule docket No. 08-0401-2401, updating traditional test section for teacher and agency flexibility.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Code §§ 33-5504, 33-5507, Idaho Digital Learning Academy Act  
Idaho Administrative Code, IDAPA 08.04.01 Rules of the Idaho Digital Learning Academy  
Idaho Code Title 67, Chapter 52, Idaho Administrative Procedures Act  
Executive order 2020-01, Zero Based Regulation

**BACKGROUND/DISCUSSION**

The State Board of Education is granted authority to promulgate rules regarding the administration of the Idaho Digital Learning Academy (IDLA). Guidance for the rulemaking process is provided by the Office of Administrative Rules Coordinator, Division of Financial Management (DFM) through the Idaho Rule Writer’s Manual.

The negotiated rulemaking process requires multiple opportunities for stakeholders and members of the public to provide feedback on the proposed rule.

The 2024 legislature reviewed 08.04.01 rule amendments. Concurrent resolutions HCR32 and SCR122 were not in alignment on a single point of revision and therefore none of the proposed amendments passed. Specifically, the House

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Education Committee rejected the proposed removal of language in subsection 102.03 requiring faculty to contact students within the first 24 hours of class. The Senate Education Committee did not reject this proposed amendment; however, as consensus was not achieved, all proposed amendments failed in 2024.

For the 2025 session, IDLA has requested to bring forward one of the amendments proposed in 2024 that was not contested, specifically, broadening the definition of the final course assessment. Historically, this assessment, through IDAPA, has only allowed for traditional tests. However, as assessment of content mastery can be evidenced in a variety of ways (portfolios, presentations, etc.), IDLA requests to broaden this definition thereby giving more flexibility to local education agencies and teachers in this process.

The Board approved the proposed rule in August 2024. Subsequently, the rule was published in the October 2, 2024, Administrative Bulletin of Negotiated Rulemaking, Vol. 24-10. That publication marked the opening of a formal 21-day public comment period. The public comment period closed on October 23, 2024. No additional feedback was received.

Final revisions of the rule are presented to the Board for approval. If approved, the rule is submitted to the Division of Financial Management as pending.

The final proposed rule language is presented as Attachment 1 – Pending Rule.

**IMPACT**

If the Board approves the pending rule, it will move forward for review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idah Code.

All approved pending rules become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**ATTACHMENTS**

Attachment 1 – Notice of Pending Rule Docket No. 08-0113-2401

Attachment 2 - Pending Rule Docket No. 08-0401-2401- Rules of the Idaho Digital Learning Academy

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

No comments were received regarding the proposed rule. There were no changes to the proposed rule, and it is presented in Attachment 2 as it was approved by the Board in June of 2024. Staff recommends approval.

**BOARD ACTION**

I move to approve pending rule – Docket Number 08-0401-2401, as submitted in Attachment 2.

**CONSENT**  
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Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.04.01 – RULES OF THE IDAHO DIGITAL LEARNING ACADEMY**

**DOCKET NO. 08-0401-2401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under Sections 33-5504, 33-5505, 33-5507, and Chapter 55, Title 33, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The 2024 legislature reviewed 08.04.01 rule amendments. Concurrent resolutions HCR32 and SCR122 were not in alignment on a single point of revision and therefore none of the proposed amendments passed. Specifically, the House Education Committee rejected the proposed removal of language in subsection 102.03 requiring faculty to contact students within the first 24 hours of class. The Senate Education Committee did not reject this proposed amendment. All other proposed revisions were not contested by either germane committee. IDLA has requested to bring forward in 2025 one of the proposed revisions that was not contested by either germane committee.

The proposed change will allow IDLA in collaboration with the local education agency (LEA) to determine comprehensive assessment requirements for their students enrolled in Idaho Digital Learning Academy (IDLA) courses. This proposed change reflects similar language in 08.04.01, Section 01 under Accountability recognizing the partnership between IDLA and the local school enrolling the student. The current language specifies a more traditional assessment. The proposed language will provide for a broader definition and allow for portfolios or other demonstrations of learning to serve as the final assessment when deemed appropriate by IDLA and the LEA. This minor adjustment to 08.04.01 recognizes the authority of LEAs. The adjustment to 08.04.01 does not increase regulation.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2024, Idaho Administrative Bulletin, Vol. 24-10 pages 145-146.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nicholas Wagner at [rules@edu.idaho.gov](mailto:rules@edu.idaho.gov) or (208)-488-7586).

DATED this 21 day of November 2024.

*Nicholas Wagner / Administrative Rules Coordinator / Idaho State Board of Education / 650 W State St. / PO Box 83720 / Boise, Idaho and 83720-0037 / Phone: (208)488-7586, fax: (208)334-2632*

**08.04.01 – RULES OF THE IDAHO DIGITAL LEARNING ACADEMY**

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. ACCOUNTABILITY.**

**01. Exams.** Each IDLA course will require the student to ~~take complete, at the discretion of the LEA,~~ either a comprehensive final exam at an approved site under proctored conditions or a comprehensive final project. (3-15-22)( )

**02. Student Work and Ethical Conduct.** (3-15-22)

**a.** IDLA will inform students in writing of the consequences of plagiarism. The consequences for plagiarism are set out in the IDLA student handbook which is made available online at all times and is communicated to each student and parent prior to the beginning of each class. IDLA will investigate suspected cases of plagiarism and inform parents, students, and the local school district when a suspected case arises. (3-15-22)

**b.** Acceptable use and behavior in a distance-learning environment is determined by local school district's policies IDLA students and parents will be informed by the IDLA AUP specifically governing behavior in an online school. IDLA will provide a copy of the IDLA AUP to the Idaho State Board of Education in the IDLA Annual Report. (3-15-22)

**c.** In a case of violation of the acceptable use policy or other disciplinary issues, IDLA will notify the local school district. The local school district is responsible for the appropriate disciplinary action. IDLA should be notified by the local school district of any disciplinary action resulting from a student's participation in an IDLA course. (3-15-22)

**d.** The IDLA Director or designee reserves the right to deny disruptive students access to IDLA courses in the future or remove them from participating in an existing course. Appeals to the denial or removal from a course may be made in writing to the IDLA Board of Directors discussing the circumstances for removal or denial. The IDLA Board of Directors will review the appeal and hold a special board meeting to allow the student an opportunity to speak to the issue. The IDLA Board of Directors will issue a final decision within ten (10) days of the board meeting. (3-15-22)

**03. Teacher Interaction.** IDLA faculty are required to contact students within the first twenty-four (24) hours of class. Contact includes phone, e-mail, web conferencing, or other technological means. IDLA is required to submit periodic progress reports and final course percentages for individual students' grades which are then reported to the local school district for transcription to the student's academic record. (3-15-22)

**(BREAK IN CONTINUITY OF SECTIONS)**



**CONSENT**  
**NOVEMBER 21, 2024**

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**IDAHO DIVISION OF VOCATIONAL REHABILITATION**

**SUBJECT**

Pending Rule – Docket 47-0101-2401 Rules Governing Vocational Rehabilitation Services

**REFERENCE**

November 2017	Board approved pending rule amendments to Docket 47-0101-1701.
November 2019	Board approved temporary rule Docket 47-0101-1901 re-establishing expired provisions for Idaho's Vocational Rehabilitation Program while the Division completed a two-year process for rewriting IDAPA 47.01.01.
June 2020	Board approved temporary and proposed rule Docket 47-0101-2001 establishing provisions for Idaho's Vocation Rehabilitation Program.
November 2020	Board approved pending rule Docket 47-0101-2001.
June 2022	Board approved temporary and proposed Omnibus rule Docket 47-0101-2200
August 2024	Board approved proposed rule Docket 47-0101-2401, updating sections to meet federal review requirements.

**APPLICABLE STATUTE, RULE, OR POLICY**

Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA), Public Law 113-128  
Idaho Constitution Article IX, Section 2  
Section 33-2303, Idaho Code  
Idaho Administrative Code, IDAPA 47.0101- Rules Governing Vocational Rehabilitation Services  
Idaho Code Title 67, Chapter 52, Idaho Administrative Procedures Act

**BACKGROUND/DISCUSSION**

Administrative rules promulgated under the Board's authority include IDAPA 08, IDAPA 55, and IDAPA 47.

IDAPA 47.01.01, Rules Governing Vocational Rehabilitation Services, establishes the rules for vocational rehabilitation services provided by the Idaho Division of Vocational Rehabilitation.

During the spring and summer of 2024, the Division of Vocational Rehabilitation engaged in a federal compliance review. As part of this review, it was identified that IDAPA 47-0101 is in need of minor revisions.

**CONSENT**  
**NOVEMBER 21, 2024**

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The proposed removal of language specifying that services must be related to a primary individual plan in subsections 203.01.c and 203.02.c and removal of Subsection 206.04, regarding employment maintenance, serve to ensure that the rule is again compliant with federal regulations. Section 33-2303, Idaho Code and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA). (Public Law 113-128).

**IMPACT**

If the Board approves the pending rule, it will move forward for review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idah Code. All approved pending rules become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**ATTACHMENTS**

Attachment 1 – Notice of pending Rule Docket No. 47-0101-2401  
Attachment 2 - Pending Rule Docket 47-0101-2401

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

No comments were received regarding the proposed rule. There were no changes to the proposed rule, and it is presented in Attachment 2 as it was approved by the Board in June of 2024. This rule is necessary to comply with federal requirements. Staff recommends approval.

**BOARD ACTION**

I move to approve the pending rule Docket 47-0101-2401, as provided in Attachment 2.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION**

**47.01.01 – RULES GOVERNING VOCATIONAL REHABILITATION SERVICES**

**DOCKET NO. 47-0101-2401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 33-2303 and 33-6306, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

During the spring and summer of 2024, the Division of Vocational Rehabilitation has been engaged in a federal compliance review. As part of this review, it was identified that IDAPA 47-0101 is in need of minor revisions.

The proposed removal of language specifying that services must be related to a primary individual plan in subsections 203.01.c and 203.02.c and removal of Subsection 206.04, regarding employment maintenance, serve to ensure that the rule is again compliant with federal regulations. Section 33-2303, Idaho Code and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA). (Public Law 113-128).

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2024, Idaho Administrative Bulletin, Vol. 24-10 pages 464-466.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nicholas Wagner at [rules@edu.idaho.gov](mailto:rules@edu.idaho.gov) or (208)-488-7586).

DATED this 21 day of November 2024.

*Nicholas Wagner / Administrative Rules Coordinator / Idaho State Board of Education / 650 W State St. / PO Box 83720 / Boise, Idaho and 83720-0037 / Phone: (208)488-7586, fax: (208)334-2632*

**47.01.01 – RULES GOVERNING VOCATIONAL REHABILITATION SERVICES**

**000. LEGAL AUTHORITY.**

Article IX, Section 2 of the Idaho Constitution, Section 33-2303, Idaho Code and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA). (Public Law 113-128). (4-6-23)

**(BREAK IN CONTINUITY OF SECTIONS)**

**203. SEVERITY OF DISABILITY.**

At the time a customer is determined eligible for vocational rehabilitation services, a determination of the severity of disability, as it relates to employment, will also be determined. A priority category assignment will be determined for all eligible individuals, in one (1) of the following categories: (4-6-23)

**01. Priority Category 1 - Eligible Individuals with the Most Significant Disabilities (MSD).** (4-6-23)

- a. Meets criteria established for a customer with a significant disability; and (4-6-23)
- b. Experiences a severe physical and/or mental impairment that seriously limits three (3) or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and (4-6-23)
- c. Requires multiple ~~primary Individualized Plan for Employment (IPE)~~ services over an extended period of time. (4-6-23)( )

**02. Priority Category 2 - Eligible Individuals with Significant Disabilities (SD).** (4-6-23)

- a. Meets the criteria for a customer with no significant disability; and (4-6-23)
- b. Experiences a severe physical and/or mental impairment that seriously limits one (1) or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and (4-6-23)
- c. Requires multiple ~~primary IPE~~ services over an extended period of time. (4-6-23)( )

**03. Priority Category 3 - All other Eligible Individuals with Disabilities (D).** (4-6-23)

- a. Has a physical or mental impairment; and (4-6-23)
- b. Impairment constitutes or results in a substantial impediment to employment; and (4-6-23)
- c. Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. (4-6-23)

**(BREAK IN CONTINUITY OF SECTIONS)**

**206. ORDER OF SELECTION.**

**01. Order of Selection.** When the Division cannot provide the full range of vocational rehabilitation services to all eligible customers because of fiscal or personnel capacity constraints, the agency will enter an order of selection. The order of selection will be based on the following requirements: (4-6-23)

- a. Students with disabilities, as defined by 34 CFR 361.5(c)(51), who received pre-employment transition services prior to eligibility determination and assignment to a disability priority category will continue to receive such services. (4-6-23)

b. All customers who have an Individualized Plan for Employment will continue to be served. (4-6-23)

**02. Priority Status.** Priority will be given to eligible individuals with the most significant disabilities, followed by those with significant disabilities, and finally those eligible individuals with disabilities. All eligible customers will be assigned to one (1) of the priority categories as outlined in Section 203 of these rules. (4-6-23)

**03. When Unable to Serve Eligible Individuals.** If the Division cannot serve all eligible individuals within a given priority category, individuals will be released from the statewide waitlist based on disability priority category and date of application. (4-6-23)

~~**04. Employment Maintenance.** The Division will serve individuals who are in immediate jeopardy of losing their employment and who require specific services or equipment to maintain employment, regardless of severity of disability category assignment, in accordance with 34 CFR 361.36.a(3)(v). (4-6-23)~~

(BREAK IN CONTINUITY OF SECTIONS)

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
NOVEMBER 21, 2024**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
1	<b>UNIVERSITY OF IDAHO - REQUEST FOR CAPITAL PROJECT AND DEVELOPMENT AGREEMENT APPROVAL; ON-CAMPUS HOUSING IMPROVEMENTS, UNIVERSITY OF IDAHO (UI), MOSCOW, IDAHO</b>	Action Item

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**BUSINESS AFFAIRS AND HUMAN RESOURCES  
NOVEMBER 21, 2024**

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Request for Capital Project and Development Agreement Approval; On-Campus Housing Improvements, University of Idaho (UI), Moscow, Idaho

**REFERENCE**

January 2023	Executive Director approval for Master Development project management
August 2023	University of Idaho Regents approved the FY25-30 University of Idaho Six-year Plan. Lines 33 through 36 are included in this request
April 2024	University of Idaho Regents approve amendment to University of Idaho Six-year Plan
May 2024	University of Idaho Regents approve initial design and development phase of on-campus housing improvements, for a total cost of up to \$12,000,000

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.K.1 and Section V.K.4

**BACKGROUND/DISCUSSION**

The University of Idaho (UI) seeks Board of Regents full project approval for On-Campus Housing Improvements, which includes the design, development, and construction of on-campus housing projects and related student amenities. UI also requests approval of the Development Agreement with the selected Master Developer, Gilbane Development Company (Gilbane).

Based on feedback from the Board, received during the May 2, 2024 SBOE meeting, UI has separated the housing projects into two phases. The initial Project focuses on addressing the most immediate needs within the housing system, including the redevelopment of South Hill Apartments and renovations of existing residential facilities (Wallace Residential Complex, Theophilus Tower, and Elmwood Apartments). The work will be executed through a fixed-price Development Agreement with the Master Developer, pending Board approval. The Development Agreement establishes a not-to-exceed amount of \$162.82 million and transfers both budget and schedule risk to the Master Developer while enabling them to manage contracts and subcontracts for project delivery.

The current capacity and physical condition of University housing does not meet student needs. The average age of on-campus housing exceeds 50 years, with significant deferred maintenance. Due to increased demand, UI is currently leasing a nearby motel (referred to as North Campus Communities) to provide temporary housing for up to 200 students. On-campus residence halls would be at 104%

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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capacity without this overflow housing, an increase of 7.0% over last fall. The primary driver of occupancy increases is freshman enrollment and resident growth. The fall 2024 first-time freshman class was the largest in UI history, with 2,025 students, representing an 8.3% increase over fall 2023. This includes 1,390 freshman residents, up from 1,315 last year. Overall enrollment (+3.7%), retention (+1.0%), and international undergraduate enrollment (+33.9%) have also increased, reflecting the success of ongoing campus-wide retention and student success initiatives.

The Project aligns with the strategic goals and objectives of the University and is a key component to achieving Carnegie R1 Classification. By improving graduate and family housing facilities, the Project will enhance the University's ability to attract high-caliber graduate students, faculty, and staff. Furthermore, the Project fully supports the principles, goals, and objectives of UI's Long Range Campus Development Plan (LRCDP).

The Project includes the redevelopment of South Hill Apartments (including demolition of 431 existing beds, 251 new beds of single-student housing, and 150 new beds of married/family housing) as well as renovations to Wallace Residential Complex, Theophilus Tower, and Elmwood Apartments containing a total 1,416 beds. The Project also includes infrastructure and utility improvements required for the completion of new and renovated projects. These upgrades include expanded and reconfigured underground sanitary, storm, and domestic water systems and electrical replacements which support the new and renovated housing. All utility work is to be done in compliance with the current Utility P3 Concession Agreement, as previously approved by the Board.

These housing improvements are to be executed through the Development Agreement with Gilbane. In 2023, UI selected Gilbane as Master Developer for on-campus housing improvements through an RFP process. In accordance with the Board's May 2, 2024 approval, UI has begun planning, design, and pre-construction site work in support of the Project. Gilbane and its sub-contractors have mobilized on site to execute early groundwork and infrastructure work for the South Hill development. These activities were started to keep the Project on schedule in preparation for winter weather.

The University is negotiating the attached Development Agreement to memorialize the development process and relationship with Gilbane through Project completion. The Development Agreement is inclusive of UI design standards and seeks to mitigate financial, physical, and legal risk throughout delivery of the Project. The Master Developer is contractually obligated to deliver the Project for a fixed price (and has provided a parent company guarantee to backstop this obligation) on the agreed schedule. Under the Development Agreement, Gilbane will assume responsibility for all cost overruns excluding those arising from a University default, University change directive, or from change orders as a result of an excusable delay or unforeseen site condition. In the event the Master



**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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Developer cannot deliver any phase of the Project on the established timelines, they are responsible for all costs associated with late delivery. The University requests Board approval of the Development Agreement and all exhibits contained therein.

**IMPACT**

New housing and existing housing improvements will have an immediate positive impact on physical challenges and strategic priorities. The projects will address current capacity and deferred maintenance needs, while facilitating continued growth of the on-campus resident population. UI anticipates significant improvement to the student experience upon Project completion, providing residents with requested community spaces, AC upgrades, resolutions to ongoing maintenance issues, and improved unit finishes. New South Hill will provide the quality of housing necessary to attract and retain the talent required for Carnegie R1 Classification.

Based on design and pre-planning work completed to date, the estimated total project cost is \$162.82 million. This estimate is inclusive of costs for architectural services, developer fees, permitting, utilities, project contingencies, and University costs. The sole source of funds for this project will be University debt financing through general revenue bonds, subject to approval by the Board in early 2025. Given the current spending timeline of the Project, and the University's internal spending to date, the University has issued a request for proposals (RFP) for interim financing from various financial institutions to provide additional liquidity, maximize financing schedule flexibility (e.g. market timing), and potentially reduce interest costs. The University intends to request Regents approval at its December 2024 meeting for a non-revolving line of credit in accordance with the terms of the RFP, which shall be provided in the University's submission of materials for the December 2024 meeting. The RFP is entirely subject to the Regents approval thereof.

<b><u>Funding</u></b>		<b><u>Estimate Budget</u></b>	
State	\$0	Hard Costs	\$125,280,000
Federal	\$0	Soft Costs	\$18,150,000
Other (UI)	\$162,820,000	Utility Infrastructure Costs	\$8,530,000
<b>Total</b>	<b>\$162,820,000</b>	University Costs	\$4,650,000
		Project Contingency	\$6,210,000
		<b>Total</b>	<b>\$162,820,000</b>

**ATTACHMENTS**

- Attachment 1 – Supplemental Materials
- Attachment 2 – Development Agreement

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

Board staff recommends approval of the University of Idaho's request to execute the proposed On-Campus Housing Improvements Project, with a total project budget not to exceed \$162.82 million. The project will be executed through a fixed-price Development Agreement with Gilbane Development Company, which is expected to address immediate housing needs and accommodate continued student population growth. The project aligns with the University's strategic goals and will have a significant impact on improving student housing quality, supporting academic and residential community enhancements, and advancing the University's long-term development plans.

Approval is also recommended for the attached Development Agreement in substantial conformance with its current terms, which will formalize the development and delivery of the project. The agreement includes provisions to mitigate risks related to cost overruns, delays, and quality assurance, ensuring that the Master Developer delivers the project within the agreed budget and schedule.

Board staff further recommends granting the Vice President of Finance and Administration the authority to approve any necessary consulting and vendor contracts and to execute contracts for all utility extension, expansion, and repair required to complete the project.

**BOARD ACTION**

I move to approve the request by the University of Idaho to execute the proposed On-Campus Housing Improvements Project, including the project budget for a cost not to exceed \$162.82 million (collectively, "the Project"). Approval of the debt financing will be sought at a subsequent Board meeting. In support of the Project, I move to approve the attached Development Agreement in substantial conformance with its current terms for execution between the University of Idaho and Gilbane. Approval includes authority for the Vice President of Finance and Administration to approve all necessary and requisite consulting and vendor contracts over the length of the Project. Approval also includes the ability to execute contracts for all utility extension, expansion, and repair necessary to deliver the Project.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_



University  
of Idaho

# **UI HOUSING IMPROVEMENTS**

## **MASTER DEVELOPER P3**

***REQUEST FOR CAPITAL***

***PROJECT & DEVELOPMENT***

***AGREEMENT APPROVAL***

NOVEMBER 21, 2024



# BACKGROUND

The University of Idaho (“UI”) seeks project approval for on-campus housing improvements.

- I** CHALLENGES: UI needs additional student housing to accommodate enrollment growth and address deferred maintenance needs.
  - UI enrolled 2,025 first-time freshmen for the 2024-25 academic year, which is 8.3% higher than last year.
  - On-campus residence halls would be at 104% capacity without utilizing the current overflow housing option.
  - The average age of existing housing exceeds 50 years.
- I** REQUEST: Full project approval for the housing improvement project will address current challenges, enhance student experience, and support continued growth. The project is to be executed through the proposed Development Agreement with the total project cost not-to-exceed \$162.82mm.

## Board Involvement Overview

JANUARY 2023  
SBOE approved Gilbane as Master Developer

APRIL 2024  
Amendment to 6-year Capital Plan

MAY 2024  
SBOE approved \$12.00mm in Spending Authorization

AUGUST 2024  
Reimbursement Resolution for Use of Tax-exempt Bonds for Housing Improvements

NOVEMBER 2024  
Request for Capital Project and Development Agreement Approval



# EXISTING CONDITIONS

As Freshman classes have grown, UI housing has struggled to keep pace with demand.

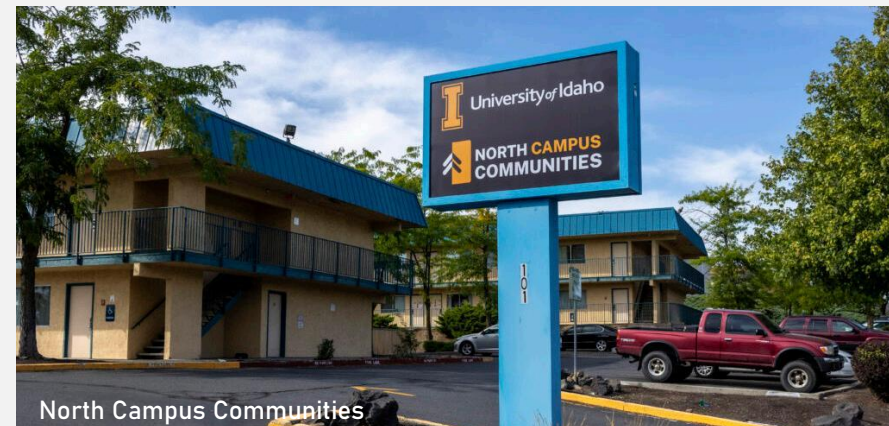
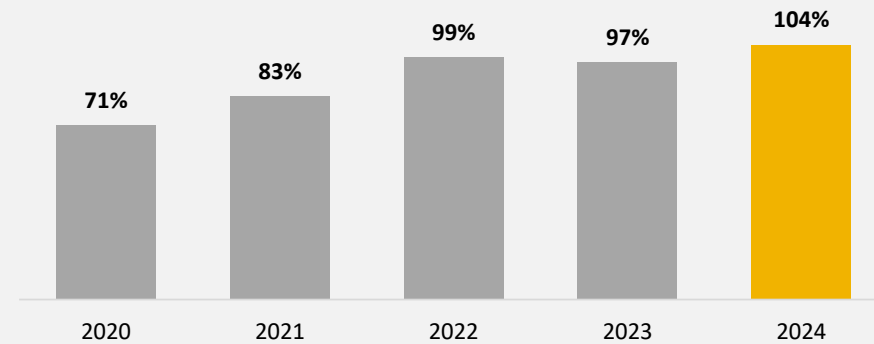
## I ENROLLMENT GROWTH

- Fall 2024 enrollment was 12,286, up 437 students from fall 2023.
- UI brought in a record-breaking 2,025 first-time freshmen. Of these new freshmen, 1,390 are living on-campus in Moscow, up nearly 6% (75 residents) from last year.

## I OCCUPANCY CHALLENGES

- Current Moscow residence hall capacity is 2,075 beds with an additional 200 beds of overflow housing from a motel master lease.
- Without overflow housing, fall 2024 occupancy would have been 104%, a 7% increase over last year.

Housing Occupancy (excluding overflow options)





# EXISTING CONDITIONS

UI housing has struggled to keep pace as enrollment has outpaced available supply on and around campus.

## I DEFERRED MAINTENANCE

- On-campus housing faces significant deferred maintenance making it increasingly difficult to meet safety standards and student expectations.
- Current offerings do not adequately meet the needs of current and future UI students; the buildings lack air conditioning, have HVAC issues, require investment in community/social spaces, and are generally in need of upgrades.



Existing: South Hill Apartments



Rendering: New South Hill Apartments

Design  
Collective



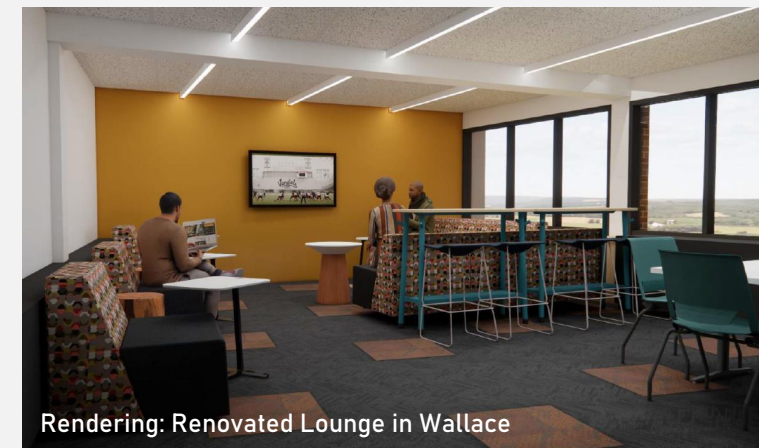
# PROJECT COMPONENTS

Based on Board feedback, UI has focused on the initial set of investments to address the most immediate needs.

1. REDEVELOPMENT OF SOUTH HILL APARTMENTS
  - a. Demolition of 431 existing beds
  - b. New construction of 251 single-student housing beds
  - c. New construction of 150 married/parenting housing beds
  - d. New construction of the Village Commons Community Center
2. RENOVATIONS TO EXISTING HOUSING FACILITIES
  - a. Wallace Residential Complex: 986 beds
  - b. Theophilus Tower: 406 beds
  - c. Elmwood Apartments: 24 beds



Existing: Lounge in Wallace



Rendering: Renovated Lounge in Wallace



# PROJECT OVERVIEW

The housing projects are designed to improve student experience, address deferred maintenance, and maintain affordability.

## I RECENT STATE OF IDAHO & RELEVANT PROJECT COMPARISON

- Proposed housing projects are generally in line with recent comparable State of Idaho and Gilbane new construction/renovations projects on a cost per gross square foot (GSF) and cost per-bed basis.
- The New South Hill Apartments are larger in size on a per bed basis due to the needs of the target market (upper division, graduate, family students). The project also has \$5mm+ of unique costs due to existing site conditions and required preparation work.

I UI is seeking approval of the Total Project Cost not-to-exceed \$162.82mm.

Relevant Project Comparison

Institution	Opening Year	Housing Type	Bedroom Occupancy	Bed Count	Building Size (GSF)	Hard + Soft \$ per GSF	GSF per Bed	Hard + Soft \$ per Bed
<b>NEW CONSTRUCTION</b>								
Institution A	2025	Residence Hall	Double	450	98,000	\$622	218	\$135,600
Institution A	2024	Apartment-style	Single	278	92,000	\$592	331	\$196,000
<b>Uofl - New South Hill</b>	<b>2026</b>	<b>Apartment-style</b>	<b>Single</b>	<b>408</b>	<b>193,232</b>	<b>\$424</b>	<b>474</b>	<b>\$200,900</b>
Institution B	2026	Apartment-style	Single	602	213,000	\$378	354	\$133,700
Institution C	2024	Apartment-style	Single	697	264,770	\$363	380	\$137,800
<b>RENOVATION</b>								
Institution C	2023-2024	Residence Hall	Double	1,152	226,888	\$291	197	\$57,400
<b>Uofl - Residence Halls</b>	<b>2025-2027</b>	<b>Residence Hall</b>	<b>Double</b>	<b>1,408</b>	<b>364,867</b>	<b>\$181</b>	<b>259</b>	<b>\$47,000</b>

Total Project Budget

	Amount
1 Hard Costs	\$125.28mm
2 Soft Costs	\$18.15mm
3 Utility Infrastructure Costs	\$8.53mm
4 University Costs	\$4.65mm
5 Project Contingency	\$6.21mm
<b>6 Total Project Cost</b>	<b>\$162.82mm</b>





# RENTAL RATES

RJA conducted a market study in early 2024 that included collecting student survey responses from nearly 2,500 students. Students were asked a variety of questions, including preferences and interest at specific rental rates.

**I** Nearly 75% of students reported that living on campus had a positive or very positive impact on their overall UI experience; however, 40% of residents in Theophilus and Wallace rated their living conditions as less than satisfactory.

**57,500+**  
data points from UI  
students

**I** DESIRE AND WILLINGNESS TO PAY FOR IMPROVED HOUSING

- In-unit climate control, more amenities, better finishes, and more unit-types were the most highly desired housing improvements.
- Students were given the option to select their preference for various unit configurations at existing, renovated, or new rental rates. 60% of students preferred renovated facilities/rates and 15% expressed a desire for new construction at associated rental rates (12% undergraduate, 47% graduate/professional).
- The proposed new facilities represent **less than 50% of the identified demand** for new, apartment-style housing on-campus at UI.
- Assumed rental rates for residence halls are below the peer group, and new apartment-style rates are consistent with comparable facilities in the Moscow community and new, apartment-style housing in the state.

**(26%)**  
lower student  
satisfaction in  
overflow housing

**55+ years**  
age of Theophilus  
and Wallace

**8.7%**  
enrollment growth  
since fall 2021



# PEER BENCHMARKING

UI's on-campus residence hall and apartment pricing was benchmarked against select peer residence halls based on comparable variety, quality, and volume of inventory.

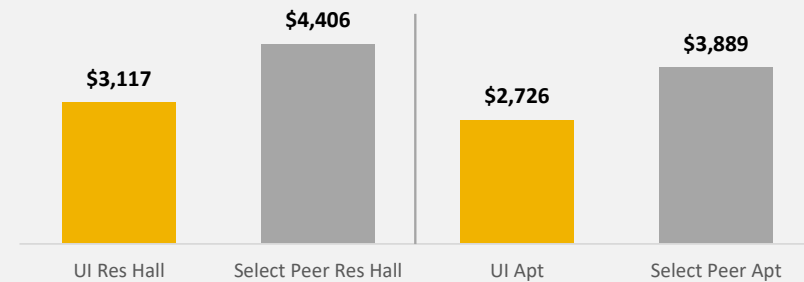
## I CURRENT RATES

- The University of Idaho's current rates are less expensive, on average, than the peer group.
- UI residence halls are 29% lower than the peer group, and apartments are 30% lower.

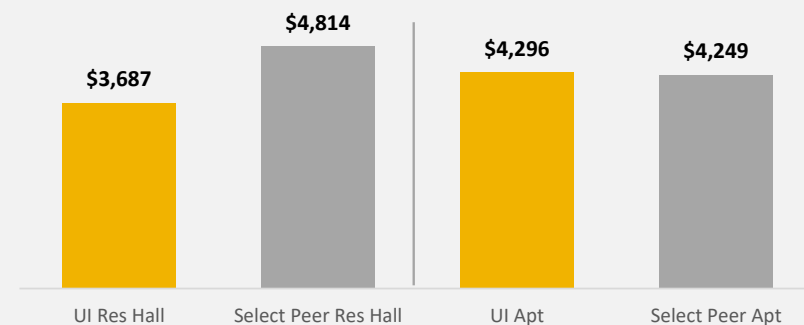
## I FUTURE RATES

- UI's residence hall rates are projected to still be a significant discount (23%) to the targeted peer market in fall 2027 (anticipated full completion of the renovations).
- Apartment-style housing will be within one percent of the peer group.

Fall 2024 Semester Rate Comparison



Projected Fall 2027 Semester Rate Comparison <sup>[1]</sup>



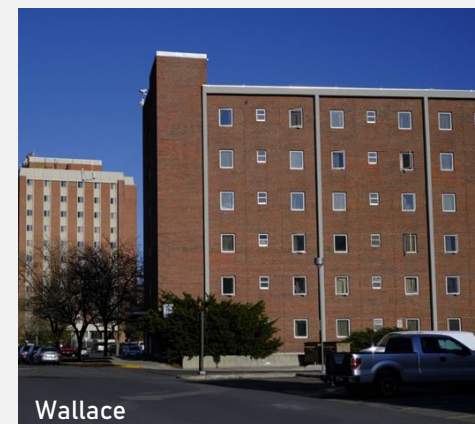
<sup>[1]</sup> Rate projections include new UI buildings coming online and escalate non-renovated buildings and peers by 3% annually.



# DEVELOPMENT AGREEMENT

The Development Agreement (“DA”) describes the duties and undertaking of the Master Developer (Gilbane) relating to the Housing Project.

- I** PURPOSE: describe roles, responsibilities, and contractual obligations between the Master Developer and UI for the development of the Project.
- I** UI OBLIGATIONS: primary obligation is to pay the Master Developer the amount of the Stipulated Sum (\$147.48mm), for which the Master Developer will develop the Projects in accordance with University-approved plans and specifications, state and local code, on-time and within the budget.
- I** University risk mitigation components:
  - BUDGET: risk is managed through the Stipulated Sum, which includes contingencies for addressing non-conforming work, schedule acceleration, or design alterations.
  - SCHEDULE: risk is managed through Liquidated Damages and costs paid to UI for damages incurred resulting from late delivery (relocation services, temporary housing, meal stipends).





# PLAN OF FINANCE

The University is utilizing various capital markets strategies to most efficiently finance the Project.

## I Initial Funding (August 2024 - Present):

- Utilize existing U of I reserves
- Funds spent on initial Project work planned to be replenished when the permanent financing is completed

## I Interim Financing (December 2024 - Q1/Q2 2025):

- The University is exploring opportunities to enter into an interim financing arrangement to provide additional liquidity, maximize financing schedule flexibility (e.g., market timing), and potentially reduce interest costs

## I Permanent Financing (Q1/Q2 2025 - Forward):

- Pending Board approval and feedback, issue general revenue bonds in Q1/Q2 2025 to fund the Project



## KEY CONSIDERATIONS



CAPITAL MARKETS VOLATILITY

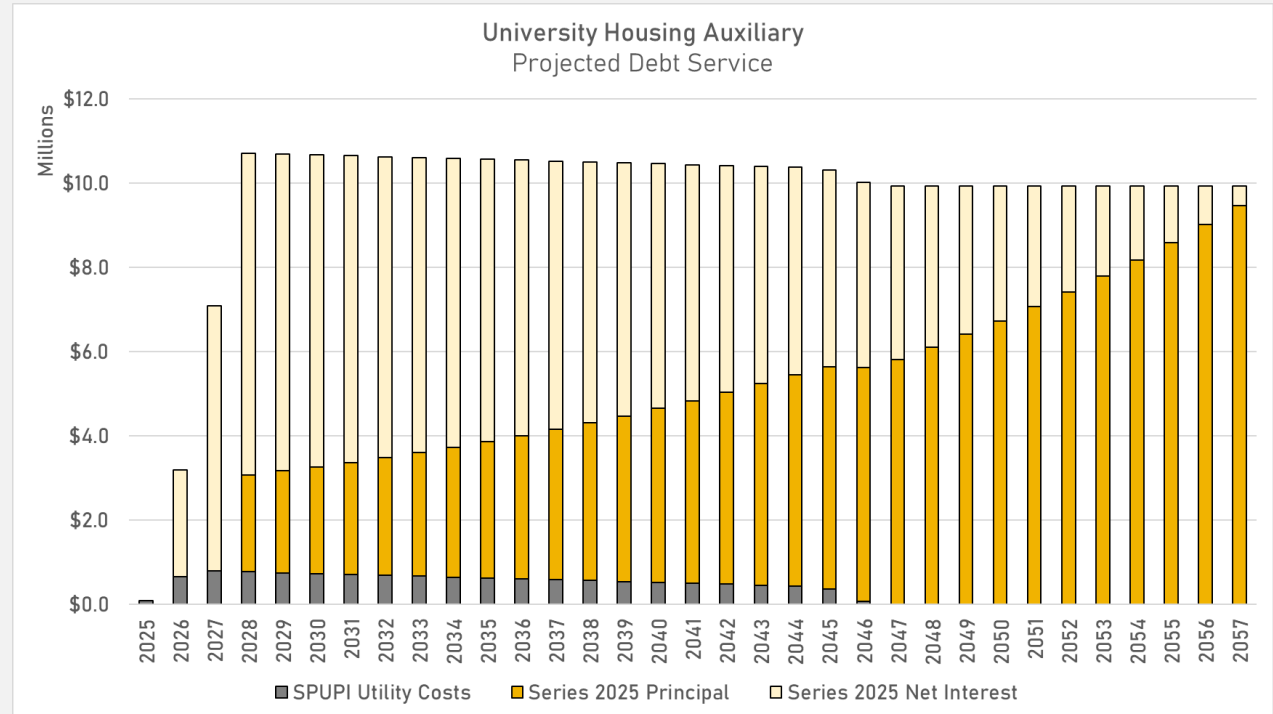


MACROECONOMIC TRENDS



# FINANCIAL STRUCTURE: INDICATIVE FINANCING TERMS

General Revenue Bonds Preliminary, Subject to Change	
	30-year principal amortization Level debt service
	Tax-Exempt
	General revenue of the University
	10-year call at Par
	4.50%
Capitalized Interest Fund	Amount sufficient to achieve 1.0x minimum DSCR from housing auxiliary through FY27



Illustrative only, Preliminary and subject to change.



# NEXT STEPS

## SCHEDULE & KEY MILESTONES

SBOE

Financial Close

Construction

Opening

	Key Milestones & Opening Dates	2024	2025				2026				2027			
		Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1	November SBOE Meeting: Project Approval Request	Grey												
2	South Hill: Demolition, Utilities, Site Work	Yellow												
3	December SBOE Meeting: Interim Financing Request	Grey												
4	Financing: Execute Interim Project Financing	Dark Grey	Dark Grey											
5	SBOE Meeting: Permanent Financing Request		Grey	Grey										
6	Financing: Complete Permanent Financing		Dark Grey	Dark Grey										
7	Theophilus: Phase I Renovation, 8/2025 opening			Yellow	Orange									
8	Wallace: Wing I Renovation, 1/2026 opening				Yellow	Yellow	Orange							
9	New South Hill: New Construction, 8/2026 opening		Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Orange					
10	Wallace: Wing II Renovation, 8/2026 opening						Yellow	Yellow	Orange					
11	Elmwood: Renovation, 8/2026 opening							Yellow	Orange					
12	Theophilus: Phase II Renovation, 8/2026 opening							Yellow	Orange					
13	Wallace: Wing III Renovation, 1/2027 opening								Yellow	Yellow	Orange			
14	Wallace: Wing IV Renovation, 8/2027 opening										Yellow	Yellow	Orange	
15	Theophilus: Phase III Renovation, 8/2027 opening											Yellow	Orange	

**QUESTIONS?**



**PROJECT DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE REGENTS OF THE UNIVERSITY OF IDAHO  
AND  
[UI DEVCO LLC]  
DATED AS OF [\_\_\_\_], 2025**



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**EXHIBITS**

Exhibit 1	Defined Terms
Exhibit 2-A	The Project Site
Exhibit 2-B	The Project
Exhibit 3-A	Plans and Specifications Accepted as of Effective Date
Exhibit 3-B	Required Post-Effective Date Plans and Specifications Submittals
Exhibit 4	The Services
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Exhibit 12	Site Logistics and Safety Plan
Exhibit 13	Form of Application for Payment
Exhibit 14	Development Fee Payments
Exhibit 15	Form of Guaranty
Exhibit 16	University of Idaho Design and Construction Standards
Exhibit 17	Contractors/Consultants Required to be Covered by Performance and Payment Bonds

**PROJECT DEVELOPMENT AGREEMENT**

**PREAMBLE**

This Project Development Agreement (this “**Agreement**”) is made as of the [ ] day of [ ], 2025 (the “**Effective Date**”) by [UI DEVCO LLC] (“**Developer**”), and **THE REGENTS OF THE UNIVERSITY OF IDAHO** (the “**University**”). The “**Developer**” and the “**University**” are each referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

A. The University desires to: (a) develop 400 apartment beds of graduate and family housing and a community building on the South Hill portion of the Campus (as defined below) (“**Project Element – South Hill**”); (b) renovate and redevelop the University’s existing Wallace Residence Center (“**Project Element – Wallace Residence Center**”); (c) renovate and redevelop the University’s existing Theophilus Tower (“**Project Element – Theophilus Tower**”), and (d) renovate and redevelop the University’s existing Elmwood Apartments student housing facilities (“**Project Element – Elmwood**”) (each a “**Project Element**”, and collectively the “**Project**”), on the property located on the Moscow, Idaho campus of University (the “**Campus**”) and described or depicted on **Exhibit 2-A** attached hereto and made a part hereof (the “**Project Site**”).

B. On January 17, 2023, the University issued a Request for Proposals, No. 23-13M, as amended by Addendum 1, dated January 27, 2023, and Addendum 2, dated February 22, 2023 (collectively, the “**RFP**”) pursuant to which certain shortlisted respondents were invited to submit proposals for the development of the Project and on April 25, 2023, the University selected Gilbane Development Company (the “**Master Developer**”) as the proposer found to be most advantageous to the University, based on the factors set forth in the RFP.

C. The University and the Master Developer entered into a Master Development Agreement for the University of Idaho Multi-Phase Facilities Project dated as of September 25, 2023 (the “**MDA**”) pursuant to which the Master Developer caused the Developer to enter into that certain (i) Pre-Development Services Agreement by and between Developer and the University dated as of October 7, 2024 (the “**PDA**”); and (ii) Early Construction Work Agreement by and between Developer and the University dated as of October 7, 2024 (the “**Early Construction Work Agreement**”).

D. Developer is committed to Substantially Completing the Project by the Substantial Completion Deadlines and delivering the Finally Complete Project in accordance with the Plans and Specifications for the Stipulated Sum, all in accordance with and subject to the terms and conditions of this Agreement.

E. The Parties wish to enter into this Agreement to set forth their respective roles, responsibilities, rights and obligations concerning the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement, the Parties agree as follows:

**1. Introduction**

A. The Preamble, Recitals, and **Exhibit 1** through **Exhibit 16** are parts of this Agreement and are incorporated herein by reference.

Capitalized terms used in this Agreement are defined in the text or in **Exhibit 1**.

**2. The Project**

- A. The Project is generally described and defined in **Exhibit 2-B**. All building materials for the Project must be new per the Plans and Specifications and of good quality in accordance with the Construction Documents.
- B. The Project's Plans and Specifications as accepted by the University as of the Effective Date are attached as **Exhibit 3-A**. The Developer shall prepare and submit all required submittals under **Exhibit 3-B** as and consistent with the submittal deadlines set forth in **Exhibit 3-B**. Acceptance of the Plans and Specifications, and any changes thereto, by the University shall not constitute any representation or warranty by the University as to the quality or sufficiency of the construction means, methods and materials set forth in the Plans and Specifications.
- C. The University may inspect and monitor the Project and the Services at any time, upon reasonable prior coordination with Developer. However, the University, must sign in with Developer at the Project Site and follow reasonable safety rules and regulations established by the Developer and the General Contractor in all respects. No such inspections, monitoring or other obstruction or undue interruption of construction activities shall be permitted to cause any delays in the progress of the development of the Project. To the extent any such inspections or monitoring that cause any delays in the Critical Path of the development of the Project may constitute University Delays as provided herein; provided, however, that if any inspection or monitoring is necessary, as reasonably determined by the University, as the result of Developer's material breach of any of Developer's duties, liabilities, or obligations under this Agreement, any delay associated with such inspection or monitoring shall not constitute a University Delay.
- D. The University has relied upon the Developer to conduct all reasonable and necessary due diligence in connection with the Project Site and the Project prior to the Effective Date (including, without limitation, the due diligence requirements set forth in **Exhibit 5**), and in accordance with the standard of care described herein.
- E. The Developer accepts the Project Site (including the improvements thereupon) "as-is" and shall not be entitled to any relief from its obligations under this Agreement or adjustment to the Stipulated Sum for any defect or condition either known at the time of the Effective Date or discovered on the Project Site following the Effective Date, except to the extent any such defect or condition (a) was not actually known to Developer as of the Effective Date, (b) would not have actually been known to Developer as of the Effective Date if Developer had undertaken reasonable and customary due diligence with respect to the Project Site (including, without limitation, the due diligence requirements set forth in **Exhibit 5**), and (c) was not caused or exacerbated by the acts or omissions of Developer (an "**Unforeseen Site Condition**").

**3. Developer's Services**

- A. Subject to the terms and conditions set forth herein, in exchange for the Stipulated Sum, Developer shall act as University's representative and developer in connection with the development and construction monitoring and oversight of the Project, and shall deliver Substantially Complete Project Elements to the University by each Substantial Completion Deadline (and Finally Complete Project Elements as required under this Agreement) for the Stipulated Sum, subject to Excusable Delay and Change Orders that are approved or permitted in **Section 22** and as otherwise provided herein. As University's representative, Developer shall monitor, oversee, facilitate and supervise the development and construction process with the objective of causing the Project to be developed and completed in a good and workmanlike manner, free and clear of all mechanic's, materialmen's

and similar liens, all in accordance with the terms of this Agreement. Developer shall diligently perform its Services in a competent manner consistent with the accepted Plans and Specifications and in accordance with the professional standards of an experienced and competent national developer, with a scope, level of expertise and quality (taking into consideration Project-specific budget parameters), not less than those generally performed by competent national developers of properties similar in type and quality to the Project and located on campuses of comparable public universities.

- B. Developer shall provide the Services generally described in **Exhibit 4**. These Services shall include all design, development and construction services necessary to complete the Project, all required existing material testing and due diligence and other services customarily and reasonably within the general scope of the Services and responsibilities of the Developer; provided, however, such Services are directly related to the Project. To the extent that any other design, development or construction work is necessary to complete the Project in accordance with the Plans and Specifications is needed to complete the Project is not specifically delineated to a specific Party in this Agreement, then the Developer shall be responsible for such work.
- C. Developer shall obtain and maintain all other necessary approvals and permits required in connection with the Project by various governmental agencies and authorities or from complying in all material respects with the Plans and Specifications, the Construction Documents, and all applicable building codes and applicable ordinances. The Developer shall (as part of the Services and without any adjustment to the Stipulated Sum) diligently and in good faith coordinate with SPUPI with respect to any permits necessitated by the Project which SPUPI is required to obtain under the Utility P3 Agreement. The University shall reasonably assist in such efforts if requested in writing by the Developer.
- D. The Developer shall perform the Services in accordance with the University Design and Construction Standards; provided, however, that any conflict between the Project Element – South Hill Plans and Specifications attached in **Exhibit 3-A** and the University Design and Construction Standards, the former shall prevail.
- E. Developer shall diligently and expeditiously perform the Services in accordance with Good Industry Practice in a manner necessary to ensure that the Project satisfies each of the purposes, objectives, functions, uses, and requirements set forth in **Exhibit 2-B**. All duties under this Agreement (to the extent there is a qualitative or subjective standard in determining Developer’s performance or non-performance thereof) shall be measured and interpreted in accordance with such standard of performance. As between University and the Developer, Developer will be solely responsible for the means, methods, and techniques utilized in the construction of the Project.
- F. Developer shall warrant that the completed Project will be of first class quality, will be in conformity with the Construction Documents, that each Project Element shall be free of material defects in workmanship and materials for twelve (12) months after Substantial Completion of such Project Element, and Developer shall cause the General Contractor to repair or replace any defective part of the Project discovered during the applicable twelve (12) month period, all without cost or expense to the University. For purposes of this **Section 3.E**, “defects in workmanship and materials” shall not include ordinary wear and tear, misuse, abuse, or improper maintenance. Developer shall utilize commercially reasonable efforts to cause all components of the Project that have greater warranties of labor and/or materials (i.e., roof and HVAC warranties), to the extent said greater warranties of labor and/or materials exist, to be appropriately assigned to University so that the University, or any successor thereof, will have the right to directly enforce such warranties against the applicable contractors and materialmen.

- G. Developer shall assist the University in conducting a warranty inspection for each Project Element of the Project prior to the expiration of the twelve (12) month warranty period applicable to such Project Element, as identified in the Construction Documents to be executed between Developer and the General Contractor for construction of the Project. Developer shall assist the University in enforcement of warranties and coordinate all warranty work until all provisions of the one-year warranty period are satisfied. To the extent any warranties remain after the one-year warranty period, the Developer shall assign all such warranties to the University. Developer's warranty work as set forth in the two (2) immediately preceding sentences shall be at Developer's sole cost and expense.
- H. This Agreement supplants and terminates the PDA and the Early Construction Work Agreement. Notwithstanding anything to the contrary in this Agreement, any work previously performed under the PDA and the Early Construction Work Agreement as of the Effective Date shall be irrevocably deemed a part of the Services performed under this Agreement (including for purposes of the warranty under Section 3.G of this Agreement), and the coverages afforded under the insurance policies required under Section 13 and the Performance and Payment Bonds required under Section 17).

**4. Term; Time of Essence**

- A. The term of this Agreement begins on the Effective Date and ends on the Termination Date or otherwise as provided in this Agreement (the "**Term**"). The Parties recognize that Developer has performed some Services prior to the Effective Date.
- B. Time is of the essence in the performance of this Agreement.

**5. Limitations and Restrictions**

- A. Developer, Contractors/Consultants, and their respective contractors, subcontractors, sub-consultants, agents, employees, and others supplying labor, equipment, or material by or through them to the Project may not do any of the following without University's prior written consent:
  - (i) Make any expenditure or incur any obligation on behalf of the University unless otherwise permitted by this Agreement; or
  - (ii) Make any change to the Project (except to the extent permitted in Section 22) or the Substantial Completion Deadlines or Project Occupancy Deadlines (except to the extent adjusted due to an Excusable Delay or University Change Directive).
- B. Notwithstanding Section 5.A, Developer may act as is necessary in its reasonable judgment under the circumstances without the consent of University, if Developer in its reasonable, good faith judgment considers that such action is necessary to preserve the structural integrity of the Project, to protect the safety and welfare of people or property, or to avoid imminent compliance actions by any governmental authority, and that obtaining the consent of University (whether in writing or orally) is impractical under the circumstances (an "**Emergency**"). If Developer takes such Emergency action, Developer will immediately notify the University of the action taken, and so long as the Emergency was not caused by the negligence of Developer, General Contractor, Contractors/Consultants, nor any Person claiming by, through or under such Persons, then any appropriate Change Order required by Section 22 shall be issued in connection with such Emergency action.

- C. Developer shall not take any action that shall cause a default under this Agreement.
- D. This Agreement is a services agreement and is not intended to and will not constitute a lease of the Project Site or any other real or personal property.

**6. Development Team**

- A. Developer shall supply competent development staff and employ qualified Contractors/Consultants to perform all of Developer's responsibilities and obligations under this Agreement in a prompt and timely manner. All such development staff, Contractors/Consultants and any on-site construction (quality control) personnel, whether retained as a consultant or employed by Developer shall be paid out of the Development Budget as a Development Cost.
- B. In the performance of this Agreement, Developer and Contractors/Consultants (including, but not limited to, the General Contractor) shall comply with all applicable laws and regulations, including those affecting employees, as well as applicable industry standard practices for construction safety. The Developer will keep fully informed of and comply with applicable laws. Without limiting the foregoing, the Developer shall: (i) comply with all applicable laws governing employment and/or employee wages and hours, including (A) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (B) the Idaho Minimum Wage Law, I.C. Sec 44-1501, *et seq.*; (C) the Idaho Claims for Wages Act, I.C. Sec. 45-601, *et seq.*; and (D) I.C. Sec. 44-1001, *et seq.*, and (ii) comply with and maintain employment policies in a manner consistent with all applicable laws regarding: (A) workplace safety, including the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*; and (B) lawful employment of U.S. citizens and non-U.S. citizens, including taking reasonable steps to verify the employment eligibility of all employees as required under such laws.
- C. Developer, Contractors/Consultants, and all personnel used or employed by Developer and Contractors/Consultants to perform the Services shall have and keep all required licenses, permits, and insurance coverages. Without limiting the foregoing, Developer shall require any architects, engineers, contractors, subcontractors, specialists, and consultants engaged in connection with the Construction of the Project to perform their respective obligations under the terms of the Construction Documents (i) to be licensed in accordance with State law (to include, without limitation, licensing by the General Contractor as a Class "Unlimited" Public Works Contractor by the State of Idaho, pursuant Idaho Code § 54-1904), (ii) to obtain Project professional liability insurance pursuant to **Exhibit 8** hereto, and to maintain such insurance for a period of ten (10) years after the Substantial Completion (Project), and (ii) to obtain Payment and Performance Bonds as required under this Agreement.
- D. If the University deems a Contractor's or Consultant's work unsatisfactory, the University shall provide notice to the Developer of such unsatisfactory work. The Developer and the University shall meet to decide the best course of action with respect to such Contractor/Consultant.

**7. Development Budget**

- A. The Developer has prepared and the University has accepted the Development Budget for the Project, the final version of which has been approved by the Parties and attached hereto as **Exhibit 6**. The Development Budget is the total budget for Development Costs for the Project. The Stipulated Sum for Project consists of the component line items set forth on **Exhibit 6**.
- B. The Developer may re-allocate funds as between Development Budget line items provided that: (i) no such re-allocation shall necessitate the need for a modification to the Stipulated Sum (unless

such modification has been documented in a Change Order pursuant to Section 22); and (ii) the Developer shall give the University notice of any such re-allocation within five (5) business days after any such re-allocation.

- C. Developer will be responsible for funding all cost overruns associated with the Project (excluding any portion of such overruns actually caused by any Uncured University Default or Change Orders arising from Excusable Delays or University Change Directives) from its own funds; provided, however, the Developer may reasonably leverage the hard and soft costs and any contingencies to fund any cost overruns associated with the Project (excluding any portion of such overruns actually caused by any Uncured University Default or Change Orders arising from Excusable Delays or University Change Directives) before funding any remaining cost overruns associated with the Project (excluding any portion of such overruns actually caused by any Uncured University Default or Change Orders arising from Excusable Delays or University Change Directives) from its own funds. The Developer understands that the Parties are relying on the allocation of the Stipulated Sum as set forth in the Development Budget as the final costs and fees to complete the Project.

**8. The Project Development Account**

- A. Developer shall maintain an operating account at a bank or other financial institution approved by University (the “**Project Development Account**”).
- B. Developer shall deposit all Draws into the Project Development Account.
- C. Developer shall make all Project payments to itself and Contractors/Consultants engaged in connection with the Construction of the Project. Developer shall not make or permit to be made any disbursement from the Project Development Account other than Development Costs that are permitted to be disbursed pursuant to an approved Draw Request.

**9. Draw Requests and Draws**

- A. Developer shall make all requests (“**Draw Requests**”) for payments (“**Draws**”) of Development Costs due pursuant to clause (ii) of Section 16.C in writing to the University, for review and approval, such approval not to be unreasonably withheld or delayed; provided, however, that:
  - (i) Draw Requests may be submitted on or before the first (1st) day of each month after commencement of performance, but no more frequently than once monthly.
  - (ii) Draws may only be used to pay for Development Costs actually incurred as allotted within the Project Schedule of Values through the last day of the immediately preceding calendar month for properly provided labor and materials, deposits, and for equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project Site.
  - (iii) Any payment on account of stored materials or equipment will be subject to the Developer providing written proof that the University has title to such materials or equipment and that they are fully insured against loss or damage.
- B. Draw Requests shall include the following and any other information reasonably required by University:



- (i) an application for payment that is certified by the Developer and that establishes the percentage of the Services completed for which payment is requested on a form substantially similar to that set forth in **Exhibit 13**;
  - (ii) all supporting documentation included in **Exhibit 13** and otherwise reasonably necessary to establish clearly that Developer is entitled to payment of all amounts applied for;
  - (iii) a signed and unconditional waiver of Developer's mechanic's lien rights for all labor and material provided through the current Draw Request;
  - (iv) a signed certificate of the Developer confirming that Developer has on file all conditional waivers of the mechanic's lien rights of all Contractors/Consultants for whom payment is sought, waiving their lien rights for all labor and material provided;
  - (v) an updated list on the status of all Change Orders;
  - (vi) an updated Project Schedule of Values showing costs incurred to date and costs remaining;
  - (vii) evidence the Developer has paid all applicable State taxes in accordance with Idaho Code § 63-15; and
  - (viii) a four-week look-ahead Project schedule.
- C. Written approval of a particular Draw Request by the University is a prerequisite to funding of such Draw Request or any portion thereof.
- (i) If University Disputes a Draw Request, University, as applicable, will notify Developer in writing within five (5) business days of such disputing party's receipt of the Draw Request.
  - (ii) Thereafter Developer shall immediately provide any additional information or documentation reasonably requested by the University to satisfy such party of the nature and propriety of the amount in question. If University continues to Dispute a Draw Request after receiving such additional information or documentation, University will notify Developer in writing within two (2) business days of such party's receipt of such additional information and the University and Developer shall agree on the disputed value of the Draw Request which shall be deducted from the payment while the remaining amount of said Draw Request remains in Dispute.
- The University shall pay amounts due under each Draw Request within thirty (30) days of the University's approval of such Draw.
- D. The amount payable to Developer under each Draw Request for amounts owed to any Contractor/Consultant, excluding design team fees or their monthly construction administration invoices, for items contained in the "Total Direct Construction Costs Amount" component line item of the Development Budget shall be reduced by a retainage of five percent (5%) until such time as such Contractor/Consultant substantially completes its scope of work. At the time of Substantial Completion of each Project Element, all retainage applicable to such Project Element shall be released to Developer, to further pay down the outstanding amounts owed to Contractors/Consultants for work satisfactorily completed. These requirements concerning retainage shall be set forth in the applicable Construction Documents.

- E. Developer shall discharge or cause to be discharged of record by bond or otherwise, within thirty (30) days following the date whereupon Developer receives actual knowledge of the filing (or an additional fifteen (15) days if such lien is not reasonably capable of being removed within the thirty (30) day period), of any mechanic's or similar lien filed against the Project for work or materials claimed to have been furnished at Developer's request to or for the benefit of Developer and/or the Project. If Developer shall fail to cause such lien or claim or lien to be so discharged or bonded within such period, in addition to any other right or remedy the University may have, University may, but shall not be obligated to, discharge such lien or claim or lien by procuring the discharge of such lien or claim or lien by the deposit in a court or by bonding, and, in any event, University shall be entitled, if University so elects, to compel the prosecution of any action for the foreclosure of such lien or claim by the lienor or claimant and to pay the amount of the judgment, if any, in favor of the lienor, with interest, costs and allowances. Developer shall be liable to University, as applicable, on demand and from time to time, for any sum or sums so paid by or on behalf of University and all costs or expenses actually incurred by the University, including, but not limited to, reasonable attorneys' fees actually incurred in prosecuting such discharge or in defending any such action. Developer agrees to provide the University with written notice of any lien filed against the Project promptly following Developer's obtaining actual knowledge of such lien.
- F. Upon receipt of any payment under Section 16 from the University, the Developer shall promptly pay all Contractors/Consultants, materialmen, laborers, and suppliers such amounts as they are entitled for the Services covered thereby in accordance with the terms and conditions of the Construction Documents.
- G. The Developer agrees and acknowledges that title to all Services covered by any payment under Section 16 shall immediately pass to the University upon payment thereof.
- H. The submission by the Developer of a payment request also constitutes an affirmative representation and warranty that all Services for which the University has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever.
- I. If the University becomes aware or is informed that Developer has not paid a Contractor/Consultant, materialmen, laborer, or supplier as provided herein and in accordance with the Construction Documents, the University shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Developer naming Developer and any such Contractor/Consultant, materialmen, laborer, or Supplier as joint payees. Such joint check procedure, if employed by the University, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the University to repeat the procedure in the future nor to create any contractual or other relationship of any kind between the University and such person or entity.
- J. No payment under Section 16 to Developer shall be interpreted or construed to constitute acceptance of any Services not in strict compliance with this Agreement, and Developer expressly accepts the risk that defective Work may not be detected (i) during any inspection by the University, (ii) prior to making of any payment to Developer, or (iii) before the University's occupancy of the Project.

**10. Developer Records**

- A. Developer shall make and keep records and accounts on a cash basis. They shall be sufficient for financial statements in accordance with generally accepted accounting principles, consistently applied, to be prepared from them. Developer shall provide such records and cooperate and work

in good faith with University, Project accountants and auditors in the preparation of financial statements with respect to books and records maintained by Developer during the development and construction period for the Project.

- B. All books and records made or kept by Developer pertaining to the Project shall always be accessible or present at Developer's office in Providence, Rhode Island and electronic copies of such books and records will be available for the University; and (i) they shall be available for and subject to audit, inspection, and copying by University, or their respective representatives during normal business hours, after reasonable notice; and (ii) within fifteen (15) days after the University's written request to audit or inspect Developer's books and records, Developer shall as a Development Cost provide originals or copies of those books and records to University at the location requested by University.

**11. University Approvals**

- A. Except as otherwise set forth in this Agreement, the University will review and respond to any complete and compliant requests within fifteen (15) business days (collectively, a "**Response**"). The University will respond in writing via the University's Authorized Representative by offering the Response or taking other appropriate action with respect to, the request, as applicable. If objecting to or disapproving such request, the University will provide written notice to the Developer specifying in reasonable detail the reasons for the objection or disapproval. If the University objects to or disapproves any request in accordance with this Section, then the Developer will resubmit the request as promptly as reasonably possible, and the University will resume its review respond to such request by approving or disapproving the request within fifteen (15) business days of receipt of the Developer's resubmittal of said request. The University's review of a request resubmittal shall be limited to the issue, condition or deficiency which gave rise to the University's objection or disapproval and will not extend to other aspects for which the Response was not previously provided to the Developer unless the issue, condition or deficiency that gave rise to the University's objection or disapproval reasonably relates to the University's initial objection or disapproval.
- B. If the Developer must submit a request to University for review and response more than twice due to the Developer's failure to comply with the requirements of this Agreement, the Developer will pay the University for the University's reasonable costs actually incurred thereafter in reviewing any portions of such request (for avoidance of doubt, as an expense of the Developer and not as a Development Cost).
- C. Where University policies allow final approval of a request by an authorized University representative such approval shall be the final decision of the University. Where University policies require that a request be approved by the Board of Regents of the University of Idaho, the University will present the request (after initial approval thereof by the University) to the Board of Regents of the University of Idaho in the manner specified in University policies and applicable law. Any approval of the Board of Regents of the University of Idaho shall be at the sole discretion thereof and shall not be subject to the Dispute resolution process. Developer shall reasonably assist the University in obtaining any such approval if requested by the University.
- D. In all cases where Responses are required to be provided, such Responses will not be either withheld or delayed unreasonably, and such determinations will be made reasonably except in cases where a different standard is specified.

**12. Project Site**

- A. Developer will have full and exclusive responsibility for Project Site safety during the course of performance of this Agreement. Developer will ensure that all demolition, site work, construction and installation of the Project will be performed in accordance with all applicable permits and laws and industry standard practices for construction safety. The University and all members of the Developer-led design-build team, shall have unfettered access to the Project Site, on a twenty-four (24) hour per day, seven (7) day per week basis, beginning on the Effective Date and continuing throughout the Term; provided that the access of the Developer to any Project Element or portion of the Project that is open to students shall be limited as described in the Site Logistics and Safety Plan; provided further that construction activities may only occur after 7:00 a.m. The University shall provide the Developer at least two (2) weeks' notice of any special on campus events (such as move-in or graduation) which may impact the Developer's performance of the Services. The Developer shall reasonably coordinate its performance of the Services so as to accommodate such events.
- B. To the extent the Developer shall be responsible for obtaining utilities to the Project Site in accordance with the approved Plans and Specifications, the Developer shall be responsible for obtaining utilities to the Project Site in a manner compliant with the Utility P3 Agreement (including any necessary coordination with SPUPI for the provision thereof), including adherence to the lines of demarcation set forth in the Utility P3 Agreement. The cost to be incurred by Developer in providing any utilities to the Project Site in accordance with the approved Plans and Specifications shall be accounted for in the Stipulated Sum.
- C. Developer will be responsible for ensuring the safety and security of any University-affiliated persons, Project personnel, and the larger public, on the Project Site during the Term. All University personnel, police, fire and emergency services, and any governmental authority with jurisdiction over the Project, will have access to the Project as necessary and without condition or cost to carry out emergency and security services.
- D. At a minimum, the following restrictions must be placed upon construction activities, and Developer will provide for the incorporation of these restrictions in the Construction Documents:
- (i) access to the Project Site will be limited to those involved with the work (subject to the rights of the University and its designees (including SPUPI) to enter the Project Site and inspect the work herein);
  - (ii) Developer must notify the University in writing at least seventy-two (72) hours in advance when coordination meetings requiring their participation are required. The University and its representatives shall have the right to participate in all recurring or special construction progress meetings (and regular meetings shall be conducted no less frequently than bi-weekly);
  - (iii) Developer will provide a six foot (6') high chain link security fence (which may not contain razor or barbed wire) with lockable gates at the perimeter of the Project Element – South Hill portion of the Project Site and associated staging area pursuant to the Site Logistics and Safety Plan attached hereto as **Exhibit 12**;
  - (iv) Developer, throughout the Construction period, shall be responsible for the enforcement of discipline and good order among the workers on the Project Site;
  - (v) signage posted at the Project Site shall be subject to the University's prior approval; and

- (vi) Developer and its Contractors/Consultants shall not bury or burn or otherwise dispose of Construction debris on the Project Site or any other part of the University property.
- E. The University shall have the right to prescribe reasonable additional construction rules and regulations from time to time; provided, however that in the event compliance with rules and regulations prescribed after the Effective Date hereof causes an actual delay in Substantial Completion, or results in an actual increase in cost, such event may be characterized as a University Delay in accordance with the procedures set forth herein.
- F. Developer shall as a Construction expense, comply and cause its Contractors/Consultants to comply in all material respects with all building codes, ordinances, rules, regulations, orders, directives, and statutes of all governmental authorities which may now or hereafter, from time to time, be established and which are, or shall be, applicable to the University as they relate to the development and construction Project, including without limitation, the Americans With Disabilities Act of 1990, and shall take, as otherwise provided herein, all action necessary to cause the Project to comply in all material respects with all provisions of the Construction Documents, applicable to University relating to the development and construction of the Project.
- G. Developer shall confine its operations to the Project Site and shall not store any material or equipment on property of the University outside the boundaries of the Project Site, except as approved in writing and subject to such conditions as may be specified and approved by the University. Developer shall protect all work and shall at all times keep and cause its Contractors/Consultants to keep the Project Site clean and free from waste materials and rubbish. Developer shall require that the General Contractor and any other Contractors/Consultants operating on-site utilize best industry practices to prevent mud and dirt from being carried outside the boundaries of the Project Site by any construction vehicles or otherwise. Developer shall be obligated to maintain temporary site water runoff management measures in compliance with applicable laws and shall be responsible for any and all fines and citations for violations thereof. To the extent reasonably possible, Development and Construction of the Project shall be done so as to minimize disruption of the University's operations.
- H. All construction activities which affect other areas/buildings/campus operations outside of the Project Site must be coordinated with the appropriate departments of the University (such departments, and representatives of those departments shall be identified in the pre-construction meeting). A mandatory pre-construction meeting shall be conducted by Developer prior to the start of any construction activities for the purpose of reviewing security procedures, utility coordination, access to the Project Site, and Construction coordination issues. The meeting shall be attended, at a minimum, by representatives of Developer, the University, the Architect, and the General Contractor's project manager and superintendent.
- I. If any Developer submittals, meetings, or other communications with the City of Moscow or other State or local governmental authorities are necessitated during the Term, then the Developer will (i) notify University reasonably in advance of all scheduled meetings, presentations and hearings, and promptly thereafter inform University of the content thereof; (ii) keep University reasonably and currently informed of the content of any other meetings or communications between the Developer and such governmental authority; (iii) provide to University copies of all applications, and submittals, and major communications, in advance, for its prior review and approval; (iv) provide to University copies of all material communications received from such governmental authorities; and (v) consult and otherwise cooperate and coordinate with University concerning the Developer's dealings with such governmental authorities.

**13. Insurance**

- A. Throughout the Term, Developer shall acquire and maintain or cause to be acquired and maintained in force insurance as provided in **Exhibit 8**.
- B. Developer waives all rights against the University, and the contractors, subcontractors, consultants, agents, and employees of University, for damages caused by fire or any other peril to the extent covered by any property insurance obtained under this **Section 13** or any other property insurance applicable to the Project work, except rights to proceeds of that insurance.

**14. Environmental Matters**

- A. Developer may not:
  - (i) Direct, suffer, or permit any of its employees to handle, transport or, use, any Hazardous Materials in or about the Project Site, other than to the extent incorporated into building materials or contained in fuels consumed in connection with the construction of the Project, in each case consistent with the construction practices of competent real estate developers in compliance with all Environmental Laws; or
  - (ii) Direct, suffer or permit any of its employees to manufacture or store any Hazardous Materials in or about the Project Site; or
  - (iii) Knowingly or negligently suffer or permit: (a) any Hazardous Materials to be used by any employee or third party in any manner not fully in compliance with all Environmental Laws; or (b) the Project Site or adjoining areas to become contaminated with any Hazardous Materials by reason of any act of Developer, General Contractor, any Contractors/Consultants, or any person entering the Project Site by, through or under any of them.
- B. “**Hazardous Materials**” means and includes (a) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6091 *et seq.*), as amended from time to time, and regulations promulgated pursuant thereto; (b) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 6091 *et seq.*), as amended from time to time, and regulations promulgated pursuant thereto; (c) polychlorinated biphenyls; (d) underground storage tanks, whether empty, filled or partially filled with any substance; (e) any substance the presence of which on or under the Project Site is prohibited by any governmental requirements; (f) any petroleum products or waste, and (g) or any other environmentally regulated substance or material, waste, pollutant or contaminant, defined as such or regulated by any Environmental Laws.
- C. “**Environmental Laws**” are laws, rules or regulations relating to or imposing liability or standards of conduct concerning the protection of the environment, natural resources, health and safety, and/or activities involving any asbestos, asbestos-containing materials, materials presumed by law to contain asbestos, PCBs, petroleum, petroleum byproduct (including but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity), natural or synthetic gas products, radioactive materials, infectious waste, and/or hazardous or toxic substances, chemicals or materials, or any other waste, material, pollutant or contaminant that is regulated to protect the environment, as may now or at any time hereafter be in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, CERCLA, the

Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-To-Know Act, and the Occupational Safety and Health Act.

- D. Notwithstanding the limitations set forth in Section 14.A, Developer may handle, store, use, or dispose of Hazardous Materials to the extent customary and necessary for the performance of Developer's duties under this Agreement, provided all disposal occurs offsite. Developer shall always handle, store, use, and dispose of those Hazardous Materials in a safe and lawful manner and shall ensure that all disposal of Hazardous Materials and any other waste occurs offsite. Developer shall also take reasonable precautions to prevent those Hazardous Materials from contaminating the land or the environment, harming human health, harming natural resources or violating any applicable laws, regulations, or ordinances of any federal, state, or local governmental authority. Developer shall promptly notify the University of any Release of any Hazardous Materials on the Project Site, which Release is not made pursuant to and in conformance with the terms of any permit or license duly issued by appropriate governmental authorities, and any such notice shall include a description of measures taken or proposed to be taken by Developer to contain and remediate the Release and any resultant damage to property, persons or the environment. For the purposes of this section, the term "Release" shall have the same meaning ascribed to it under CERCLA.
- E. Developer shall upon request, make available to the University complete and accurate copies of all disposal tickets for materials (hazardous or not) from the Project Site that are disposed of off the Project Site.

**15. Indemnities**

- A. In addition to the Developer's other indemnification obligations as set forth elsewhere in this Agreement, the Developer shall release, protect, indemnify, defend, and hold harmless each University Indemnitee from and against any actual losses by such University Indemnitee, due to third-party claims and third party losses arising out of, relating to, or resulting from:
- (i) any actual failure by the Developer to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, any material breach by the Developer of its representations or warranties set forth herein;
  - (ii) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use by a Developer Party of trade secrets, patents, proprietary information, know-how, trademarked or service marked materials, equipment, devices or processes, copyright rights or inventions in connection with the Project;
  - (iii) any actual or alleged violation of any federal or state securities or similar law by any Developer Party;
  - (iv) any actual or alleged tax of any kind attributable to any attempted or actual transfer of the Project or any part thereof;
  - (v) any lien filed against the Project Site or the Project as a result of any action by a Developer Party;
  - (vi) any actual or alleged release or exacerbation of Hazardous Materials on or near the Project Site by a Developer Party;

- (vii) any actual or alleged claim for brokerage commissions, fees or other compensation by any person who acted solely on behalf of any Developer Party in connection with this Agreement, or any transfer of the Project or any part thereof or any direct or indirect interest in the Developer;
- (viii) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (a) the failure of any Developer Party to comply with the requirements of this Agreement, (b) the gross negligence or intentional misconduct of any Developer Party, or (c) the unauthorized entry onto or encroachment upon another's property by any Developer Party; or
- (ix) any actual gross negligence; reckless, willful, or intentional misconduct (excluding intentional Developer Default); illegal activities (or inaction); fraud; criminal conduct; bad faith; violation or breach of contract (excluding breach of this Agreement); arbitrary or capricious acts on the part of any Developer Party, in each case, arising out of, relating to, caused by, or otherwise associated with performance of the Services by any Developer Party.

The Developer's indemnity obligation under this Section 15 shall not extend to any third-party losses or third-party claims incurred by the University Indemnitees to the extent adjudicated (including all appeal rights) to have been caused by the sole negligence; recklessness, willful, or intentional misconduct; illegal activities (or inaction); fraud; criminal conduct; bad faith; or violation or breach of contract (excluding breach of this Agreement); or arbitrary or capricious acts on the part of the University Indemnitee seeking indemnification.

- B. If a University Indemnitee asserts in writing the existence of any third-party claim for which the Developer may be required to indemnify the University Indemnitee hereunder, University will as soon as is practicable inform the Developer in writing of such third-party claim, which will include a copy of the third-party claim (and accounting of third-party losses, to the extent available) and any related correspondence or documentation; provided, that any delay or failure by University to inform the Developer will not constitute a waiver of any rights of University to such indemnification except to the extent the rights of the Developer are actually, materially, and demonstrably prejudiced thereby.

The University may in its discretion participate in, or assume, the defense of any such third-party claim by giving notice to that effect to the Developer. The University agrees to pay all of its own expenses of participating in or assuming each defense, except that the Developer will bear the reasonable fees, costs and expenses of separate counsel, if the use of counsel chosen by the Developer would present such counsel with a conflict of interest; the actual or potential defendants in, or targets of, any such action include both the University Indemnitee and the Developer, and the University Indemnitee will have reasonably concluded that there may be legal defenses available to it and/or other University Indemnitees which are different from, or additional, to those available to the Developer; the Developer will not have employed counsel to represent the University Indemnitee within a reasonable time after notice of the institution of such action; the Developer authorizes the University Indemnitee to employ separate counsel at the Developer's expense; or the Developer is otherwise not providing an effective defense in connection with the action.

The Developer will not be liable for any settlement or compromise by an affected University Indemnitee of a third-party claim except with the Developer's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed, or except where the settlement or



compromise is approved by the court after the Developer receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

In any agreements between the Developer and any Contractors/Consultants relative to the Project, the Developer shall use commercially reasonable efforts to require such Contractors/Consultants to provide an indemnity in favor of University and the other parties indemnified hereunder, on materially the same terms of the indemnity provided by the Developer to University pursuant to this Section 15.

- C. The provisions of this Section 15 shall survive termination of this Agreement, Final Completion of the Project, and all Services and other activities contemplated by this Agreement.
- D. Except for any obligation of Developer to indemnify pursuant to Section 15.A or pay Liquidated Damages or provide Temporary Housing Services pursuant to Section 20, and excluding Developer's liability for damage to tangible property or injuries to persons, including death, in no event shall any Party hereto be liable under this Agreement for any consequential, special, indirect or punitive damages of any kind.

**16. Development Costs and Stipulated Sum**

- A. The University shall pay to the Developer \$[\_\_\_\_\_]<sup>1</sup> representing the “**Pre-Development Services Payment**” (as defined under the PDA) within fifteen (15) days of the Effective Date in consideration for services furnished by the PDA Developer under the PDA. For avoidance of doubt, the Developer shall be entitled to no other compensation for services rendered by the Master Developer under the MDA or the PDA Developer under the PDA.
- B. The University shall (subject to payment of an invoice for such funds satisfying the requirements of Section 9) pay to the Developer \$[\_\_\_\_\_]<sup>2</sup> as compensation for work previously performed by the PDA Developer under the Early Construction Work Agreement within fifteen (15) days of the Effective Date in consideration for certain unreimbursed services performed by the PDA Developer under the Early Construction Work Agreement. Any payments for not-yet-completed Early Construction Work Agreement work are hereby acknowledged and agreed by the Parties to be included within the Stipulated Sum. For avoidance of doubt, the Developer shall be entitled to no other compensation for services rendered by the PDA Developer under the Early Construction Work Agreement.
- C. In consideration of Developer's performance of the Services hereunder, and the additional efforts of the Developer in furtherance of the Project contemplated hereunder, University will pay the Developer (i) the Development Fee portion of the Stipulated Sum as set forth in Exhibit 14, and (ii) monthly installments during the scheduled construction period for the Project (in accordance with and as described in Section 9).
- D. The Developer shall be entitled to no funds in excess of the Stipulated Sum in consideration of delivery of the Finally Complete Project unless the Stipulated Sum is adjusted based upon Change Orders as contemplated in Section 22 and as otherwise provided herein.

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<sup>1</sup> To be confirmed at the execution of the Agreement.

<sup>2</sup> Insert any unpaid amounts under the ECA.

**17. Payment Bonds and Performance Bonds**

Developer shall provide Performance and Payment Bonds (each such bond covering the Services of those Contractors/Consultants' set forth in Exhibit 17 performance of the Work) issued by a reputable surety company satisfactory to the University, with the Developer as principal, and a dual obligee rider, naming the Developer and the University as additional obligees. The bond surety shall be obligated to perform all obligations of the Developer.

**18. Force Majeure; Default**

- A. Neither Party shall be in default of this Agreement to the extent that it cannot perform any of its obligations under this Development Agreement by reason of any event of Force Majeure. Developer shall not be obligated to bear any Development Cost that is a result of an event of Force Majeure that is properly raised in accordance with the provisions hereof, and the time frames for Developer's performance under this Agreement shall be extended, on a day-to-day basis, for any delays resulting from or caused by any events of Force Majeure that are properly raised in accordance with the provisions hereof. As used herein, "**Force Majeure**" shall mean any of the following specifically identified occurrences first occurring after the date of this Agreement which result in an unavoidable delay in the Critical Path of any Party's performance of any of its obligations under this Agreement if such occurrences are not reasonably foreseeable by, beyond the reasonable control of, and not caused or exacerbated by the acts and omissions of, the Party in question: (i) strike, lock-out or other labor troubles, (ii) city, county, state or other governmental restrictions, injunctions, or limitations, including (1) the non-issuance of any permits or approvals required for the Construction and Development of the Project beyond the time periods which are reasonable and customary for a project of this type (in no instances less than for which provision has been allotted by Developer in the Project Schedule) for reasons other than the failure of the Plans and Specifications to comply with governmental requirements and applicable reviewers' comments, and (2) any quarantine ordered by such governmental authority as a result of an epidemic, pandemic or other public health crisis, (iii) failure or shortage of electrical power, water, fuel oil, or other utility or service, (iv) riot, war, insurrection, terrorism, or other national or local emergency, including an epidemic, pandemic or other public health crisis, (v) accident, flood, fire, or other casualty, (vi) unusually severe weather conditions, as set forth below, (vii) acts of God and other casualties, (viii) unavailability of materials used to Construct the Project, and (j) other similar or related occurrences which are beyond the reasonable control of the Person in question. The parties shall not be precluded from making claims associated with Force Majeure delays because an event or condition existed prior to the Effective Date hereof (e.g. the COVID-19 pandemic), provided that the specific "occurrence" giving rise to the Force Majeure claim (e.g. any future public order associated with the pandemic) occurred after the Effective Date hereof. Construction time shall include normal weather conditions, such as rain, snow, and freezing temperatures. Extension of time will not be allowed for normal inclement weather as recorded by the National Weather Service. Claims for extensions of time due to delay attributed to unusually severe weather must be supported by climatological data covering the period for the thirty (30) preceding years. When the weather in question exceeds the intensity or frequency for the thirty (30) year average, the excess experienced shall be considered "unusually severe." Comparison shall be made on a monthly basis. Whether or not unusually severe weather in fact delays the Critical Path of construction of the Project will depend upon the effect of weather on the work being performed during the time under Construction. As a condition precedent to claiming the benefit of any Force Majeure delay, the Party claiming the benefit of any Force Majeure delay shall be obligated to provide written notice of the Force Majeure delay to the other Parties no later than fifteen (15) days after the Party claiming Force Majeure delay becomes aware that an event of Force Majeure has caused or is expected to cause a delay.

- B. This Agreement will remain in effect until Developer fulfills all of the Services and its obligations under this Agreement, and the Project is Finally Complete (including punch list items), or as otherwise provided in this Agreement.
- C. **“Developer Default”** means any one or more of the following (a Developer Default, after expiration of any applicable grace or cure period hereunder, being an **“Uncured Developer Default”**):
- (i) Developer or Guarantor files a voluntary proceeding under any bankruptcy or insolvency laws, or is the subject of an order of relief under any present or future law relating to bankruptcy, insolvency, or other relief for debtors;
  - (ii) Developer or Guarantor seeks, consents to, or acquiesces in the issuance of an order of relief, appointment of any trustee, receiver, custodian, conservator, or liquidator of Developer, for all or any substantial part of its properties (“acquiesce” includes the failure to file a petition or motion to vacate or discharge any order of relief, judgment, or decree providing for that appointment within the time specified by law);
  - (iii) A court of competent jurisdiction enters an order of relief, judgment, or decree approving an involuntary bankruptcy proceeding filed against Developer or Guarantor;
  - (iv) Developer or Guarantor seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future law relating to bankruptcy, insolvency, or other relief for debtors, or Developer or Guarantor consents to or acquiesces (as defined above) in the entry of an order of relief, judgment, or decree, or it is not vacated and not stayed for an aggregate of ninety (90) days after its entry;
  - (v) Any trustee, receiver, custodian, conservator, or liquidator of Developer or Guarantor, or of all or any substantial part of either’s properties, is appointed without the consent or acquiescence of Developer and that appointment is not vacated and not stayed for an aggregate of ninety (90) days;
  - (vi) Developer made or provided any warranty, representation or other statement by or on behalf of the Developer herein, which was false, erroneous, or misleading in any material respect when made;
  - (vii) Developer fails or refuses to provide any of the Services or to perform any other obligation under this Agreement in the manner and within the time required by this Agreement or commits or permits a material breach of any of Developer’s duties, liabilities, or obligations under this Agreement;
  - (viii) Developer knowingly withholds material information from University that could impact the Substantial Completion date;
  - (ix) Developer fails to pay to University when due any amount payable to University pursuant to this Agreement within the time period required by this Agreement, and such failure continues without cure for a period of ten (10) days;
  - (x) After exhaustion of all rights of appeal, (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into

effect an agreement for voluntary exclusion, of the Developer or any affiliate of the Developer, or (ii) the Developer or Guarantor, or any of either's officers, directors, or employees have been convicted of, or plead guilty or nolo contendere to, a violation of law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the State; provided that if the offending person is an officer, director or employee, cure will be regarded as complete when the Developer proves that such person has been removed from any position or ability to manage, direct or control the decisions of the Developer or Guarantor (as applicable) or to perform Services; and if the person debarred or suspended or subject to an agreement for voluntary exclusion is an affiliate of the Developer, cure will be regarded as complete when the Developer replaces such person in accordance with this Agreement;

- (xi) Any assignment of this Agreement or of ownership interests in the Developer in violation of Section 31.G; or
  - (xii) Developer fails to Substantially Complete any Project Element no later than ninety (90) days after the applicable Project Occupancy Deadline, subject to Excusable Delays and University Change Directives.
- D. The University shall provide the Developer with a written notice of Developer Default that describes the nature of the Developer Default, after which:
- (i) Developer will have thirty (30) days to cure the Developer Default; provided, however, Developer can cure a Developer Default not reasonably capable of being cured within thirty (30) days (specifically excluding defaults that could be cured by the payment of any monetary amount), if Developer begins the cure within thirty (30) days and then diligently pursues the cure thereof to completion to the reasonable satisfaction of the University (subject to a maximum total cure period of one hundred twenty (120) days).
  - (ii) The University shall have all rights and remedies under this Agreement and at law and in equity upon any Uncured Developer Default (including drawing upon the Performance and Payment Bonds required under Section 17 and termination of this Agreement pursuant to Section 19.A).
- E. **“University Default”** includes any one or more of the following (a University Default, after expiration of any applicable grace or cure period hereunder, being an **“Uncured University Default”**):
- (i) The University materially fails or refuses to pay any amount when due pursuant to Section 9; or
  - (ii) The University commits or permits a material breach of any of the University's duties, liabilities or obligations under this Agreement.
- F. Developer shall provide the University with a written notice of default that describes the nature of the University Default, after which:
- (i) The University shall have thirty (30) days to cure the University Default; provided, however, the University can cure a University Default not reasonably capable of being cured within thirty (30) days, if University begins to cure within thirty (30) days and then

diligently pursues the cure thereof to completion to the reasonable satisfaction of Developer.

- (ii) The Developer shall have all rights and remedies at law and in equity upon any Uncured University Default (including termination of this Agreement pursuant to Section 19.C).

**19. Termination**

- A. The University may terminate this Agreement in its sole discretion and with immediate effect (or on such other date certain in the University's sole discretion) upon the occurrence of an Uncured Developer Default (an "**Uncured Developer Default Termination**"). In the event of an Uncured Developer Default Termination, the University shall, within thirty (30) days after the effective date of such termination or receipt of Developer's final invoice provided in accordance with Section 9 (whichever is later), reimburse the Developer its actual, documented, and properly incurred costs of performing the Services unpaid at the time of termination (such amount to be non-inclusive of any Allowable Profit and Overhead Mark-Up) net of any reasonable wind-down or site restoration costs incurred by the University in connection with such Uncured Developer Default Termination. If an Uncured Developer Default Termination occurs, such termination will not excuse the Developer from any liability arising out of such Uncured Developer Default. The Developer will additionally (to the extent directed by the University) perform reasonable site restoration services at the Developer's expense during the period between delivery of the University's notice of termination and termination of this Agreement.
- B. The University may, in its sole discretion, terminate this Agreement for its convenience at any time during the Term of this Agreement (a "**Termination for Convenience**") upon ten (10) days' prior written notice to the Developer, which notice shall set forth the effective date of such termination. If University exercises a Termination for Convenience, then University shall, within thirty (30) days after the effective date of such termination or receipt of Developer's final invoice provided in accordance with Section 9 (whichever is later), reimburse the Developer (i) its actual, documented, and properly incurred costs of performing the Services unpaid at the time of termination, plus (ii) the Allowable Profit and Overhead Mark-Up with respect to such services, plus (iii) 100% of the next scheduled Development Fee as set forth in Exhibit 14. The Developer will additionally (to the extent directed by the University) perform reasonable site restoration services at the University's expense during the period between delivery of the University's notice of termination and termination of this Agreement.
- C. The Developer may terminate this Agreement upon the occurrence of an Uncured University Default (an "**Uncured University Default Termination**"). In the event of an Uncured University Default Termination, the University shall, within thirty (30) days after the effective date of such termination or receipt of Developer's final invoice provided in accordance with Section 9 (whichever is later), reimburse the Developer its actual, documented, and properly incurred costs of performing the Services unpaid at the time of termination (such amount to be inclusive of any Allowable Profit and Overhead Mark-Up).
- D. In the event of any termination of this Agreement, Developer will work diligently and in good faith as may be necessary to facilitate a smooth transition with minimal disruption to the Project and University campus. The foregoing covenant shall survive termination of this Agreement.

**20. Project Completion**

- A. For purposes of this Agreement, each Project Element will be deemed substantially complete (“**Substantially Complete**” or “**Substantial Completion**”) when the Services have been substantially performed and the Project Element’s improvements are:
- (i) Substantially completed as required by the Construction Documents (including, for avoidance of doubt, any requirements of substantial completion under the University Design and Construction Standards), including all life safety systems, all furniture, fixtures, and equipment necessary for occupancy of the Project is installed and fully commissioned and operational, all required temporary certificates of occupancy are issued, the Project is capable of being occupied for its intended purposes, and a punch list of unfinished items has been prepared by Developer and provided to and approved by University;
  - (ii) All governmental authorities having jurisdiction over occupancy prior to the Final Completion, including the state fire marshal, if applicable, have given their approval to occupancy of the Project on a temporary basis pending the occurrence of Final Completion; and
  - (iii) The Developer has provided and the University has accepted a draft reconciliation of Project costs to the University.

Developer shall provide written notice to the University when Substantial Completion for each Project Element has occurred.

Each Project Element of the Project shall each, respectively, be deemed to be Substantially Complete when in the University’s judgement the requirements of subsections (i) through (iii) above have been met for such Project Element of the Project.

- B. Developer shall commence site preparation and construction promptly in accordance with the Construction schedule. Developer shall cause Substantial Completion for each Project Element to occur on or before the applicable Substantial Completion Deadline, as may be adjusted pursuant to Section 22.
- C. If the Developer or the University reasonably determines that the Developer will not achieve Substantial Completion of a Project Element by the applicable Substantial Completion Deadline:
- (i) If the Developer reasonably determines that it will not achieve Substantial Completion of a Project Element by the applicable Substantial Completion Deadline, the Developer shall provide written notice thereof to the University and following such notice, Developer shall promptly prepare a remedial plan to re-sequence and/or accelerate performance of Construction work to achieve on-time Substantial Completion of the Project Element by the applicable Substantial Completion Deadline, to the extent reasonably possible at commercially reasonable cost under the circumstances.
  - (ii) If the University reasonably determines that the Developer will not achieve Substantial Completion of a Project Element by the applicable Substantial Completion Deadline, University may, in its sole discretion, provide written notice thereof to the other Parties and following such notice, Developer shall promptly prepare a remedial plan to re-sequence and/or accelerate performance of Construction work to achieve on-time Substantial Completion of a Project Element by the applicable Substantial Completion

Deadline, to the extent reasonably possible at commercially reasonable costs under the circumstances.

- D. In the event that Substantial Completion of any Project Element will not be achieved by the Substantial Completion Deadline for such Project Element (and without limiting Section 20.E), then the Developer shall give the University prompt written notice thereof as soon as such fact is determined, and shall pay to the University within 30 days of the University’s invoice thereof (unless the University elects in its sole discretion to deduct such amounts from monthly payments due the Developer under Section 9) those certain liquidated damages set forth below (the “**Liquidated Damages**”).

<b>Project Element</b>	<b>Liquidated Damage</b>
Project Element – South Hill	\$7,500/per day during which Substantial Completion is not achieved following the applicable Substantial Completion Deadline up to and including the applicable Project Occupancy Deadline.
Project Element – Elmwood	\$3,000/per day during which Substantial Completion is not achieved following the applicable Substantial Completion Deadline up to and including the applicable Project Occupancy Deadline.
Project Element – Theophilus Tower	\$3,000/per day during which Substantial Completion is not achieved following the applicable Substantial Completion Deadline up to and including the applicable Project Occupancy Deadline.
Project Element – Wallace Residence Center	\$3,000/per day during which Substantial Completion is not achieved following the applicable Substantial Completion Deadline up to and including the applicable Project Occupancy Deadline.

- E. Without limiting Section 20.D, in the event that Substantial Completion of any Project Element will not be achieved by the Project Occupancy Deadline for such Project Element (as such Project Occupancy Deadline may be extended by reason of Excusable Delays and/or University Change Directives), then Developer shall give the University prompt written notice thereof as soon as such fact is determined. In such case, the Developer will be responsible (a) for the costs of acceleration and (b) to provide or arrange for the following services to be furnished to the anticipated residents of such Project Element the Project for the period of such delay and continuing for up to one week after such Project Element of the Project is Substantially Completed to enable residents ample opportunity to move into such Project Element of the Project in an orderly manner (collectively, the “**Temporary Housing Services**”):

- (i) The University will use reasonable efforts to house displaced residents in vacant bedrooms in other similar on-campus housing operated by the University to the extent such vacancies exist (based upon the number of beds for which the available rooms were designed or utilized to meet excess demand or emergencies by the University and other considerations as appropriate, as determined by the University in its sole discretion). The Developer’s obligation to pay costs associated with housing displaced residents in on-campus housing operated by the University shall not exceed \$100/bed per day for the duration of the displacement.
- (ii) The Developer will arrange for the provision of the following services to all remaining displaced residents of the Project who are not housed in vacant bedrooms in the

University's other on-campus housing, all of which will be subject to the University's approval, not to be unreasonably withheld:

- (a) Temporary housing of a quality and condition comparable to housing provided by the University on campus in facilities selected from the list of pre-approved housing facilities attached hereto as **Exhibit 11**;
  - (b) The temporary housing to be provided to displaced residents shall provide: (1) for residents of Project Element – South Hill, for no more than one displaced resident per room in non-smoking rooms and (2) for residents of Project Element – Elmwood, Project Element – Theophilus Tower and Project Element – Wallace Residence Center, for no more than two displaced residents per room in non-smoking rooms;
  - (c) Transportation of displaced residents housed off-campus between their temporary housing facilities to a central location on campus made available seven (7) days a week from 7 a.m. to midnight on weekdays and from 10 a.m. to midnight on weekends including all holidays at frequencies comparable to that offered by the University with respect to similarly situated housing facilities;
  - (d) Relocation services to the displaced residents to and from temporary housing and campus, including the management of the relocation process;
  - (e) To the extent reasonably necessary and not otherwise handled by on-campus security, reasonable security services to displaced residents, subject to the University's approval, not to be unreasonably withheld; and
  - (f) A meal stipend that is equivalent to the daily amount under the University's meal plan for each displaced resident housed in the temporary housing who does not have reasonably convenient access to campus dining or other cooking facilities.
- (iii) At the University's election, the provision of Temporary Housing Services, or any of them, shall be made in the name of the University or Developer, and Developer will cooperate with the University and one another in executing such legal documentation (if any) as is necessary to procure such services.
  - (iv) Developer shall pay for all actual, documented costs of providing the Temporary Housing Services except that Developer shall not be responsible for such costs for any days of delay in the Substantial Completion of any Project Element of the Project beyond the applicable Project Occupancy Deadline primarily caused by an Excusable Delay (provided that Developer provided the requisite notices thereof), or a University Change Directive.
  - (v) Developer shall pay actual, documented costs of providing the Temporary Housing Services for each day of delay in the Substantial Completion of any Project Element beyond the applicable Project Occupancy Deadline to the extent the primary cause of such delay was an event of Force Majeure or a University Delay (for which Developer provided the requisite notices).
  - (vi) The University shall pay all actual, documented costs of providing the Temporary Housing Services for each day of delay in the Substantial Completion of any Project Element of the Project beyond the Project Occupancy Deadline to the extent the primary cause of such



delay was an Event of Default by University, a University Delay (for which Developer provided the requisite notice), or a University Change Directive.

- (vii) The University's costs of providing Temporary Housing Services in the University's other on-campus housing facilities pursuant to Section 20.D above shall be equal to the rates charged by the University to other residents of such other housing facilities, pro-rated for the period of time the displaced residents actually occupy such other housing facilities; provided, however, that the total costs payable to the University for providing Temporary Housing Services pursuant to Section 20.D shall not, in any event, exceed One Hundred and no/100 Dollars (\$100.00) per bed, per day.
- F. For purposes of this Agreement, the Project will be deemed finally complete (“**Finally Complete**” or “**Final Completion**”) when in the University's judgement all Services are fully performed and such respective components of the Project's improvements are:
- (i) Fully completed as required by the Construction Documents (including all punch list items and for avoidance of doubt, any requirements of final completion under the University Design and Construction Standards) and all required final certificates of occupancy are issued.
  - (ii) Fully paid for and free from all liens of Developer, Contractors/Consultants, and Project laborers.
  - (iii) All governmental authorities with jurisdiction, including the State fire marshal, have given their final approval of the Project (including City of Moscow Fire Department design approval).
  - (iv) The Developer has provided a full reconciliation of Project costs that is agreed upon by the Developer and the University.

Developer shall provide written notice to the University when Final Completion has occurred.

- G. Developer shall cause Final Completion to occur within a reasonable time (but in no event more than 90 days) after Substantial Completion (Project).

## **21. Related Contracts; Utility P3 Interface**

- A. Developer shall use commercially reasonable efforts to include in all Project Services Agreements and contracts it executes in connection with the Project an indemnity provision requiring the other contracting party to indemnify and save harmless the University, the State of Idaho and their respective members, designated members, officers, directors, shareholders, agents, and employees from and against all claims, losses, and liability resulting from any damage to, injury to, or death of, people or property caused by, occasioned by, in connection with, or arising out of the performance of the Services or work of that contracting party, its employees, or agents, and from and against all related fees, costs, and attorneys' fees and costs. If any contracting party refuses to agree to incorporate such a provision in its Project Services Agreements, Developer shall obtain the written approval of the University prior to entering into such agreement.
- B. Before allowing any Contractor/Consultant to enter the Project Site to begin any Project work, and for the duration of the Term, Developer shall obtain and deliver to the University, copies of the certificates of insurance as required in Exhibit 8.

- C. The Developer hereby acknowledges the University has granted to Sacyr Plenary Utility Partners Idaho LLC (“SPUPI”) under that certain Long-Term Lease and Concession Agreement for the University of Idaho Utility System (the “**Utility P3 Agreement**”) the right to use, possess, control, operate, manage, modify, maintain, and rehabilitate the subject utility system (generally, University’s campus utility systems), and perform all “Capital Improvements” and “Directives” (as defined under the Utility P3 Agreement).

Upon any determination or allegation that any right of the Developer hereunder infringes upon SPUPI’s specific development rights under the Utility P3 Agreement, the University may require reasonable adjustments to the terms or conditions of this Agreement to rectify the infringement in favor of SPUPI, and the Developer agrees to accede to such adjustments further to its obligations; provided, however, that if any such adjustment materially increases Developer costs actually incurred in connection with the Services or materially effects Developer’s ability to achieve each Substantial Completion Deadline and Project Occupancy Deadline, then the Developer shall be entitled to a proportionate increase to the Stipulated Sum or extension to a Substantial Completion Deadline or Project Occupancy Deadline (as applicable).

The Developer acknowledges that University is solely responsible for approving “Capital Improvements” and “Directives” under the Utility P3 Agreement. The Developer shall not under any circumstance direct or approve work or any other action by SPUPI. The Developer agrees to work in good faith to coordinate the Services with Utility P3 Agreement Capital Improvements and Directives by working through the University.

In the event any failure of the Developer to comply with the requirements of this Agreement, the Plans and Specifications or any design specifications for utility work or any applicable instruction from the University causes the University to incur additional costs or causes the University and/or SPUPI to be delayed in any work under the Utility P3 Agreement under or relating to the Utility P3 Agreement (including any “Delay Events” or “Compensation Events” (as defined in the Utility P3 Agreement)), the Developer shall reimburse any such costs within thirty (30) days of notification thereof (or such costs may be netted against any amount due to Developer in the University’s sole discretion).

The Developer acknowledges the current lines of demarcation set forth in Appendix L to the Utility P3 Agreement and agrees that it will perform all necessary utility work up to such lines of demarcation and that it will not undertake any utility work passed the line of demarcation for work that is set forth as the responsibility of SPUPI set forth therein.

- D. The Developer shall as part of the Services diligently coordinate with SPUPI and any other utility impacted by the Project as necessary to ensure that the Project and the performance of the Services do not negatively impact such utility providers or utility service.

**22. Other University Development; Change Orders**

- A. Other University Development. The University may further develop or improve portions of the University campus not included within the Project as they or any of them may wish, without Developer’s interference or hindrance; provided, however, in no event shall any such development or improvement materially interfere with the development of the Project or limit access by Developer or any Contractor/Consultant, to the Project Site.
- B. Changes. After this Agreement is signed, any modifications to the scope of Project work, the Stipulated Sum, any Substantial Completion Deadline or Project Occupancy Deadline, or the Plans

and Specifications (except as contemplated under Section 2.B, Exhibit 3-B, and Section 22.G), may only be made by a change order executed by the Developer and the University as required by this Section 22 (a “**Change Order**”).

- C. Written Agreement. Each Change Order shall be a written instrument, signed by the Developer and the University, and include the following:
- (i) The scope of the change in the scope of Project work, if any;
  - (ii) The amount of the adjustment, if any, to the Stipulated Sum;
  - (iii) The extent of the adjustment, if any, to any Substantial Completion Deadline or Project Occupancy Deadline; and
  - (iv) Any other material changes to the terms and conditions of this Agreement.

If the Project is thus modified by an approved Change Order, Developer will perform the Project work as changed and record such change in the Construction Documents as needed, and the Parties, as applicable, will consent to and execute any modifications of this Agreement and the Project Services Agreements related to it as may be reasonably required.

- D. University Requested Changes. If University desires a Change Order for Project, University, as applicable, will issue a written request to Developer describing the requested change and the following shall apply:
- (i) Within ten (10) days of receiving such a request, the Developer will provide to the University a written estimate of the impact that the requested change will have on the Stipulated Sum or Substantial Completion Deadline or Project Occupancy Deadline, if any. The Parties will then negotiate in good faith, and as expeditiously as possible, in order to finalize and execute a Change Order. In the event the Parties are unable to reach an agreement with respect to the proposed Change Order within five (5) business days following receipt of the written estimate, then no Change Order shall be issued or executed.
- E. Developer Requested Changes. If the Developer desires or requests a Change Order to the Project, Developer will issue a written request to University that includes the information set forth below.
- (i) The request for a Change Order by Developer will include the following information:
    - (a) The proposed change in any component of Development Costs (if any) and to the Stipulated Sum (with any overhead and profit not to exceed the Allowable Profit and Overhead Mark-Up), if any.
    - (b) The proposed change (if any) to any Substantial Completion Deadline or Project Occupancy Deadline. If the request is for an extension of time, Developer shall provide a critical path schedule indicating any applicable Substantial Completion Deadline or Project Occupancy Deadline before the change, identifying activities impacted by the change and the new Substantial Completion Deadline or Project Occupancy Deadline. Developer shall also provide a recovery plan indicating methods and costs for maintaining the existing Substantial Completion Deadline or Project Occupancy Deadline.

- (c) Supportive information for cost and time including detailed, itemized proposals from all affected Contractors/Consultants. Information shall be broken down into the following components:
    - (i) Labor classification, rate, and hours.
    - (ii) Equipment rate and hours.
    - (iii) Material quantities and costs.
    - (iv) Applicable taxes, insurance, and bond.
    - (v) Credit for work deleted (similarly documented).
    - (vi) Overhead and profit (not to exceed the Allowable Profit and Overhead Mark-Up).
    - (vii) Justification for any change in time, as described above.
  - (ii) The Parties will then negotiate in good faith, and as expeditiously as possible, in order to finalize and execute a Change Order. In the event the Parties are unable to reach an agreement with respect to the proposed Change Order within five (5) business days following receipt of the required information, then no Change Order shall be issued or executed.
  - (iii) If a Developer-requested Change Order results in a net decrease in the cost of any of the Services (including any substitution of equipment and materials) then the Parties shall each take the benefit of 50% of such decrease in costs.
- F. Developer Approval of Change Orders. Developer shall have no obligation to approve Change Orders of any origin unless sufficient funds are available under the Development Budget to pay for such Change Order, or unless the University is able to pay for such Change Order directly.
- G. Non-Material Changes to Plans and Specifications. Notwithstanding Section 22.A, the Developer shall not be required to obtain a Change Order from the University for any non-material changes to the Plans and Specifications. As used in this Section 22.G, a material change to the Plans and Specifications shall be any change that modifies the cost, function/use, quality, or appearance of the Project, or substantially alters any aspect of the Project's engineering.

**23. University Right to Stop Work**

If instructed by the University, the Developer shall immediately cease and desist performance of the Services as instructed by the University and shall not proceed further until the University instructs that the Services shall resume; provided, however, that in the event any such stoppages in excess of an aggregate of ten business days are attributable to University convenience or any University assertion of a breach of this Agreement determined under Dispute resolution to have been in error, the University shall pay the Developer's reasonable, documented, and properly incurred direct costs of attributable to such stoppage.

**24. Developer's Duties in Case of Loss**

- A. Developer shall promptly notify the University of any fire or other damage to the Project or any portion of the Project Site. Developer will arrange for an insurance adjuster to view the Project Site or the Project before the Services commence. Developer may not settle any losses, complete loss reports, adjust losses, or endorse loss drafts without the University's prior written consent.
- B. Developer shall promptly notify University of any personal injury or property damage occurring to the Project or on the Project Site.
- C. The Developer shall repair and restore all property at the Project Site or on any parcel owned by any other Person damaged, lost, or destroyed by any act or omission of the Developer during the Term.

**25. Taxes and Contributions**

- A. Developer has full and exclusive responsibility and liability for withholding and paying, as may be required by law:
  - (i) All federal, state, and local taxes and contributions concerning, assessed against, or measured by:
    - (a) Developer's earnings under this Agreement, or
    - (b) Salaries, other contributions, or benefits paid or made available to anyone employed by Developer in connection with the Services; and
  - (ii) All other taxes and contributions applicable to the Services for which Developer may be responsible.
- B. Developer shall file all returns and reports required in connection with those laws, taxes, contributions, and benefits.
- C. Developer shall assist and cooperate with the University in the University's preparation of federal, state, or local governmental tax or other corporate or non-profit reports or forms, including providing all information and tax forms related to the Project, including any tax forms for Contractors/Consultants; provided that Developer shall be reimbursed for the reasonable and documented costs incurred by Developer in providing such assistance and cooperation.

**26. Ownership of Information and Materials; Confidential Information and the Idaho Public Records Act**

- A. Upon termination of this Agreement, Developer shall deliver to the University all originals of written data and information generated by or for Developer in connection with the Project; provided, however, (i) the University shall have paid to Developer all Development Costs incurred in the development of such data and information in accordance with the terms of this Agreement, and (ii) Developer shall, solely for the purposes of Developer's post-termination obligations and Dispute resolution, be permitted to retain copies of the written data and information generated by or for Developer in connection with the Project. All such data and information are the University's property. Developer shall send all such data and information in electronic form to University. This includes:

- (i) Data and information supplied to Developer by University's contractors or agents;
  - (ii) All drawings, plans, logs, photographs, books, records, contracts, agreements, documents, and writings in Developer's possession or control relating to the Services or the Project; and
  - (iii) Plans, specifications, and drawings (including as-built Construction Drawings) for the Project or any other element of the Project.
- B. The University may use that data and information without further compensation to Developer or any of its Contractors/Consultants and their respective contractors, subcontractors, sub-consultants, agents, employees and their supplying labor, equipment, or material by or through them to the Project.
- C. Following Final Completion of the Project, Developer may use that data and information (except the University's proprietary financial information) in marketing its services to other owners or governmental agencies; provided that the Developer may not share any proprietary information about the Project or the University without the University's prior written consent.
- D. The Developer shall not use the name, trade name, trademark, or other designation of the University, or any contraction, abbreviation, or simulation any of the foregoing, in any advertisement or for any commercial or promotional purpose without the University's prior written consent in each instance.
- E. To the fullest extent permitted by law, (1) all confidential non-public information about University, the Project Site, and various transactions to be undertaken as part of the Project, (2) reports, test results and other documents and data prepared or obtained by or issued to the Developer, or issued by or to or obtained by its Constituents, and all copies thereof, with respect to the condition (including without limitation the environmental condition) of the Project Site, and (3) University's uses and operations of or at the Project Site, and any plans University may have or may hereafter develop for the use, development and operation of the Project Site or the Project (collectively, the "**Confidential Information**"), shall be dealt with by the Developer and its Constituents on a confidential basis, and shall not be disclosed to any third parties, including without limitation any governmental authorities; provided, however, that disclosure of the Confidential Information may be made by the Developer (i) subject to the same obligation of confidentiality, to the Developer's Constituents, (ii) to any governmental authority having jurisdiction if but only to the extent that such disclosure is required by applicable law, and only after prior written notice to University of the requirement of such disclosure and the intent of the Developer to make such disclosure, and (iii) otherwise with the prior written consent of University.

Notices to University under this Section 26.E shall be given at least ten (10) business days prior to the date of intended disclosure unless a shorter period is necessitated by demand of any such governmental authority requiring such disclosure, in which case Developer shall give the maximum prior written notice practicable under the circumstances.

Unless disclosure is required by applicable law, the University shall keep confidential any information obtained from the Developer that constitutes a "trade secret" as defined by applicable law, including Idaho Code § 48-801, as determined by the University in its reasonable discretion. If the Developer seeks to defend an action seeking the disclosure of information that the Developer determines to be confidential pursuant to this Section 26.E, then the University shall use commercially reasonable efforts to cooperate in such action at no out-of-pocket cost to the

University, provided that the University shall not be required to institute any legal action against the requesting party. Notwithstanding anything to the contrary herein, the University may disclose the United States federal tax treatment and tax structure of the Project.

Notwithstanding any contrary provision of this Agreement, in no event shall the University or any of its Constituents be liable to the Developer, any affiliate of the Developer, or any contractor engaged by or on behalf of the Developer or any such affiliate, for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in this Section 26.E if such breach is not the result of gross negligence or intentional misconduct or is required under the provisions of the Idaho Public Records Act or a court order or other legal requirement. The Developer hereby irrevocably waives all claims to any such damages.

**27. Notices; Authorized Representatives**

- A. Whenever under the provisions of this Agreement it will be necessary or desirable for one Party to serve any notice, request, demand, report, notification, or other communication on another Party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by electronic mail and where the electronic mail is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to Developer: [UI DEVCO LLC]  
c/o Gilbane Development Company  
7 Jackson Walkway  
Providence, RI 02903  
Attention: Edward Broderick, President & CEO  
Telephone: [\_\_\_\_\_]   
Email: [\_\_\_\_\_]

With a copy to: Gilbane Development Company  
7 Jackson Walkway  
Providence, RI 02903  
Attention: Molly Stolmeier, General Counsel  
Telephone: 614-493-6155  
Email: mstolmei@gilbaneco.com

If to the University: University of Idaho  
875 Perimeter Dr.  
Moscow, ID 83844  
Attention: [\_\_\_\_\_]   
Telephone: [\_\_\_\_\_]   
Email: [\_\_\_\_\_]

With a copy to: Office of General Counsel  
875 Perimeter Drive, MS 3158  
Moscow, ID 83844-3158  
Telephone: 208-885-6125  
Email: counsel@uidaho.edu

Mailing address or an additional and/or a different person to whom any such notice, request, demand, report, notification, or other communication are thereafter to be addressed. Any notice, request, demand, report, notification, or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by electronic mail will be deemed delivered on the date of receipt as shown on the received electronic mail (provided, that the original is thereafter delivered as provided aforesaid).

B. Each of the Developer and University hereby designates the following individuals as its initial, respective "Authorized Representatives" to administer this Agreement on its respective behalf:

(i) For the Developer: Geoff Eisenacher

(ii) For University: Raymond Pankopf

The Authorized Representatives will be reasonably available to each other during the Term and will have the authority to issue instructions and other communications on behalf of the Developer and University, respectively, and will be the recipient of notices and other written communications from the other Party pursuant to this Agreement. However, such Authorized Representatives will not have the authority to make decisions or give instructions binding upon the Developer or University, except to the extent expressly authorized by the Developer or University, as the case may be, in writing. The Parties may designate different Authorized Representatives, by written notice of the identity of and contact information for the new Authorized Representative(s) for the Developer or University, as the case may be.

**28. Non-Discrimination Policy**

A. The Developer shall comply with, and maintain employment policies in a manner consistent with, all applicable laws regarding equal employment opportunity and non-discrimination in employment, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (1990); (viii) the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 *et seq.*; (ix) Idaho Code Sec. 39-41; (x) Idaho Code Sec. 67-6528; and (xi) the Idaho Human Rights Act, Idaho Code Sec. 67-5901 *et seq.*

B. The Developer shall cause all Contractors/Consultants to comply with each of the federal and State laws referenced in this Section 28, and shall include a provision to such effect in each contract entered into with any contractor.

**29. Dispute Resolution**

A. Any Disputes between the Developer and the University shall be resolved as provided in Exhibit 10.



- B. Notwithstanding anything to the contrary, no Party will be required to await the resolution of dispute proceedings regarding the reasons for terminating this Agreement before exercising such Party's termination rights.
- C. Pending final resolution of any Dispute (except a Dispute regarding the cause for terminating this Agreement), the Parties will continue to fulfill their respective obligations under this Agreement.
- D. Each party to a Dispute will bear its own attorneys' fees and costs in any Dispute or litigation arising out of or pertaining to this Agreement, and no Party will seek or accept an award of attorneys' fees or costs, except as otherwise expressly provided herein. The fees and costs of any mediator will be borne equally by each Party.
- E. For avoidance of doubt, in any case where sole discretion is specified with respect to University's consent or decision, such consent or decision will not be subject to the Dispute resolution procedures set forth herein.

**30. Agent for Service of Process; Venue**

- A. If Developer is not a resident of the State of Idaho, is an association or partnership without a member or partner resident in the State of Idaho, or is a foreign corporation, Developer will appoint an agent for service of process in the State of Idaho.
- B. Any action or proceeding against any Party relating in any way to this Agreement may be brought and enforced in the state courts in the State in Latah County, Idaho, and the Developer hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable law, any objection it may have now or here-after have to the laying of venue of any such action or proceeding in such courts and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
- C. Satisfaction of the Dispute resolution procedures set forth in Section 29 will be a condition precedent to instituting a legal action in court; provided, that if University determines, in its sole discretion, that a Dispute involves an issue that poses an immediate and serious threat to the public health, safety and welfare, University will be entitled to take whatever steps it deems appropriate and to initiate litigation of the matter in court without first submitting the Dispute to the Dispute resolution procedures of this Agreement.

**31. Miscellaneous**

- A. Imputation of Actions of MDA Developer and PDA Developer. Without limiting any other provision of this Agreement, the acts or omissions of the Master Developer under the MDA and the PDA Developer under the PDA shall be imputed to the Developer under this Agreement.
- B. Attorneys' Fees.
  - (i) In any lawsuit, arbitration, or injunctive proceeding between the Parties concerning any part of this Agreement or the rights and duties of either Party, the Party prevailing in that matter (as determined by the court or arbitral panel) will be entitled to recover its reasonable attorneys' fees and court costs, to the extent permitted by applicable law. This includes its reasonable attorneys' fees and costs related to any post-judgment collection or enforcement proceedings.

- (ii) Those attorneys' fees and costs will be recoverable separately from and in addition to any other amount included in such judgment.
- C. Independent Contractor. In providing Services, Developer will be an independent contractor of the University, not its employee or agent.
- D. Severability. Each part of this Agreement is intended to be severable. If an arbitration panel or court of competent jurisdiction finds any part of this Agreement to be unenforceable or invalid for any reason, that finding will not invalidate or adversely affect the rest of this Agreement. But if that finding would result in un-just enrichment or extreme hardship to either of the Parties, or make performance of either Party's obligations under this Agreement unreasonable or impossible, the remaining portions of this Agreement may be invalidated or modified, in whole or in part, as determined by the arbitration panel or the court of law.
- E. Waiver; Consents. No consent or waiver to a default may be deemed or construed to be a consent or waiver to any other default.
- F. Governing Law. This Agreement is entered into in the State of Idaho, and is governed by its laws, without regard to its principles of conflicts of laws.
- G. Assignment. The University may assign this Agreement only to an entity or enterprise directly or indirectly under the control of University. This Agreement (and any right accruing hereunder) may not be assigned by the Developer without the prior written consent of the University, in its sole discretion; provided, however, if the Developer proposes to assign this Agreement only to an affiliate controlled by, controlling or under common control with the Developer and having financial resources substantially similar to that of the Developer then such consent shall be in the University's reasonable discretion. Any purported assignment by Developer in violation of the terms of this Section 31 is void ab initio and, in the case of the Developer. "Assignment," in the case of the Developer, includes change of legal form, material change in composition of the members or share/stockholders of the Developer, or material change to those members or share/stockholders that control the management of the Developer or a material aspect of its business, or otherwise the direction or control of the Developer (or any member or share/stockholder of the Developer), in each case, whether by assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, or otherwise.
- H. Modification of Agreement. To be effective, any modification of this Agreement shall be in writing and signed by all Parties. In the event such a modification to this Agreement becomes necessary, the University and the Developer will negotiate in good faith and use good faith efforts with the goal of agreeing upon and executing a subject amendment within a period of no more than forty-five (45) days.
- I. Headings. The headings are inserted for convenience only. They may not affect the construction or meaning of anything in this Agreement.
- J. Interpretation. "Include" and "including" each refers to all other items or matters that could reasonably fall within the broadest possible scope of the general statement, term, or matter appearing before it. All references to Articles, Sections, Paragraphs, Recitals, Preamble, and Exhibits mean designated parts of this Agreement.
- K. Further Assistance. Each Party will execute other documents and take other actions as may be reasonably required by the other Parties to carry out the purposes of this Agreement.

- L. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.
- M. Entire Agreement. This Agreement and its exhibits contain the entire agreement between the Parties concerning its subject matter. No Party nor its agents have made representations or promises concerning this Agreement except as expressly stated in this Agreement. No claim or liability may arise for any representations or promises not expressly stated in this Agreement.
- N. Preservation of Immunity. Nothing in this Agreement is intended or may be construed as a waiver, either express or implied, of any of the immunities, rights, benefits, defenses, or protections provided to the University under governmental or sovereign immunity laws from time to time applicable to the University.
- O. Publicity. The University reserves the right to from time to time make commercially reasonable and non-prejudicial public announcements regarding this Agreement and other aspects of the Project, and to reference the Project in promotional materials and other external materials. The Developer shall not make any public announcement regarding this Agreement without the prior written consent in each instance of University. The Developer will provide prior notice and review to University of any public statement about the Project.
- P. Appropriations. All financial obligations of the University hereunder are payable solely from appropriation of funds from the State of Idaho (which appropriation shall be in the State of Idaho's sole discretion) and from revenues legally available to the University for the ensuing fiscal year for such purposes, and the Developer shall have no other right to receive payment from moneys raised by taxation or state appropriations. The Legislature of the State of Idaho shall not be obligated to make future appropriations for the payment or the performance of any other obligations hereunder.
- Q. Boycott of Israel. Pursuant to Idaho Code Section 67-2346 and 67-2347A, if payments under this Agreement exceed one hundred thousand dollars (\$100,000) and the Developer employs ten or more persons, the Developer is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under its control; or a boycott of any individual or company because the individual or company (i) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (ii) engages in or supports the manufacture, distribution, sale, or use of firearms, as defined in Idaho Code Section 18-3302(2)(d). The terms in this section defined in Idaho Code Section 67-2346 shall have the meaning defined therein.
- R. Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Developer certifies that it is not currently owned or operated by the government of China and will not for the duration of this Agreement be owned or operated by the government of China. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein.
- S. Limitation of Liability. No recourse under or upon any obligation, covenant, or agreement contained in this Agreement, for any claim based thereon, under any judgment obtained against University, by the enforcement of any assessment or penalty or otherwise, by any legal or equitable proceeding by virtue of any constitution, rule of law or equity, or statute or otherwise, or under any other circumstances, under or independent hereof, shall be had against any Constituent, as such, past, present, or future of University, for the payment for or to University or any receiver thereof, of any sum that may be due and unpaid by University under this Agreement or otherwise. Notwithstanding anything in this Agreement to the contrary, no Constituent of the University shall have any personal liability to Developer whatsoever arising under this Agreement, and none of the

assets of such Constituents shall be subject to judgment, foreclosure or seizure by Developer for any matter arising under this Agreement (including because of the execution or attempted execution of this Agreement, or because of any breach of this Agreement).

- T. Maintenance of University 501(c)(3) Status. If any provision of this Agreement may cause the University to lose its status as an Internal Revenue Code Section 501(c)(3) corporation the offending provision(s) shall be modifiable such that the provision(s) will no longer cause the University to lose its 501(c)(3) status (and if removal of the offending provision renders this Agreement no longer viable, the Parties shall negotiate in good faith any further necessary modifications).
- U. Guaranty. The performance of Developer's covenants and obligations under this Agreement shall be guaranteed by Guarantor in accordance with the guaranty by Guarantor in favor of the University, which shall be executed simultaneously with the execution of this Agreement in the form set forth in **Exhibit 15** (the "**Guaranty**"). If the Guarantor does not maintain sufficient assets to fulfill its obligations under the Guaranty, then the University may require the Developer to provide an additional or substitute guarantor of this Agreement. All references to the Guarantor shall also refer to any additional or substitute Guarantor, as applicable.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

**THE REGENTS OF THE  
UNIVERSITY OF IDAHO**

By: \_\_\_\_\_  
Name:  
Title:

**[UI DEVCO LLC]**

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT 1

DEFINED TERMS

1. “**Agreement**” is defined in the Preamble.
2. “**Allowable Profit and Overhead Mark-Up**” means six percent (6%) of the actual, documented, and properly incurred costs of performing the Services.
3. “**Approvals**” is defined in Paragraph A of **Exhibit 4**.
4. “**Architect**” means Design Collective Integrus Architecture.
5. “**Campus**” is defined in the Recitals.
6. “**Change in Law**” means a change of to any applicable law, regulation, or rule (federal, state, or local) as existed on the date of the University’s approval of the Plans and Specifications for any Project Element which change materially impacts the Developer’s performance of the Services with respect to such Project Element.
7. “**Change Order**” is defined in Section 22.B.
8. “**Civil Engineer**” means JUB Engineers.
9. “**Confidential Information**” is defined in Section 26.E.
10. “**Constituents**” means the members, managers, officers, office-holders (public entities or individuals only), directors, share/stockholders, partners, employees, agents, representatives, consultants, attorneys, accountants, contractors, successors, and assigns of any entity.
11. “**Construct**” any derivative thereof, means to develop, improve, install, construct, demolish, renew, restore or perform any other work of similar nature in connection with locating, placing and installing the improvements, equipment or furnishings, comprising the Project.
12. “**Construction Contract**” means, with respect to the Project, the Construction Contract, dated on or about the date of this Agreement, between the Developer, as owner, and General Contractor, as general contractor, pursuant to which the General Contractor has agreed to Construct the Project and any amendments thereto.
13. “**Construction Documents**” means, collectively, this Agreement, the Construction Contract, the Plans and Specifications and any and all contracts entered into by Developer, Architect, or General Contractor for engagement of Contractors/Consultants, materialmen, and laborers from time to time in connection with the Construction of the Project or the provision of materials or labor in respect thereto, and all those other contracts and/or agreements from any Person rendering services or supplying material in connection with the design, acquisition, Construction, furnishing, equipping, and operation of the Project.
14. “**Construction Drawings**” are the drawings, including schematic drawings, design development drawings, and construction drawings, prepared by the Architect, or other Contractor/Consultant, and approved by the University in the manner provided in **Exhibit 4** for the construction of the Project and any changes, modifications, or supplements thereto.

15. “**Contractor/Consultant**” means any company, entity, firm, attorney, person, individual, or advisor (other than the University, Developer, and their employees) that contracts with and is paid by or charges a fee to Developer, the General Contractor, any other Contractor/Consultant, or any number of them, to perform any duties or services (including any Services) relating to Project design, development, demolition, or Construction at any tier. The General Contractor and any Suppliers are Contractors/Consultants.
16. “**County**” means Latah County, Idaho, a political subdivision of the State, and its successors and assigns.
17. “**Critical Path**” means the sequence of activities that must be timely completed in order to complete the next activity in the sequence and ultimately in order to substantially complete the Project on or before the Substantial Completion Deadline.
18. “**Developer**” is defined in the Preamble.
19. “**Developer Default**” is defined in Section 18.C.
20. “**Developer Party**” means any person or entity for whom the Developer may be legally or contractually responsible, and any Constituent(s) of any of the foregoing.
21. “**Development Budget**” means the development budget for the Construction of the Project. The Development Budget as of the date hereof is set forth on Exhibit 6.
22. “**Development Costs**” means all costs and expenses incurred by Developer in connection with the Construction of the Project.
23. “**Development Fee**” means \$6,400,000.
24. “**Dispute**” means any dispute between the Parties concerning their respective rights and obligations under this Agreement.
25. “**Draw**” is defined in Section 9.
26. “**Draw Requests**” are defined in Section 9.
27. “**Early Construction Work Agreement**” is defined in the Recitals.
28. “**Effective Date**” is defined in the Preamble.
29. “**Emergency**” is defined in Section 5.B.
30. “**Environmental Laws**” are defined in Section 14.C.
31. “**Excusable Delay**” means any delays in the development or Construction of the Project as the result of (a) Force Majeure, (b) a University Delay, (c) an Unforeseen Site Condition or (d) a Change in Law.
32. “**Finally Complete**” and “**Final Completion**” are defined in Section 20.F.
33. “**Force Majeure**” is defined in Section 18.A.

34. “**General Contractor**” means Lydig Construction, and its successors and assigns or any other Person who has undertaken responsibility for all or any portion of the Construction of the Project.
35. “**Good Industry Practice**” means a professional standard of care and expertise normally employed by development firms performing similar services in conformance with (i) all professional construction and engineering judgement and practices, and generally accepted as standards of the industry in the State, and (ii) applicable law and governmental approvals.
36. “**Guarantor**” means Gilbane Development Company.
37. “**Guaranty**” is defined in Section 31.U.
38. “**Hazardous Materials**” are defined in Section 14.B.
39. “**Liquidated Damages**” are defined in Section 20.D.
40. “**Master Developer**” is defined in the Recitals.
41. “**MDA**” is defined in the Recitals.
42. “**Monthly Progress Reports**” is defined in Paragraph J of Exhibit 4.
43. “**Party**” and “**Parties**” are defined in the Preamble.
44. “**PDA**” is defined in the Recitals.
45. “**PDA Developer**” means UI DEVCO LLC in its capacity as “PDA Developer” under the PDA.
46. “**Performance and Payment Bonds**” means the performance bond and payment bond for the Project required by this Agreement, the forms of which are shown in Exhibit 9.
47. “**Person**” means natural persons, firms, joint ventures, associations, trusts, partnerships, corporations, limited liability companies, public bodies, and similar entities.
48. “**Plans and Specifications**” means the detailed plans and specifications for the acquisition, construction of the Project fully identifying and describing all mechanical, electrical, and plumbing systems, materials, signage, design, colors of exterior paints, and other finishes prepared by or on behalf of the Architect, as may be updated pursuant to the submittal requirements of Exhibit 3-B and otherwise amended from time to time with the consent of University. The Plans and Specifications accepted by the University as of the Effective Date are referenced in Exhibit 3-A.
49. “**Project**” is defined in in the Recitals.
50. “**Project Development Account**” is defined in Section 8.A.
51. “**Project Element**” is defined in the Recitals.
52. “**Project Element – Elmwood**” is defined in the Recitals.
53. “**Project Element – South Hill**” is defined in the Recitals.
54. “**Project Element – Theophilus Tower**” is defined in the Recitals.



55. “**Project Element – Wallace Residence Center**” is defined in the Recitals.
56. “**Project Occupancy Deadline**” means:
- (a) Project Element – South Hill: [\_\_\_\_], 202[ ];
  - (b) Project Element – Elmwood: [\_\_\_\_], 202[ ];
  - (c) Project Element – Theophilus Tower: [\_\_\_\_], 202[ ]; and
  - (d) Project Element – Wallace Residence Center: [\_\_\_\_], 202[ ].<sup>3</sup>
57. “**Project Schedule**” means a schedule prepared and updated by Developer. It represents the best current estimate of the timetable required to complete the Project. The initial Project Schedule accepted by the University is attached as **Exhibit 7-A**.
58. “**Project Schedule of Values**” means a detailed schedule of values for all activities related to the performance of the Work. The initial Project Schedule of Values accepted by the University is attached as **Exhibit 7-B**.
59. “**Project Services Agreements**” is defined in Paragraph B of **Exhibit 4**.
60. “**Project Site**” is defined in the Recitals.
61. “**RFI**” means a request for information or clarification of the Construction Drawings.
62. “**RFP**” is defined in the Recitals.
63. “**Services**” means the development and construction management services described in **Exhibit 4**.
64. “**Site Logistics and Safety Plan**” means the Site Logistics and Safety Plan provided by the Developer and approved by the University and included as **Exhibit 12**.
65. “**SPUPI**” is defined in Section 21.C.
66. “**State**” means the State of Idaho.
67. “**Stipulated Sum**” means the stipulated sum for the performance of the Services and delivery of a Finally Complete Project, as the same may change from time to time as permitted herein. The Stipulated Sum as of the date hereof is set forth on **Exhibit 6**.
68. “**Substantially Complete**” and “**Substantial Completion**” is defined in Section 20.A.
69. “**Substantial Completion (Project)**” means Substantial Completion of each Project Element.
70. “**Substantial Completion Deadline**” means:
- (a) Project Element – Elmwood: [\_\_\_\_], 202[ ];

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<sup>3</sup> Deadlines being finalized; anticipated to be the week of normal UI move in.

- (b) Project Element – South Hill: [\_\_\_\_], 202[ ];
- (c) Project Element – Theophilus Tower: [\_\_\_\_], 202[ ]; and
- (d) Project Element – Wallace Residence Center: [\_\_\_\_], 202[ ].<sup>4</sup>
71. “**Suppliers**” means suppliers of materials to the Project, each of whom shall be selected by Developer.
72. “**Temporary Housing Services**” is defined in Section 20.D.
73. “**Term**” is defined in Section 4.
74. “**Termination for Convenience**” is defined in Section 19.B.
75. “**Termination Date**” means the date that is twelve (12) months after Final Completion.
76. “**Uncured Developer Default**” is defined in Section 18.C.
77. “**Uncured Developer Default Termination**” is defined in Section 19.A.
78. “**Uncured University Default**” is defined in Section 18.E.
79. “**Uncured University Default Termination**” is defined in Section 19.C.
80. “**University**” is defined in the Preamble.
81. “**University Change Directive**” shall mean a Change Order initially requested and finally approved by the University in accordance with Section 22.
82. “**University Default**” is defined in Section 18.E.
83. “**University Delay**” means any delay to the Critical Path of the initial Construction of the Project to the extent caused by the University (excluding delays consistent with the established timeframes for the University to conduct reviews and/or grant or deny discretionary approvals), including without limitation as a result of the University’s failure to comply with the terms of this Agreement, or the failure of the University to timely deliver possession and control of the Project Site in accordance with the terms of this Agreement. Notwithstanding the foregoing, no University Delay shall be deemed to have occurred unless and until Developer has provided written notice of such delay to the University. The Parties shall exert reasonable efforts to mitigate the cost and time impacts of any University Delay. University Delay shall not include any good faith Dispute by University with the Developer over the approval of a Draw Request or payment of a Development Cost, until such Dispute has been resolved, and thereafter University refuses to approve the Draw Request or the payment of such Development Cost. Upon agreement by the parties (or determination via Dispute resolution) that a University Delay has occurred, the Parties shall determine any applicable compensation or relief in accordance with the Change Order process set forth in Section 22.

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<sup>4</sup> Deadlines being finalized.

84. “**University Design and Construction Standards**” means the [\_\_\_\_\_] included as **Exhibit 16**.
85. “**University Indemnitee**” means University, the State, and their respective employees, officeholders, and other Constituents.
86. “**Utility P3 Agreement**” is defined in Section 21.C.

**EXHIBIT 2-A  
THE PROJECT SITE**

[see attached]

**EXHIBIT 2-B  
THE PROJECT**

**EXHIBIT 3-A**

**PLANS AND SPECIFICATIONS ACCEPTED AS OF EFFECTIVE DATE**

[see attached]

**EXHIBIT 3-B**

**REQUIRED POST-EFFECTIVE DATE PLANS AND SPECIFICATIONS SUBMITTALS**

<b>Submittal</b>	<b>Submittal Requirements</b>	<b>Submittal Deadline</b>

**EXHIBIT 4**

**THE SERVICES**

The Services include all design, development and Construction work and services required or necessary to complete the Project, as well as other services customarily and reasonably within the general scope of such services and responsibilities.

Among other things, the Services include the following:

- A. Obtain and pay for, as a Development Cost, all necessary land use approvals, environmental approvals, approvals of historical renovation (if any) and new construction in protected historical areas (if any); entitlements; and building and other permits and licenses for the lawful Construction, use, and operation of the Project (collectively, the “**Approvals**”), and:
  - 1. Represent the University as might be required with the City of Moscow, the County, and other governmental and historical (if any) agencies and bodies;
  - 2. Execute documents directly related to the development of the Project that are approved by the Developer and the University; and coordinate with the General Contractor any changes required by those documents.
- B. Execute all agreements, purchase orders, amendments, and supplements related to Project design, development, and Construction;
  - 1. These include all survey, architectural, environmental, geotechnical, and other testing or consulting service agreements, Contractors/Consultants agreements, the Construction Contract, and all other agreements, amendments, and supplements for the furnishing of services, supplies, materials, machinery, or equipment required for Project design, development and Construction (collectively, the “**Project Services Agreements**”).
- C. The Project Services Agreements shall be consistent with this Agreement and the Development Budget, as amended.
- D. Oversee and coordinate the General Contractor’s services and activities in developing the Construction Documents, and all related submissions to any governmental or historical (if any) agencies or bodies.
- E. Submit all Construction Documents and related design specifications to the University to the extent required by this Agreement, for approval and obtain such approval at least five business days before releasing such documents for Construction.
- F. Provide oversight and direction to the Architect in developing the design and function of the Project and specifications for systems, equipment and materials required for the use and operation of the Project.
- G. Require the General Contractor to obtain bids from qualified Contractors/Consultants in accordance with the Project Schedule, Development Budget, and Plans and Specifications.
- H. Negotiate and execute the Construction Contract.
- I. Diligently oversee and monitor the General Contractor’s Construction so as to keep Project design, development and Construction costs within the Development Budget. Provide value-engineering services and assistance to University.



- J. Establish and implement appropriate administrative and financial controls for Project design, development, and Construction, including:
1. Facilitate, oversee and coordinate, and work with the General Contractor, Contractors/Consultants, environmental consultants, professionals, and lawyers, employed or retained in connection with Project design, development, and Construction;
  2. Administer the Project Services Agreements in connection with or relating to Project design, development, and Construction;
  3. Keep the University informed of Project progress by, not later than twenty (20) days after the end of each month, including the month in which Final Completion occurs, providing a report to the University (the “**Monthly Progress Report**”) reflecting the following information: (i) construction progress reports reflecting budget to actual reconciliations, percent completion of each construction line item together with narrative explaining any variance to budget and schedule delays; (ii) an updated Project Schedule along with reports as to compliance or noncompliance with the Project Schedule, including estimated four-week look-aheads; (iii) any recovery schedules if in noncompliance with the Project Schedule; (iv) budget to actual itemization of each component line item in the Development Budget; (v) any Change Orders proposed, under review, accepted, and denied including funding source(s) for such Change Orders; (vi) a narrative summary of construction progress with corresponding photos; and (vii) other information reasonably requested by University;
  4. Provide the University with copies of all material documents and correspondence provided to or generated by Developer in connection with the performance of the Construction Documents, including those related to the satisfaction of the items in the Project Schedule; and
  5. Provide the University each iteration of the Project Schedule using the most current version of either Primavera Project Planner (P3) for Windows or Microsoft Project or, with prior approval of the owner, comparable alternate scheduling software. Scheduling software must be capable of importing/exporting data without degradation to/from the most current version P3 for Windows, including but not limited to, scheduling logic/sequencing, activities, durations, cost loading, etc. The scheduling software must support the following logic relationships: finish to start (FS), finish to finish (FF), start to start (SS) and start to finish (SF) with support for lead/lag. The scheduling software must support resource and cost loading. The scheduling software should be capable of electronically exporting data to an external Excel or comma-separated value file.
- K. Verify services, work, equipment, materials, and labor used on the Project so that Developer will have a reasonable basis:
1. To approve or disapprove requests for payment made by the General Contractor, Contractors/Consultants, and any other parties with respect to Project design, development, demolition, or Construction; and
  2. To determine that the Project is being designed, Constructed, and completed in accordance with this Agreement and the Construction Documents or, if Construction is not being so completed, to promptly notify the University.

- L. As needed, attend job meetings and conferences required by this Agreement or called by the General Contractor or the University. Such meetings shall occur biweekly unless otherwise needed or required and scheduled with agreement of the Parties.
- M. Review the results of, and inform the University of actions needed to address inspections made by the General Contractor, Contractors/Consultants, or any governmental or historical (if any) agencies or bodies.
- N. Prepare, file, and execute (on the University's behalf if and as appropriate), any notices of commencement and completion required or permitted to be filed on completion of the Project. Act as needed to obtain any certificates of occupancy or equivalent documents required for the occupancy of Project improvements (and provide copies to University as required or requested).
- O. Following Substantial Completion (Project), coordinate the compilation of all as-built Construction Drawings and specifications for the Project, and operating and maintenance manuals for all applicable aspects of the Project. Deliver to the University two (2) sets of as-built Construction Drawings (with one of them in reproducible form), plus one electronic copy of as-built Construction Drawings. Prepare necessary punch list items (subject to University acceptance), defect notices, or warranty claims.
- P. Process and complete any punch list items, defect notices, or warranty claims.
- Q. Provide the following services:
  - 1. Regularly observe and record all significant development and Construction-related activities at the Project Site;
  - 2. Monitor contractual requirements of Contractors/Consultants and other parties with whom Developer has contracted in connection with Project development, demolition, and Construction. Notify the University in writing in the event that any such requirements are not being met;
  - 3. Use diligent efforts to maintain a cooperative environment among the General Contractor and Contractors/Consultants;
  - 4. Use diligent efforts to have the General Contractor maintain on a current basis a daily written log or diary to record job conditions. This will be available to Developer and the University for review and copying upon request. The log will include daily weather conditions, a list of important visitors or officials to the Project Site, and daily progress and activities on the Project Site;
  - 5. Use diligent efforts to have the General Contractor keep, on behalf of the General Contractor and Developer, available for inspection by the University at any time, upon reasonable prior written notice to the Developer, a complete set of all Construction Documents, including all Change Orders, supplementary drawings, current as-built Construction Drawings, clarifications, contracts, and purchase orders with Contractors/Consultants;
  - 6. Direct the General Contractor to use best practices to expedite the timely processing and approval of shop drawings;
  - 7. Use diligent efforts to have the General Contractor maintain on a current basis a log of approvals of RFIs, submittals, and shop drawings to make sure all such terms and drawings

have been properly approved by the Architect or Developer before starting related work. (Developer has authority to approve all submittals, shop drawings, samples, and substitutions that are in conformance with, or are greater or equivalent to, those contained in the Construction Documents.);

8. Use diligent efforts to have the General Contractor receive material samples furnished at the Project Site by Contractors/Consultants, record the date the samples (or copies) are received and from whom, and notify the University (where applicable) of the availability of the samples for examination. (Developer shall use diligent efforts to have the General Contractor record in a log the approval or rejection of samples, and have the General Contractor maintain custody of copies of approved samples.);
  9. Direct the General Contractor to review and approve RFIs as necessary, and see that proper clarifications are issued, with all clarifications noted in the RFI log;
  10. Attend all Construction meetings and conferences and require General Contractor to have the General Contractor's construction manager prepare complete and accurate minutes for all such meetings and issue them to all parties who attended or as the University may direct;
  11. Subject to the requirements of the Agreement, use reasonably diligent efforts to coordinate the processing of any Change Orders and submissions to the University for approval, if and to the extent required;
  12. Perform periodic Project Site supervision and observations of Project work in progress as a basis for determining conformance of such work and any materials and equipment with the Construction Documents. Report any defective work or deficiencies to the University and the General Contractor. Use diligent efforts to implement procedures to facilitate and assure such deficiencies are cured on as timely a basis as is possible;
  13. Verify and confirm the progress of the Project work and the amounts requested by the General Contractor for payment; and
  14. Review and report to the University concerning any Change Orders and their cost.
- R. Work with the University, and other parties as necessary, to prepare and negotiate such contracts, easements, licenses and other agreements as are necessary or desirable for the provision of water, sewer, gas, electric, telephone, cable television, internet, and other utilities, in capacities adequate for the development and use of the Project for its intended purposes. Developer shall receive the approval of the University prior to executing such agreements. Developer shall not enter into, execute or deliver any agreement, document or undertaking, or incur any obligation in the name, on the credit, or on behalf of University except as expressly authorized by this Agreement or separate written communication.
- S. Any work under the Early Construction Work Agreement not-yet-completed as of the Effective Date (except as otherwise expressly set forth in the Plans and Specifications).

**EXHIBIT 5**

**DUE DILIGENCE REQUIREMENTS**

*[TO COME FROM UNIVERSITY]*

**EXHIBIT 6**

**DEVELOPMENT BUDGET**

*[GILBANE TO PROVIDE STANDARD OUTPUT TABLE]*

**EXHIBIT 7-A  
INITIAL PROJECT SCHEDULE**

[see attached]

**EXHIBIT 7-B**

**INITIAL PROJECT SCHEDULE OF VALUES**

[see attached]

**EXHIBIT 8**

**INSURANCE**

1. Developer shall, at no cost to the University, provide and maintain, or cause to be provided by the General Contractor, the Architect, and its other Contractors/Consultants, and maintained in force, with responsible companies rated A-VIII or better by A.M. Best and permitted to conduct the business of insurance in the State of Idaho, the following minimum insurance coverages:
  - (a) Workers' Compensation insurance shall be provided as required by any applicable law or regulation.
  - (b) Employers' Liability insurance shall be provided in amounts not less than:
    - (i) One Million Dollars (\$1,000,000) each accident for bodily injury by accident.
    - (ii) One Million Dollars (\$1,000,000) policy limit for bodily injury by disease.
    - (iii) One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
  - (c) Developer shall carry "Commercial General Liability Insurance (Occurrence form)" or its equivalent covering all operations by or on behalf of Developer providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
    - (i) Premises and operations;
    - (ii) Products and completed operations;
    - (iii) Contractual liability;
    - (iv) Broad form property damage (including completed operations);
    - (v) Explosion, collapse and underground hazards; and
    - (vi) Personal injury liability.

[Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit, where applicable, shall apply separately on a per project basis to Developer's services under this Agreement.]<sup>5</sup>

Developer shall not provide general liability insurance under any manuscript form, "Commercial General Liability Claims Made form", or the "Modified Occurrence form" without the prior express written consent of University.

Developer shall carry an "Occurrence form" commercial general liability policy, the limits of liability shall not be less than:

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<sup>5</sup> Pending final review by UI Risk Management.



- (i) One Million Dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
  - (ii) One Million Dollars (\$1,000,000) for personal injury liability;
  - (iii) Two Million Dollars (\$2,000,000) aggregate for products-completed operations;
  - (iv) Two Million Dollars (\$2,000,000) general aggregate; and
  - (v) Twenty-Five Million (\$25,000,000) commercial umbrella (per occurrence/aggregate).
- (d) Developer shall carry automobile liability insurance, including coverage for all owned (if any), leased, hired, and non-owned automobiles. The limits of liability shall be not less than One Million Dollars (\$1,000,000) combined single limit each accident for bodily injury and property damage.
- (e) Developer shall cause the General Contractor, the Architect, and the Civil Engineer to procure and maintain professional liability insurance policies with a limit of liability of not less than Three Million Dollars (\$3,000,000) per claim and Five Million Dollars (\$5,000,000) in the aggregate annually, unless a lower limit is agreed to by University in writing. Developer shall cause the General Contractor, the Architect, and the Civil Engineer to continue to maintain professional liability insurance policies with limits of liability not less than those set forth in the preceding sentence through “final completion,” “final acceptance”, or the equivalent concept under the Agreement, and, if commercially available, thereafter for a period of ten (10) years from “substantial completion” of the Project or the applicable statutes of repose and limitations or equivalent concept under the Agreement. All professional liability insurance policies shall have a retroactive date of placement prior to or coinciding with the commencement of any services under this Agreement. All professional liability insurance policies shall provide coverage against loss or liability arising out of negligent errors or omissions of the General Contractor, the Architect, and the Civil Engineer in performing its contractual and professional obligations or subsequent alteration or work of improvement and shall include such endorsements as reasonably required by University. All professional liability insurance policies shall not contain any limitation or exclusion based upon the type or use of the structure or building. Developer shall require in its agreements with the General Contractor, the Architect and the civil engineer to furnish Developer with written notice concerning of any claims paid under any professional liability insurance policies, and a reduction of the aggregate and such notice shall be furnished by the Developer to the University with reasonable promptness.
2. Developer shall cause all of its major/significant Contractors/Consultants to maintain at all times during their work on the Project all of the insurance required of Developer under Section 1(a) through Section 1(d) of this Exhibit 8. Only the Design Builder and any other major/significant Contractors/Consultants hired directly or indirectly to perform professional design services for this Agreement shall be required to maintain the insurance required of Developer under Section 2 of this Exhibit 8. Notwithstanding anything contained herein to the contrary, the lead Architect shall be required to maintain Professional (Errors & Omissions) Liability Insurance with minimum limits of \$5,000,000 for each claim and \$5,000,000 in the aggregate.

3. The Commercial General Liability and Umbrella Excess Liability policies shall include contractual liability coverage to cover the insurable liabilities assumed by Developer under this Agreement, subject to standard policy stipulations. The cost of all insurance required under this Agreement is agreed to be included in the Stipulated Sum.
4. University and each of its affiliates, subsidiaries, partners, members, officers, directors, and employees shall be included as additional insureds under all policies required under this Agreement with the exception of the workers' compensation policy and the professional liability policy. All insurance required by this Agreement shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by University, its officers, directors and employees will be excess only and will not contribute with this insurance. The additional insured endorsements shall be issued on a combination of Endorsement ISO form CG 2010 (10/03) or its equivalent as respects ongoing operations and CG 2037 (10/01), or its equivalent, as respects completed operations. All such endorsements shall provide that such insurance shall be primary and non-contributory and not excess or contributory to any other insurance maintained by such additional insureds. The General Liability policy that is endorsed to include these additional insured endorsements shall be maintained through "final completion," "final acceptance," or the equivalent concept under the Agreement, for a period of ten (10) years from "substantial completion" of the Project or the applicable statutes of repose and limitations with certificates furnished for ten (10) years following completion of the Project. A waiver of subrogation by endorsement in favor of University shall apply to each such policy.
5. Additional insured endorsements and primary wording as evidence of the insurance required by this Agreement, shall be furnished by Developer to University before any work hereunder is commenced by Developer or within ten (10) days of the Effective Date, whichever is earlier. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days' (ten (10) days' for non-payment of premium) prior written notice to University and shall have the following wording under "Description of Operations": "All certificates must carry a thirty (30) day cancellation notification." The certificates of insurance shall show all companies affording coverage and shall use the legal name of the Developer as named insured on each policy. At University's request, Developer shall provide to University a complete certified copy of each insurance policy or renewal policy obtained by Developer as required under this Agreement.
6. Developer shall bear all costs of all deductibles and shall be held responsible for any and all damages as may result from the failure of Developer to exercise its responsibilities as defined under this Agreement.
7. The Developer, on behalf of University, shall purchase and maintain or cause to be purchased and maintained builder's risk property insurance for the Project based upon the replacement cost at the time of loss. Such insurance shall include the interests of the University, and all subcontractors in the work and include coverage for Soft Costs, Business Income, Transit, Offsite Storage, Equipment Breakdown, Flood, Earthquake, Wind, and Debris Removal subject to commercially reasonable sublimits and deductibles.
8. The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for Developer for acts or omissions of it and its Contractors/Consultants and representatives who may be engaged in performing any Services or activities under or in connection with this Agreement.

9. Developer shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required of Developer under this Agreement. In the event Developer neglects, refuses, or fails to provide or maintain any of the insurance required under this Agreement or if such insurance is canceled, ceases, or expires for any reason, the University shall have the right, but not the duty, to procure or maintain the same. In the event University does procure or maintain such insurance, University shall have, in addition to any and all other available remedies, the right to recover from Developer (including the right of set-off against sums otherwise due Developer) all of the costs associated with procuring or maintaining such insurance.
10. No insurance policy shall include any cross suits exclusion related to claims between named insured, between named insured(s) and additional insured(s) or between additional insureds.
11. The University may require Developer at any time, and from time to time, during the Term of this Agreement, to obtain and maintain in force additional insurance with coverage or limits in addition to those above-described. The additional premium cost of any such additional insurance required by the University, however, shall be borne by the University and Developer shall arrange to have such costs billed separately and directly to the University by the insuring carrier or carriers.
12. The University may purchase and maintain such other insurance as it may deem appropriate. No purchase of any insurance by the University shall in any way be deemed to alter or amend the rights or responsibilities of Developer under this Agreement.
13. It is agreed that the University will be held harmless by Developer for any loss or damage to sheds, tools, equipment, property, and materials of Developer, Contractors/Consultants, and their servants and employees, it being understood that Developer may at its own expense carry any insurance which may be required to provide the necessary protection against such loss or damage.
14. It is understood that all of the foregoing provisions requiring Developer to carry insurance shall not be construed as in any manner waiving or restricting the liability of Developer as to any obligations imposed under this Agreement.

**EXHIBIT 9**

**PERFORMANCE BOND AND PAYMENT BOND**

[see attached]

**EXHIBIT 10**

**DISPUTE RESOLUTION**

1. University and the Developer will attempt to resolve any Disputes at the Project level through good faith negotiations between the Parties' respective Authorized Representatives.
2. If the Dispute cannot be resolved at the Project level in accordance with subsection 1 above within ten (10) days following notice of a Dispute, then following such process, either Party may request non-binding mediation of the Dispute or any other form of alternative dispute resolution process that is mutually acceptable to both Parties. If the Dispute has not been resolved within sixty (60) days after the initiation of mediation proceedings or, if both Parties do not agree to mediation or another form of alternative Dispute resolution process, then either Party will have the right to pursue such remedies as available at law and in equity (subject in all respects to I.C. § 5-216). The first meeting between the mediator and both Parties will be deemed to be the initiation of mediation.
3. Any of the time periods specified in this Exhibit 10 may be extended by mutual written agreement of the Parties.
4. In any case where sole discretion is specified with respect to University's consent or decision, such consent or decision will not be subject to the Dispute resolution procedures set forth herein.

**EXHIBIT 11**

**PRE-APPROVED HOUSING FACILITIES**

[see attached]

**EXHIBIT 12**

**SITE LOGISTICS AND SAFETY PLAN**

[see attached]

**EXHIBIT 13**

**FORM OF APPLICATION FOR PAYMENT**

[see attached]



**EXHIBIT 14**

**DEVELOPMENT FEE PAYMENTS**

<b>Development Fee</b>	<b>Payment Timing</b>
\$[ ] <sup>6</sup>	Within fifteen (15) days of the Effective Date.
\$[ ] <sup>7</sup>	Upon Substantial Completion of Project Element – South Hill
\$[ ] <sup>8</sup>	Upon Final Completion of Project Element – South Hill
\$[ ] <sup>9</sup> (prorated by phase, depending on the renovation cost by phase)	Upon Substantial Completion of the renovation of Project Element – Elmwood, Project Element – Theophilus Tower and Project Element – Wallace Residence Center
\$[ ] <sup>10</sup> (prorated by phase, depending on the renovation cost by phase)	Upon Final Completion of the renovation of Project Element – Elmwood, Project Element – Theophilus Tower and Project Element – Wallace Residence Center

<sup>6</sup> \$ to reflect 50% of the overall Development Fee (\$6,400,000).

<sup>7</sup> \$ to reflect 20% of the overall Development Fee (\$6,400,000).

<sup>8</sup> \$ to reflect 10% of the overall Development Fee (\$6,400,000).

<sup>9</sup> \$ to reflect 15% of the overall Development Fee (\$6,400,000).

<sup>10</sup> \$ to reflect 5% of the overall Development Fee (\$6,400,000).

**EXHIBIT 15  
FORM OF GUARANTY**

**AGREEMENT**

This Guaranty Agreement (“Guaranty”) is made as of \_\_\_\_\_, 202\_ by GILBANE DEVELOPMENT COMPANY, a Rhode Island corporation (“Guarantor”) of 7 Jackson Walkway, Providence, Rhode Island, 02903 in favor of [THE REGENTS OF THE UNIVERSITY OF IDAHO] (“University”) of 875 Perimeter Drive, Moscow, Idaho 83844.

**RECITALS:**

A. The University operates the University of Idaho, a public university, with its main campus located in the City of Moscow, State of Idaho (“Campus”) and is the fee simple title owner of the Campus.

B. The University approved public-private partnership projects (each, a “Project” and collectively, the “Projects”) for the design, development, renovation, construction and/or demolition of certain on-campus student housing residence halls and other housing facilities located on the Campus (collectively, the “Student Housing Facilities”).

C. On or about the even date herewith, the University and UI DEVCO, LLC, an Idaho limited liability company (“Developer”) entered into a Project Development Agreement (“Agreement”) pursuant to which the University has retained Developer to renovate and redevelop the Project (as defined in the Agreement) pursuant to the terms of the Agreement.

D. To induce University to enter into the Agreement, Guarantor agrees to guarantee to University the performance of Developer’s obligations under the Agreement in accordance with the terms of this Guaranty.

NOW, THEREFORE, Guarantor agrees as follows:

1. **Guarantee.** In consideration of University entering into the Agreement with Developer, Guarantor, subject to the limitations set forth in Section 3 below, irrevocably and unconditionally guarantees to University (i) the due, proper, full and punctual payment by Developer of each and all of Developer’s liabilities and payment obligations under the Agreement when they or any part of them become due and owing according to the terms of the Agreement (the “Payment Obligations”); and (ii) performance of Developer’s obligations to renovate and redevelop the Project (as defined in the Agreement) and to otherwise complete the Project in accordance with all requirements of the Agreement and with all applicable laws, rules, permits, requirements and regulations of any governmental authority having jurisdiction over the Project (the “Performance Obligations” and together with the Payment Obligations referred to herein as collectively, the “Guaranteed Obligations”). If and whenever Developer defaults for any reason whatsoever in the payment or satisfaction of any of the Guaranteed Obligations, Guarantor shall forthwith upon written demand by University unconditionally satisfy (or procure the satisfaction of) the Guaranteed Obligations in regard to which such default has been made as if the Guarantor instead of Developer were expressed to be primary obligor of the Agreement and not merely as surety (but without affecting Developer’s obligations) in the manner prescribed by the Agreement and so that the same benefits shall be conferred on University as it would have received if the Guaranteed Obligations had been satisfied by Developer.

2. **Continuing Obligations.** Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity or enforceability of the Agreement or any provision thereof or the absence of any action to enforce the same or the waiver or consent by University or any time or indulgence granted to Developer by Contractor in respect of any provisions of the same, or any action to enforce the same or any other circumstance that might otherwise constitute a legal discharge or defense of Developer. Guarantor hereby waives any right to require proceedings first against Developer with respect

to the Agreement or the obligations set forth therein and hereby covenants that this Guaranty is to be a continuing guarantee and accordingly is to remain in force notwithstanding any act, omission, neglect, event or matter whatsoever until all Guaranteed Obligations shall have been satisfied. This Guaranty is in addition to and without prejudice to and not in substitution for any rights or security which University may now or hereafter have or hold for the performance and observance of the Guaranteed Obligations. Guarantor agrees that University shall not be obliged to take any action or exhaust its recourse against any other guarantor, any other person or any collateral security that University may hold from time to time before requiring or being entitled to performance of the Guaranteed Obligations.

3. Limitation of Guaranty. Notwithstanding anything in this Guaranty to the contrary, the aggregate amount covered by this Guaranty shall not exceed the amount of the then-remaining Stipulated Sum.

4. Preservation of Rights. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Developer is or may be entitled, relating to or arising from or out of the Agreement or otherwise, except for defenses relating to, arising from or out of the bankruptcy, insolvency, dissolution or liquidation of Developer.

5. Enforceability. Guarantor's obligations and liability under this Guaranty will remain in full force and effect and are not to be discharged, released or reduced in any way by reason of (i) any variation to or amendment of the Agreement, (ii) any provision of the Agreement being or becoming illegal, invalid, void or unenforceable, (iii) any assignment of the Agreement to another affiliate of Guarantor, (iv) any termination of the Agreement, or (v) the loss of capacity or Developer, by any change in the name of Developer or in the objects, capital structure or constitution of Developer, or by the sale of Developer's business or any part thereof, or by Developer being merged with another company or companies.

6. Payments. Guarantor shall have thirty (30) days from the date of receipt of written demand to make payment in full to University of any amount owing in accordance with this Guaranty.

7. Notices. In the event University makes a demand upon Guarantor with respect to any of the Guaranteed Obligations, University shall promptly provide notice and reasonable detail regarding such claim to the Guarantor. Any notice or other communication in connection with this Guaranty (each a "Notice") shall be in writing and shall not be effective unless same shall be given or served as provided herein and addressed as follows:

To the Guarantor to:

Gilbane Development Company  
7 Jackson Walkway  
Providence, RI 02903  
Attention: Edward Broderick, President & CEO  
Email: \_\_\_\_\_

with a copy to:

Gilbane Development Company  
7 Jackson Walkway  
Providence, Rhode Island 02903  
Attention: Molly Stolmeier, General Counsel  
Email: mstolmeier@gilbaneco.com

or at such other address or addresses as Guarantor may from time to time designate by written notice given to University. Every notice, demand, direction, approval, request or other communication hereunder shall be (a) personally served, (b) sent by recognized overnight delivery service, or (c) sent by e-mail, provided that notice by e-mail shall be promptly supplemented by delivery of notice as provided in (b) above. Any such notice, demand, direction, approval, request or other communication shall be deemed to have been delivered only on the date of the receipt by Guarantor of such delivery or transmission provided by (a) or (b) above at the address set forth above (or such other address designated pursuant hereto).

8. Representations. Guarantor hereby represents and warrants to University (such representations and warranties to be deemed to continue so long as this Guaranty remains outstanding): (i) it is a corporation duly formed and validly existing and has full power, and has taken all necessary actions, to execute and perform its obligations under this Guaranty, (ii) the execution and performance of this Guaranty do not contravene its organizational documents or applicable law or regulation and do not contravene or result in a default under any agreement or obligation of or affecting the Guarantor, (iii) this Guaranty has been validly created and constitutes a valid and legally binding obligation of the Guarantor enforceable in accordance with its terms.

9. Assignment. Guarantor shall not be entitled to assign or otherwise transfer the rights and obligations under this Guaranty or any part hereof, in whole or in part, without the prior written consent of University. This Guaranty shall inure to the benefit of University and its assignees, if any.

10. Successors and Assigns. This Guaranty shall be binding upon Guarantor and its successors and assigns.

11. Severability. If any term or provision of this Guaranty shall be invalid or unenforceable, the remainder of this Guaranty shall remain in full force and effect.

12. Entire Agreement. This Guaranty embodies the entire agreement and understanding between University and Guarantor with respect to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to the subject matter hereof. Accordingly, this Guaranty may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

13. Amendments. This Guaranty shall not be amended or modified except by an instrument in writing signed by or on behalf of the Guarantor and University.

14. Governing Law. This Guaranty shall be governed by, construed and interpreted in accordance with the laws of the State of Idaho. As to any legal action or proceeding related to this Guaranty, University and Guarantor hereby consent to the non-exclusive jurisdiction of the State of Idaho and waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar basis.

IN WITNESS WHEREOF, this Guaranty has been duly executed on the date that is first above written and shall come into force upon the signature of Guarantor.

GILBANE DEVELOPMENT COMPANY,  
a Rhode Island corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT 16**

**UNIVERSITY OF IDAHO DESIGN AND CONSTRUCTION STANDARDS**

[see attached]

**EXHIBIT 17**

**CONTRACTORS/CONSULTANTS REQUIRED TO BE COVERED BY PERFORMANCE AND  
PAYMENT BONDS**



**IDAHO DEPARTMENT OF EDUCATION  
NOVEMBER 21, 2024**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
1	IDAHO SPECIAL EDUCATION MANUAL REPEAL AND REPLACE	Action Item

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**IDAHO DEPARTMENT OF EDUCATION  
NOVEMBER 21, 2024**

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**IDAHO DEPARTMENT OF EDUCATION**

**SUBJECT**

Idaho Special Education Manual Repeal and Replace

**REFERENCE**

December 2014	Board approved changes to the Idaho Special Education Manual.
June 2016	Board approved changes to the Idaho Special Education Manual.
June 2018	Board approved changes to the Idaho Special Education Manual.
August 2024	Board approved changes to the Idaho Special Education Manual.

**BACKGROUND/DISCUSSION**

In December of 2023, the Idaho Department of Education (IDE) was informed by the U.S. Office of Special Education Programs (OSEP) that the Specific Learning Disability eligibility requirement section of the Idaho Special Education Manual required revisions.

The IDE proceeded to review the manual with department staff and experts from the field, and provided opportunity for public comment in compliance with federal regulations and Board policy. The proposed amendments that resulted from this work were approved by the Board in August of 2024.

Subsequently, the IDE recognized that some of the amendments approved by the Board in August were not part of the OSEP requirements, and while the additional amendments are desired, they need further vetting before being incorporated into the manual. As the document approved by the Board in August has not yet been implemented in the field, the most appropriate solution is to repeal the Special Education Manual approved in August of 2024 (Attachment 2) and replace it with the currently proposed version (Attachment 3).

The amendments required by OSEP for federal compliance are limited to the Specific Learning Disability section of the document, pages 118-128 of Attachment 3. The additional amendments found throughout Attachment 2 will be further vetted and presented to the Board for consideration at a later date.

- Attachment 1 is a letter submitted by IDE as part of the negotiated rulemaking process outlining the reasons for making the changes.
- Attachment 2 is the 2018 approved version of the Special Education Manual, showing the redlined amendments approved by the Board in August.
- Attachment 3 is also the 2018 approved version of the Special Education Manual, showing only the amendments necessary at this time.

**IDAHO DEPARTMENT OF EDUCATION  
NOVEMBER 21, 2024**

---

**IMPACT**

If approved, the proposed amendments will ensure that Idaho's Special Education Manual is compliant with federal laws. As this document is incorporated by reference into IDAPA 08.02.03, it will be necessary to update the Pending rule to reflect the new adoption date of this document and to ensure that IDAPA is aligned to the revisions. The Pending rule is presented for consideration as a separate agenda item.

**ATTACHMENTS**

- |              |   |
|--------------|---|
| Attachment 1 | Idaho Department of Education Special Education Commentary        |
| Attachment 2 | Special Education Manual, Approved August 2024, Including Redline |
| Attachment 3 | Special Education Manual Proposed Amendments - Redline            |

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends that the Board repeal the Special Education Manual approved in August of 2024, as it includes amendments not required by OSEP for federal compliance that need further vetting. Staff also recommends that the Board approve the Special Education Manual as presented in Attachment 3, showing only the necessary amendments.

**BOARD ACTION**

I move to repeal the Special Education manual approved on August 21, 2024, and to approve the Special Education Manual as presented in Attachment 3.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_



October 23, 2024

Docket 08-0203-2401

Public Comment

Idaho Department of Education Memorandum

This memorandum serves as the State Department of Education's (SDE) formal comments to Docket 08-0203-2401. The SDE's overarching goal with the negotiated rulemaking process has been to bring the Idaho Special Education Manual into compliance with the Individuals with Disabilities Education Act (IDEA). The Idaho Special Education Manual was adopted by the State Board of Education on October 17, 2018. In October 2023, the United States Department of Education, Office of Special Education Programs (OSEP) notified the SDE that the Idaho Special Education Manual was out of compliance with federal law with respect to the Specific Learning Disability (SLD) criteria. The SDE seeks to bring the Idaho Special Education Manual into compliance with federal law for all areas pertaining to SLD during the 2025 legislative session.

During the process of revising the criteria for SLD as mandated by OSEP, the SDE realized that a comprehensive review of the entire Idaho Special Education Manual was necessary. This review began simultaneously with the revisions for SLD, but it is still ongoing and requires public input as mandated by the IDEA. As of today, the required public input has not been obtained. Additionally, the SDE needs more time to equip Local Education Agencies (LEAs) across the state with the necessary information, resources, and training related to all non-SLD revisions to the Idaho Special Education Manual. Therefore, the SDE intends to pursue updates to all non-SLD revisions in the Idaho Special Education Manual through the negotiated rulemaking process before the 2026 legislative session rather than the 2025 legislative session.

Currently, the proposed rule includes changes to both SLD and non-SLD revisions to the Idaho Special Education Manual. As such, the SDE requests that those non-SLD revisions be removed prior to approval of the pending rule to allow the SDE to meet IDEA regulations for public input, and have adequate time to prepare LEAs for these additional procedural changes. Specifically, the SDE requests that the pending rule include only those changes to SLD as shown in the attached document. All these changes have been previously reviewed by the Board.

SDE staff are available to address any questions or concerns relating to this comment prior to approval of the pending rule.

Sincerely,

A handwritten signature in black ink that reads "Chynna Hirasaki". The signature is written in a cursive, flowing style.

Chynna Hirasaki, Ed.S.

Director, Special Education

Idaho Department of Education

**Debbie Critchfield, Superintendent of Public Instruction**

**(208) 332-6800 | 650 W. State St., Boise, ID 83702 | [sde.idaho.gov](https://sde.idaho.gov)**

chapte

DEPARTMENT OF SPECIAL EDUCATION

# Special Education Manual ~~2018~~2024

*Approved by the State Board of Education*

*August 21, 2024*

IDAPA 08.02.03.004



IDAHO ~~STATE~~ DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION  
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EFFECTIVE 7/3/2024 ~~10/18/2018~~

Nondiscrimination Clause

Federal law prohibits discrimination on the basis of race, color, religion, sex, national origin, age, or disability in any educational programs or activities receiving federal financial assistance. (Title VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1990.)

It is the policy of the Idaho ~~State~~ Department of Education not to discriminate in any educational programs or activities, or in employment practices.

Inquiries regarding compliance with this nondiscriminatory policy may be directed to the State Superintendent of Public Instruction, P.O. Box 83720, Boise, ID 83720-0027, (208) 332-6800, or to the Director, Office of Civil Rights, Department of Education, Washington, D.C.

Idaho Special Education Manual

The policies and procedures contained in this Idaho Special Education Manual have been developed by the ~~State Department of Education (SDE)~~ Idaho Department of Education and offered to local education agencies (LEA) for adoption. This Manual has been approved by the State Board of Education, meets the IDEA eligibility requirement of 20 U.S.C. Section 1412, and is consistent with state and federal laws, rules, regulations, and legal requirements.

In the case of any conflict between Idaho Administrative Code (IDAPA) and the Individuals with Disabilities Education Act (IDEA), the IDEA shall supersede the IDAPA, and IDAPA shall supersede this Manual.

*This document was developed and printed by the Idaho ~~State~~ Department of Education using grant funds from the Individuals with Disabilities Education Act.; PR/Award #H027A080088A.*

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## ACKNOWLEDGMENTS

The update and revision of this Manual over the years has involved a number of people. Special thanks are extended to the Special Education Advisory Panel, the Director’s Advisory Council, Idaho Parents Unlimited, ~~the now more than 170~~ Special Education Directors, [Idaho Special Education Support and Technical Assistance \(SESTA\)](#), and other stakeholder groups who have contributed to this important work.

## ACRONYMS AND ABBREVIATIONS

Section 504	Section 504 of the Rehabilitation Act of 1973
AA	Alternate Assessment
ADA	Americans with Disabilities Act
A.D.A.	Average Daily Attendance
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
AT	Assistive Technology
BIP	Behavioral Intervention Plan
CALP	Cognitive Academic Language Proficiency
CAP	Corrective Action Plan
CEIS	Comprehensive Early Intervening Services
C.F.R.	Code of Federal Regulations
CIP	Continuous Improvement Plan
DD	Developmental Delay
DHW	Department of Health and Welfare
DJC	Department of Juvenile Corrections
DR	Dispute Resolution
EBD	Emotional Behavioral Disorder
ECSE	Early Childhood Special Education
EL	English Learner
ESEA	Elementary and Secondary Education Act
ESSA	Every Student Succeeds Act
ESY	Extended School Year

FAPE	Free and Appropriate Public Education
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
<del>GED</del>	<del>General Education Development</del>
IAES	Interim Alternative Educational Setting
IBI	Intensive Behavioral Interventions
IDAPA	Idaho Administrative Procedures Act
IDEA	Individuals with Disabilities Education Act
IDELR	Individuals with Disabilities Education Law Report
IEE	Independent Educational Evaluation
IEP	Individual Education Program
IFSP	Individual Family Services Plan
IPUL	Idaho Parents Unlimited, Inc.
IQ	Intelligence Quotient
ISAT	Idaho Standards Achievement Test
ITP	Infant/Toddler Program
JDC	Juvenile Detention Center
LEA	Local Education Agency
<del>LEP</del>	<del>Limited English Proficiency</del>
LI	Language Impairment
LD	Learning Disability
LRE	Least Restrictive Environment
MTSS	Multi-Tiered System of Support
OCR	Office of Civil Rights

OHI	Other Health Impaired
OI	Orthopedic Impairment
OT	Occupational Therapy
PBIS	Positive Behavioral Interventions and Supports
PBS	Positive Behavioral Supports
PII	Personally Identifiable Information
PLAAFP	Present Levels of Academic Achievement and Functional Performance (Also known as PLOP for Present Levels of Performance)
<del>PLOP</del>	<del>Present Levels of Performance (Also known as PLAAFP for Present Levels of Academic Achievement and Functional Performance)</del>
PT	Physical Therapy
PTI	Parent Training and Information Center
RTI	Response to Intervention
SCID	Significant Cognitive <del>Impairment</del> Disabilities
SD	Standard Deviation
<del>SDE</del>	<del>State Department of Education</del> Idaho Department of Education
SEA	State Education Agency
SEAP	Special Education Advisory Panel
SI	Speech Impairment
SLD	Specific Learning Disability
SP	Services Plan
SS	Standard Score
TBI	Traumatic Brain Injury
VI	Visual Impairment
WIOA	Workforce Innovation and Opportunity Act





## GLOSSARY

**Academic achievement.** A student’s level of performance in basic school subjects, measured either formally or informally.

**Accommodation.** Changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results and do not fundamentally alter the requirements (or course expectations).

**Adaptation.** Changes to curriculum, instruction, or assessments that fundamentally alter the requirements, but that enable a student with a disability that significantly impacts performance an opportunity to participate. Adaptations include strategies such as reading the reading portion of a test, using spelling/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and invalidate assessment results and provide non-comparable results.

**Adaptive behavior.** Behavior that displays an age-appropriate level of self-sufficiency and social responsibility which includes the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, direction, functional academic skills, work, leisure, health, or safety.

**Adverse Impact** (adverse effect). A determination made by the evaluation team that the student’s progress is impeded by the disability to the extent that their educational performance is significantly and consistently below the level of similar age peers, preventing the student from benefitting from general education. The phrases “adverse impact” and “adverse effect” are used interchangeably in this Manual and have the same meaning. See also “educational performance.”

**Adult student.** A student with a disability, age eighteen (18) or older, to whom rights have transferred under the IDEA and Idaho Code, and who has not been deemed legally incompetent by a court or deemed ineligible to give informed consent by the IEP team.

**Age-appropriate activities.** Activities that typically-developing children of the same age would be performing or would have achieved.

**Age of majority.** The age at which, by law, a child assumes the responsibilities of an adult. In Idaho, the age of majority is eighteen (18).

**Aggregated data.** Information that is considered as a whole. In this Manual, the term refers to collective data on all students, including students with disabilities.

**Alternate assessment.** An academic assessment based on alternate academic achievement standards that have been reduced in depth, **breadth**, and complexity from the **Idaho Content Standards general education assessment**. The alternate assessment (AA) is intended only for those students with the most significant cognitive **impairments disabilities**, representing about 1% of the total student population.

**Alternative school.** A public school placement option that may be utilized for students who are not succeeding in the traditional school environment but may benefit through the use of modified curriculum or flexible programming.

**Articulation.** The ability to speak distinctly and connectedly.

**Articulation disorder.** Incorrect productions of speech sounds, including omissions, distortions, substitutions and/or additions that may interfere with intelligibility.

**American with Disabilities Act (ADA) of 1990.** A federal law prohibiting discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

**Assessment.** The formal or informal process of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. It is an integral component of the evaluation process. A test is one method of obtaining valid and reliable information within the assessment process. Assessment data may also include observations; interviews; medical reports; data regarding the effects of general education accommodations, adaptations, and interventions; and other formal or informal data.

**Assistive technology device.** Any item, piece of equipment, or product system whether acquired commercially, off a shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. Excludes surgically implanted medical devices.

**Assistive technology service.** Any service that directly assists a student with a disability with the assessment, selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the need of the student; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing devices; coordinating and using other therapies, interventions, or services with existing education and rehabilitation plans and programs; training or technical assistance for a student and/or family; and training or technical assistance for professionals, employers,

or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student.

**Attention deficit disorder (ADD).** A biologically based mental disorder that has these typical characteristics: short attention span; distractive behavior; difficulty following directions and staying on task; and an inability to focus behavior. The disorder compromises many skills needed for academic success, including starting, following through with, and completing tasks; moving from task to task; and following directions.

**Attention deficit hyperactivity disorder (ADHD).** A biologically based mental disorder in which a person has inappropriate degrees of inattention, impulsiveness and hyperactivity.

**Audiologist.** A licensed health care professional who diagnoses and supports management of hearing loss, counseling to auditory needs across environments, and fitting of hearing technology.

**Autism.** A disability category in which a developmental disability, generally evident before age three (3), significantly affects verbal or nonverbal communication skills and social interactions and adversely affects educational performance. Other characteristics often associated with autism include engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

**Basic reading skills.** For the purpose of specific learning disability eligibility, includes sight word recognition, phonics, and word analysis. Essential skills include identification of individual sounds and the ability to manipulate them, identification of printed letters and sounds associated with letters, and decoding of written language.

**Behavioral intervention plan (BIP).** A plan comprising practical and specific strategies designed to increase or reduce a definable behavior. These strategies address preventative techniques, teaching replacement behaviors, how to respond or resolve behaviors, and crisis management, if necessary.

**Benchmark.** A major milestone which describes the progress the student is expected to make toward annual goals within a specified period of time. Similar to an objective.

**Braille.** A tactile system of reading and writing, used by students who are blind or visually impaired, with an official code composed of Braille characters or cells that consist of various patterns of raised dots corresponding to alphabetic letters, punctuation marks and other symbols.

**Business day.** A workday (Monday through Friday) except for federal and state holidays, unless specifically included.

**Calendar day.** Used interchangeably with day unless otherwise indicated as a business day or a school day.

**Case manager.** A member of the evaluation and/or IEP team (usually the special education teacher) who is designated to perform administrative functions for the team, including: (1) setting up meetings; (2) ensuring appropriate forms are completed; (3) ensuring timelines are met; and (4) includes the responsibility of coordinating and overseeing the implementation of the IEP.

**Change of placement.** A change in educational placement relates to whether the student is moved from one type of educational program -- i.e., regular class -- to another type -- i.e., home instruction. Or it may also occur when there is a significant change in the student's educational program even if the student remains in the same setting.

**Change of placement for disciplinary reasons.** A removal from the current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, the total amount of time the student is removed are indicators of a pattern, and whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals.

**Charter school within a district.** A publicly funded, nonprofit, nonsectarian public school that is created by a formal agreement (charter) between the charter board of directors and the board of trustees of the local school district and operates independently within the district. It is governed by the conditions of its approved charter, performance certificate, and federal and state laws. It is the responsibility of the local district to ensure that students attending such charter schools receive appropriate services as required by IDEA and Section 504 of the ADA.

**Charter school LEA.** A publicly funded, nonprofit, nonsectarian public school that operates as its own local education agency (LEA) or district. Charter LEAs may be authorized by the local school district or the Idaho Public Charter School Commission. Charter LEAs are required to provide services in accordance with IDEA and, Section 504 of the ADA.

**Child.** An individual who has not attained age eighteen (18).

**Child count.** For purposes of the annual report required under IDEA, the State must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

**Child find.** A process to locate, identify, and evaluate individuals ages three (3) to twenty-one (21) who are suspected of having a disability and in need of special education.

**Civil action.** A judicial action that any party who is aggrieved by the final decision of a due process hearing officer may bring in either a federal district court or a state court of competent jurisdiction (as designated by Idaho law).

**Cognitive academic language proficiency (CALP).** CALP refers to language used during formal academic instruction and learning. CALP skills include listening, speaking, reading, and writing about subject area content material, and are essential to school success. It may take five to seven years for an English language learner to develop CALP.

**Compensatory education.** Educational services or remedies which are above and beyond those normally due a student under the State's education law. The principle is acknowledged by most courts that have considered the issue to be an appropriate equitable remedy when a student has been denied free appropriate public education. Services that would put the student in the same position had they not been denied a FAPE.

**Complaint.** (State complaint) A formal, written, and signed statement submitted to the Idaho **State** Department of Education by an individual or organization that contains one or more allegations and the facts on which the statement is based that a district or agency has violated a requirement of IDEA within the last year (365 days).

**Coordinated early intervening services (CEIS).** Services for students (K-12) who need additional academic and behavioral support to succeed in a general education environment. These students have not been identified as having a disability under the IDEA.

**Consensus.** Following the opportunity for each member to provide input and gain clarification, the resulting outcome where each member agrees to support the decision of the group. Consensus is both the general agreement to support the decision, and the process of reaching such agreement to support the decision.

**Consent.** Voluntary, written approval of a proposed activity, as indicated by a parent/adult student signature. The parent/adult student must be fully informed of all relevant information in his or her native language or other mode of communication and must understand all information relevant to the activity to make a rational decision.

**Conservator.** A person appointed by the court to handle financial decisions for a person who is incapacitated or debilitated. In Idaho, the conservator has all of the powers conferred pursuant to Section 15-5-424, Idaho Code, and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 15-5-209, Idaho Code, until the minor attains the age of eighteen (18) or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian, Section 15-5-424, Idaho Code.

**Controlled substance.** Any drug so designated by law whose availability is restricted; i.e., so designated by federal Controlled Substances Acts. Included in such classifications are narcotics, stimulants, depressants, hallucinogens, and marijuana. (See Schedule I, II, III, IV or V in section (c) of the Controlled Substances Act (21 U.S.C. 812(c))

**Core academic subjects.** These include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the ESEA.

**Core Content Connectors.** Alternate academic achievement standards in English/Language Art and Mathematics aligned with the Idaho Content Standards, which have been reduced in depth and complexity. The Idaho alternate assessment in English/Language Arts and Mathematics are based on these standards.

**Corrective action plan (CAP).** A plan that orders a district as a result of an IDEA complaint to take corrective actions to resolve legal deficiency as found by the [Idaho Department of Education SDE](#).

**Critical life skill.** Skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance students' integration with individuals without disabilities. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

**Dangerous weapon.** A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

**Data-based decision making.** The collecting of information that can be charted or graphed to document performance over time followed by an analysis of the information to determine needed changes in instruction, policies, programs, or procedures.

**Day.** Refers to a calendar day unless otherwise indicated as a business or school day.

**Deaf-blindness.** An IDEA disability category in which a student demonstrates hearing and visual impairments, and where the combination of these two disabilities causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.

**Deaf or Hard of Hearing.** A child with a hearing loss, whether permanent or fluctuating, that impairs the access, comprehension, and/or use of linguistic information through hearing, with or without amplification, and that adversely affects a child's educational performance.

**Detained youth.** Anyone aged three (3) through twenty-one (21) who is being held for a crime regardless of whether or not that person has appeared before the court.

**Developmental achievement.** Gains a student makes which follow the pedagogic theory that all children learn in the same basic way and in the same sequence, although at different rates.

**Developmental delay.** An IDEA disability category used only for students ages three (3) through nine (9) for whom a significant delay exists in one or more of the following skill areas: receptive/expressive language; cognitive abilities; gross/fine motor functioning; social/emotional development; or self-help/adaptive functioning. The use of this category is optional for districts.

**Disaggregated data.** Information that is reported and/or considered separately on the basis of a particular characteristic. In this Manual, the term refers to data on special education students as a group that are reported and/or considered separately from the same data on all students in a school, district, or state.

**Discipline.** Actions taken in response to a student’s violation of the student conduct code.

**Disclosure.** The access to or the release, transfer, or other communication of education records or personally identifiable information contained in these records by oral, written, electronic, or other means.

**Disproportionality.** A disparity or inequality. In this Manual, the term refers to a statistical range of data where students of a specific race or ethnicity are identified in either greater or fewer numbers than expected when compared to the representation of that race or ethnicity within the general school population. The areas addressed in the IDEA are: (1) identification as a student with a disability; (2) identification of a student with a specific category of disability; and (3) placement in a particular educational setting and (4) the incidence, duration of any type of disciplinary actions, including suspensions and expulsions.

**District.** A local educational agency (LEA) inclusive of the following terms: a local district, a state authorized charter school, a state operated program, and a traditional school. See also “LEA.”

**Dropout.** A student who has voluntarily left an education system before completion of requirements and is not known to be enrolled in any other educational program.

**Dual enrollment.** A child of school-age who is enrolled in a nonpublic school (including a homeschool) or a public charter school and enrolled in a public school to participate in public school programs and activities, Section 33-203, Idaho Code. See also “nonpublic school” and “nonpublic student.”



**Due process hearing.** An administrative hearing conducted by an [SDE Idaho Department of Education](#)-appointed hearing officer to resolve disputes on any matter related to identification, evaluation, educational placement, or the provision of a free appropriate public education under the IDEA.

**Educational performance.** A student's educational performance in achievement, developmental, and/or functional skills.

**Education record.** A student's record containing personally identifiable information maintained by an educational agency or institution, or by a party acting for the agency or institution, which may include, but is not limited to print, handwriting, computer media, video or audio tape, film, microfilm, and microfiche, but is not within the exceptions set out in the Family Educational Rights and Privacy Act (FERPA). The documents in the education record used to determine current eligibility and monitor current progress are considered part of the education record and are maintained. Items in the educational record that are no longer used, or have been summarized, may be removed from the educational record after written parental notification.

**Educational services agency, other public institution or agencies.** (1) An educational service agency, as defined in 34 CFR §300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

**Elementary school.** The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law, 34 CFR §300.13. An elementary school includes a grade configuration of grades one (1) through eight (8) inclusive, or any combination thereof, Section 33-119, Idaho Code.

**Eligibility/evaluation team.** A group of people, including the parent/adult student, charged with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the IEP team (although not necessarily the same individuals) and other qualified professionals, as appropriate.

**Emotional behavioral disorder.** An IDEA disability category in which a student has a condition exhibiting one or more of five behavioral or emotional characteristics over a long period of time, and to a marked degree, that adversely affects educational performance. The term *does not* include students who are socially maladjusted unless it is determined they have an emotional behavioral disorder. The term emotional behavioral disorder *does* include students who are diagnosed with schizophrenia.

**English Learner** [An individual aged three \(3\) to twenty-one \(21\), who is enrolled or preparing to enroll in elementary or secondary school, he or she was not born in the United States or his or her native language is a language other than English; he or she is a Native](#)

American or Alaska Native, or a native resident of the outlying areas; he or she comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or the individual is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant. The EL individual's difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the him or her the ability to meet the State's proficient level of achievement on State assessments; the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.

**Essential Components of Reading Instruction.** The term means explicit and systematic instruction in (1) phonemic awareness, (2) phonics, (3) vocabulary development, (4) reading fluency, including oral reading skills, and (5) reading comprehension strategies.

**Evaluation.** A term that means using all required procedures to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

**Expedited due process hearing.** An administrative hearing conducted by an [SDE Idaho Department of Education](#)-appointed hearing officer to resolve disputes concerning discipline for which shortened timelines are in effect in accordance with the IDEA.

**Expulsion.** Removal of a student from school for an extended period of time. For general education students, services usually cease during an expulsion.

**Extended school year (ESY).** A program to provide special education and related services to an eligible student with a disability beyond the conventional number of instructional days in a school year and at no cost to the parents. An ESY program must be based on an IEP team decision and meet Idaho standards.

**Extracurricular activities.** Programs sponsored by a district that are not part of the required curriculum but are offered to further the interests and abilities of students.

**FAPE.** (See "Free appropriate public education.")

**FERPA.** (See "Family Educational Rights and Privacy Act.")

**Facilitation.** A voluntary process during which a neutral and impartial individual, contracted by the [SDE Idaho Department of Education](#), is appointed to conduct an IEP team or other special education related meeting.

**Family Educational Rights and Privacy Act (FERPA).** A federal law protecting the privacy of students and parents by mandating that personally identifiable information about a student contained in education records must be kept confidential unless otherwise

provided by law. FERPA also contains provisions for access to records by parents, students, staff, and others.

**Fluency disorder.** Stoppages in the flow of speech that are abnormally frequent and/or abnormally long. These interludes take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

**Free Appropriate Public Education (FAPE).** A basic IDEA requirement which states that special education and related services are provided at public expense (free); in conformity with an appropriately developed IEP (appropriate); under public supervision and direction (public); and include preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the [Idaho State](#) Department of Education (education).

**Functional achievement and performance.** Gains made by a student which include programming in community living, reading, communication, self-care, social skills, domestic maintenance, recreation, employment or vocational skills. Also called independent living skills.

**Functional behavioral assessment (FBA).** A systematic process for defining problem behavior and gathering medical, environmental, social, and instructional information that can be used to hypothesize about the function of student behavior.

**General education curriculum.** The curriculum that is designed for all students, usually consisting of a common core of subjects and curriculum areas adopted by a district that are aligned to the Idaho Achievement Standards or district standards. The general education curriculum is defined by either the Idaho Achievement Standards or the district content standards if they are as rigorous.

**General education interventions.** Educational interventions designed to address the students using the core and supplemental interventions. Such interventions may include whole-school approaches, scientifically based programs, and positive behavior supports, including accommodations and instructional interventions conducted in the general education environment. These interventions may also include professional development for teachers and other staff to enable such personnel to deliver scientifically based literacy instruction and/or instruction on the use of adaptive and instructional software.

**Goal.** A measurable statement of desired progress. In an IEP, annual goals must include academic and functional goals designed to meet a child's needs that result from his or her disability, enable the child to be involved in and make progress in the general curriculum, and meet the child's other educational needs that result from the child's disability.

**Graduation.** The point in time when a student meets the district and State requirements for receipt of an Idaho high school diploma.

**Guardianship.** A judicial determination under which a competent adult has the legal right and duty to deal with problems, make decisions, and give consent for an adult with a disability (at least eighteen (18) years of age) who cannot act on his or her own behalf. The court will specify the nature and scope of the guardian’s authority.

**Health services.** See “School health services.”

**High school.** Section 33-119, Idaho Code, defines secondary school as grades seven (7) through twelve (12) inclusive of any combination thereof. See “secondary school.”

**Homebound student.** A student whose IEP team determines the child’s home is the least restrictive environment.

**Homeless children and youth.** Children and youth who lack a fixed, regular, and adequate nighttime residence as defined in the McKinney-Vento Homeless Assistance Act.

**Homeschool.** An education program delivered by parents who have decided to provide instruction in the home and not in a public or private school. A homeschool is a nonpublic school, but is not considered a private school. A virtual public school is not a homeschool.

**Homeschooled students.** A homeschooled student is one whose parents have decided to provide an educational program in the home with instruction provided by the parents. A homeschool student is considered a nonpublic school student, but is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

**Honig Injunction.** A court order to remove a special education student from school or current educational placement due to factors of dangerousness. Districts are required to continue with the provision of FAPE.

**Idaho content standards.** Educational standards in math and English language arts detailing what K-12 students should know at the end of each grade and establishing consistent standards across the states, as well as ensuring that students graduating from high school are prepared to enter credit-bearing courses at two- or four-year college programs or enter the workforce.

**Illegal use of drugs.** The unlawful use, possession or distribution of substances identified under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional.

**Independent educational evaluation (IEE).** One or more assessment(s) conducted by a qualified examiner(s) who is not employed by or contracted by the public agency or district responsible for the education of the student in question.

**Individualized education program (IEP).** A written document (developed collaboratively by an IEP team made up of parents and school personnel) which outlines the special education program for a student with a disability. This document is developed, reviewed and revised at an IEP team meeting at least annually.

**Individualized education program (IEP) team.** A team established by the IDEA and comprised of but not limited to the student's general education teacher, a special education teacher, a district representative, parents, the student when appropriate, and other knowledgeable persons. The team is responsible for developing an IEP, determining placement, and reviewing and revising the student's IEP and placement at least annually.

**Individualized family service plan (IFSP).** A written individualized plan for an infant or toddler (birth to three (3) years of age) with a disability that is developed by a multidisciplinary team, including the parents, under Part C of the IDEA.

**Individuals with Disabilities Education Act (IDEA).** A federal law ensuring services to children with disabilities. The IDEA governs how states and public agencies provide early intervention, special education and related services to individuals with disabilities. Infants and toddlers with disabilities (birth to two) and their families receive services under IDEA Part C. Children and youth (ages three (3) to twenty-one (21) receive special education and related services under IDEA Part B.

**Initial provision of service.** The first time that a child with a disability is provided special education and related services. This is also referred to as the "initial placement" and means the first time a parent is offered special education and related services for their child after an initial evaluation and eligibility determination.

**In-lieu of transportation.** Alternate method of transporting students to and from school.

**Instructional intervention.** An action or strategy based on an individual student's problem that is designed to remedy, improve, or eliminate the identified problem.

**Intellectual disability.** An IDEA disability category in which significant sub-average general intellectual functioning exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period and adversely affect the student's educational performance. ~~The terms "mental retardation" and "cognitive impairment" were previously used to refer to this condition.~~

**Interagency agreement.** A written document that defines the coordination between the state and/or public/private agencies and/or districts with respect to the responsibilities of

each party for providing and funding special education programs and special education and related services.

**Interim alternative educational setting (IAES).** The educational setting in which a district may place a student with a disability, for not more than forty-five (45) school days, if the student while at school, on school premises or at a school function carries a weapon or possesses a weapon; knowingly possesses, uses, sells or solicits the sale of illegal drugs or controlled substances; or has inflicted serious bodily injury upon another person. An IAES may also be ordered by a due process hearing officer based upon evidence that maintaining the current placement is substantially likely to result in injury to the student or others.

**Interim IEP.** A short-term IEP with all the components of a standard IEP developed by the IEP team. It may be used for students transferring from other districts pending the development of the standard IEP or other purposes as needed.

**Interpreting services.** The process of providing accessible communication between and among persons who are deaf, hard of hearing, or deaf-blind, and those who are hearing. The process includes, but is not limited to, communication between American Sign Language or other form of manual communication and English. The process may also involve various other modalities that involve visual, gestural and tactile methods including oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell.

**Itinerant specialist.** A teacher who normally travels and provides services to students in different schools or in the home or consults with teachers and administrators.

**Joint custody.** A court order awarding custody of a minor child to both parents and providing that physical and/or legal custody shall be shared by the parents.

**Joint legal custody.** A court order providing that the parents of a child are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of the child.

**Joint physical custody.** A court order awarding each parent significant periods of time in which a child resides with or is under the care and supervision of each parent. The actual amount of time is determined by the court.

**Language impairment.** An IDEA disability category in which a delay or disorder exists in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems and which adversely affects the student's educational performance. A language impairment may involve any one or a combination of the following: the form of language (morphological and syntactic systems); the content of

language (semantic systems); and/or the function of language in communication (pragmatic systems).

**Learning disability.** See “specific learning disability.”

**Least restrictive environment (LRE).** The IDEA requirement that students with disabilities, including those in public or private institutions or other care facilities, be educated with students who are nondisabled to the maximum extent appropriate.

~~**Limited English proficient (LEP).** An individual aged three (3) to twenty-one (21), who is enrolled or preparing to enroll in elementary or secondary school, he or she was not born in the United States or his or her native language is a language other than English; he or she is a Native American or Alaska Native, or a native resident of the outlying areas; he or she comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or the individual is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant. The LEP individual's difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the him or her the ability to meet the State's proficient level of achievement on State assessments; the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.~~

**Listening comprehension.** For the purpose of specific learning disability eligibility, refers to the understanding of the implications and explicit meanings of words and sentences of spoken language. This includes following directions, comprehending questions, and listening and comprehending in order to learn (e.g., auditory attention, auditory memory, and auditory perception). Listening comprehension also includes the ability to make connections to previous learning.

**Local district.** See “district” and “local educational agency (LEA).”

**Local educational agency (LEA).** A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. See “district.”

**Manifestation determination.** A determination by the parent and relevant members of the IEP team of whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the LEA's failure to implement the IEP.

**Mathematics calculation.** For the purpose of specific learning disability eligibility, this refers to the knowledge and retrieval of mathematical facts and the application of procedural knowledge in computation.

**Mathematics problem solving.** For the purpose of specific learning disability eligibility, refers to the ability to apply mathematical concepts and understandings to real-world situations, often through word problems. It is the functional combination of computation knowledge and application knowledge, and involves the use of mathematical computation skills and fluency, language, reasoning, reading, and visual-spatial skills in solving problems. Essentially, it is applying mathematical knowledge at the conceptual level.

**McKinney-Vento Homeless Assistance Act.** This law is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this law, state educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth.

**Mediation.** A voluntary, confidential, and structured process during which an [SDE-Idaho Department of Education](#)-contracted individual is appointed to serve as an impartial and neutral third party to help parents and district or agency personnel resolve an IDEA-related conflict. Mediation usually results in a written, legally-binding agreement that is mutually acceptable to both parties and enforceable in court.

**Medicaid services (school-based).** Those services, assessment, and plan development for students receiving Medicaid which school districts may bill for reimbursement with the consent of the parent.

**Medical services.** Medical services mean services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

**Middle school.** A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12).

**Migrant student.** A student who has not graduated from high school or completed a high school equivalency certificate and resides within a family that is composed of migrant fisher or agricultural workers. The student has moved within the preceding thirty-six (36) months in order for the family to obtain or seek this type of temporary or seasonal employment that is a principal means of livelihood.

**Monitoring.** An activity conducted by the [Idaho State](#) Department of Education to review a school district's compliance with federal laws, regulations, and state rules.



**Multiple disabilities.** An IDEA disability category in which two or more impairments co-exist (excluding deaf-blindness), whose combination causes such severe educational needs that the student cannot be accommodated in special education services designed solely for one of the impairments.

**Multi-tiered system of support (MTSS).** A systemic educational practice of matching educational instruction and interventions to the needs of students. MTSS is a data-driven model involving frequent monitoring of student progress to determining if interventions are needed to improve individual student outcomes using evidenced-based practices.

**Native language.** The language or mode of communication normally used by an individual or, in the case of a student, the language normally used by the student’s parents. In all direct contact with a student, the native language would be the language or mode of communication normally used by the student in the home or learning environment.

**New teacher.** A teacher who has less than one (1) year of teaching experience.

**Nonpublic school.** An educational institution or program providing instruction outside a public school, including but not limited to a private school or homeschool.

**Nonpublic student.** Any student who receives educational instruction outside of a public school, including but not limited to a private school or homeschool student.

**Nonprofit.** The term ‘nonprofit,’ as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one (1) or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

**Nursing services.** See “School health services.”

**Objectives.** Measurable, intermediate steps that describe the progress the student is expected to make toward an annual goal in a specified amount of time; similar to a benchmark.

**Occupational therapist.** A professional licensed by the Occupational Therapy Licensure Board of Idaho who, in a school setting, is responsible for assessing fine motor skills, including student’s use of hands and fingers and developing and implementing plans for improving related motor skills. The occupational therapist focuses on daily living skills such as eating, dressing, schoolwork, play, and leisure.

**Office of special education programs (OSEP).** The branch of the Office of Special Education and Rehabilitative Services (OSERS) within the U.S. Department of Education which is responsible for administering programs relating to the free appropriate public education to all eligible beneficiaries under the IDEA.

**Oral expression.** For the purpose of specific learning disability eligibility, the ability to convey wants, needs, thoughts, and ideas in a meaningful way using appropriate syntactic, pragmatic, semantic, and phonological language structures. It relates to a student's ability to express ideas, explain thinking, retell stories, categorize, and compare and contrast concepts or ideas, make references, and problem solve verbally.

**Orientation and mobility (O&M) services.** Services provided by qualified personnel to blind and visually impaired students by qualified personnel to enable these students to attain systematic orientation to and safe movement within the home, school, and community, including teaching (1) spatial and environmental concepts and use of information received by the senses to establish, maintain, or regain orientation and line of travel; (2) use of the long white cane, or a service animal, as appropriate to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; (3) understanding and use of remaining vision and distance low vision aids; and (4) other concepts, techniques, and tools.

**Orthopedic impairment.** An IDEA disability category that includes severe orthopedic impairments that adversely affects a student's educational performance and are caused by congenital anomaly (e.g., clubfoot, absence of an appendage, etc.); disease (e.g., poliomyelitis, bone tuberculosis, etc.); or from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contracture).

**Other health impairment (OHI).** An IDEA disability category in which a student exhibits limited strength, vitality or alertness, including heightened alertness to environmental stimuli that results in limited alertness with the respect to the educational environment that is due to chronic or acute health problems (such as asthma, ADD or ADHD, cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke) to such a degree that it adversely affects the student's educational performance.

**Paraprofessional.** A noncertified, non-licensed individual who is employed by a district and who is appropriately qualified, trained and supervised in accordance with state standards to assist in the provision of special education and related services.

**Parent.** As defined by IDEA, a parent is: (1) a biological or adoptive parent of a child; (2) a foster parent who has lived with the child for six (6) or more months; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed by the school district. If the child is a ward of the state, the judge overseeing the child's case may appoint the surrogate. The surrogate may not be an employee of the state or local

education agency or any other agency that is involved in the education or care of the child, has no personal or professional interest which conflicts with the interest of the child, has knowledge and skills that ensure adequate representation of the child.

**Part B.** Part of the IDEA that relates to the assistance to states for the education of students with disabilities who are ages three (3) through the semester in which a student turns twenty-one (21). Part B is administered by the **Idaho State** Department of Education and carried out by school districts and other public agencies.

**Part C.** Part of the IDEA that relates to the assistance to states for the education of children with disabilities and the early intervention programs for infants and toddlers, ages birth through two (2), with disabilities. In Idaho, Part C is administered by the Department of Health and Welfare.

**Peer-reviewed research.** A higher level of non-biased research, which has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective and scientific review.

**Personally identifiable information (PII).** Includes but not limited to, student's name, name of parent or other family member, address of student or family, social security number, student number, list of personal characteristics, or other information that would make it possible to identify the student with reasonable certainty.

**Phonology.** The process used in our language that has common elements (sound patterns) which affect different sounds.

**Phonology disorders.** Phonology disorders are errors involving phonemes, sound patterns and the rules governing their combinations.

**Physical therapist.** A professional licensed by the Idaho Physical Therapy Licensure Board who, in the school setting, assesses students' needs and provides interventions related to gross motor skills. In working with students with disabilities, the physical therapist provides treatment to increase muscle strength, mobility, endurance, physical movement and range of motion; improve posture, gait and body awareness; and monitor function, fit and proper use of mobility aids and devices.

~~**Plan for improving results (PIR).** A plan developed collaboratively between the SDE and a district to address needs identified as a result of the district's self-evaluation and/or an SDE monitoring visit.~~

**Positive behavioral intervention and supports (PBIS).** Positive reinforcement, rewards or consequences provided to a child for specific instances of behavior that impedes learning or the learning of others (or refraining from behavior) as appropriate for the purpose of allowing the student to meet his or her behavioral goals/benchmarks.

**Power of attorney.** The designation, in writing, by a competent person of another to act in place of or on behalf of another person.

~~Present level of performance (PLOP) or Present levels of academic achievement and functional performance (PLAAPF).~~ ~~Used interchangeably, these area~~ This is a statement of the student's current level of achievement or development in an area of need and how the student's disability affects his or her involvement and progress in the general education curriculum offered to students without disabilities. For preschool students, as appropriate, how the disability affects the child's participation in appropriate activities.

**Private school.** A nonpublic school that is not funded by or under federal or state control or supervision. A homeschool is not a private school.

**Private school student.** Any student who receives educational instruction in a school not funded by or under federal or state control or supervision is considered a nonpublic private school student. A homeschool student is not a private school student.

**Problem-solving team.** A general education team established at the local level, whose name may vary, with the purpose to problem-solve regarding the educational needs of any student. Procedures, meeting schedules, and team membership are established locally. The team is likely to include general educators and administrators and could include counselors, specialists, and special education personnel. Parent participation is valuable, but not required.

**Procedural safeguards.** The requirements of Part B of the IDEA that are designed to allow a parent/adult student to participate meaningfully in decisions concerning an appropriate educational program for a student with a disability and, if necessary, dispute such decisions. Also referred to as special education rights.

**Professional development.** High-quality comprehensive programs that are essential to ensure that persons responsible for the education or transition of students with disabilities possess the skills necessary to address the educational and related needs of these students. These should be scientifically-based and reflect successful practices including strategies for recruiting, hiring, preparing and retaining personnel.

**Public expense.** When a district or public agency either pays for the full cost of an evaluation or special education services or ensures that it is otherwise provided at no cost to the parent; for example, through joint agreements with other state agencies.

**Reading components.** The term "reading" means a complex system of deriving meaning from print that requires all of the following skills, which are the essential components of reading instruction: (1) Phonemic awareness: The skills and knowledge to understand how phonemes, or speech sounds, are connected to print; (2) Phonics: The ability to decode unfamiliar words; (3) Reading fluency: The ability to read fluently; (4) Vocabulary development: Sufficient background information and vocabulary to foster

reading comprehension; and (5) Reading comprehension: The development of appropriate active strategies to construct meaning from print.

**Reading comprehension.** For the purpose of specific learning disability eligibility, refers to the ability to understand and make meaning of written text and includes a multifaceted set of skills. Reading comprehension is influenced by oral language development including new vocabulary acquisition, listening comprehension, working memory, application of comprehension-monitoring strategies, and understanding of text structure including titles, paragraphing, illustrations, and other details. Reading comprehension is significantly affected by basic reading skills.

**Reading fluency.** For the purpose of specific learning disability eligibility, refer to the ability to read words and text accurately, using age-appropriate chunking strategies and a repertoire of sight words, and with appropriate rate, phrasing, and expression (prosody). Reading fluency facilitates reading comprehension.

**Reasonable measures.** A combination of recorded written and/or oral documentation to meet notification requirements of the district to parents/adult students.

**Reasonable time.** A period of ten (10) calendar days unless there are exceptional circumstances that warrant a shortened period of time such as an emergency or disciplinary meeting.

**Reevaluation.** A periodic evaluation conducted at least every three years, or more frequently if conditions warrant, or if the student's parent or teacher requests an evaluation of a student already identified as eligible for services under the IDEA. Reevaluations may occur not more than once a year, unless the parent and the district agree otherwise or may be waived by the parent and LEA.

**Related services.** Refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education and includes the following: speech therapy, language therapy, audiology services, psychological services, physical therapy, occupational therapy, recreation, therapeutic recreation, early identification and assessment of disabilities in children, counseling services, rehabilitation counseling, orientation and mobility services, interpreting services, medical services for diagnostic or evaluation purposes, school health/nursing services (excluding surgically implanted medical devices), social work services in schools, and parent counseling and training.

**Response to intervention (RTI).** A formal process for evaluating student response to scientifically research-based interventions, consisting of the core components of: (1) problem identification, (2) problem analysis, (3) applying research-based interventions, and (4) progress monitoring/decisions rules. As used in the IDEA, RTI is only mentioned as an alternative to the severe discrepancy criteria in determining whether a student has a Specific Learning Disability.

**Resolution session.** A meeting involving the parents, relevant members of the IEP team, and a representative of the district who has decision-making authority, required prior to a due process hearing if the parent has requested the due process hearing.

**School-age.** Includes all persons between the ages of five (5) (i.e., turns five (5) on or before September 1) and twenty-one (21) years who reside in Idaho. For students with disabilities who qualify for special education and related services under the IDEA, school-age begins at age three (3) and continues through the semester of school in which the student attains the age of twenty-one (21).

**School day.** Any day, including a partial day, when all students are in attendance at school for instructional purposes.

**School health services.** School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

**School psychologist.** A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Psychology and is charged with the responsibility to conduct assessments and determine a student's cognitive, academic, social, emotional, and/or behavioral functioning. This professional also provides direct services to students, consults with district staff, and may be a member of the evaluation and/or IEP team.

**Scientifically-based research (SBR).** Scientifically based research (as defined in the ESEA) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that (1) employs systematic, empirical methods that draw on observation or experiment; (2) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (5) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

**Screening.** An informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards.

**Secondary school.** The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade. An elementary school includes a grade configuration of grades one (1) through eight (8) inclusive, or any combination thereof, Section 33-119, Idaho Code. See also “high school.”

**Section 504 of the Rehabilitation Act of 1973.** A federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."

**Secular.** An adjective used to describe a private, non-religious educational entity.

**Serious bodily injury (SBI).** Bodily injury which involves (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of bodily member, organ, or mental faculty.

**Services plan (SP).** Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary.

**Setting.** The location where special education services occur.

**Significant cognitive impairments disabilities.** A designation given to a small number of students with disabilities for the purposes of their participation in ~~AAs~~ alternate assessments. Having significant cognitive impairments disabilities is not solely determined by an IQ test score, nor based on a specific disability category, but rather a complete understanding of the complex needs of a student. Students with significant cognitive impairments disabilities have a disability or multiple disabilities that significantly impact their adaptive skills and intellectual functioning. These students have adaptive skills well below average in two or more skill areas and intellectual functioning well below average (typically associated with an IQ below 55).

**Social worker.** A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Social Work and helps students and teachers address social and emotional issues. This professional may be a member of the evaluation and/or IEP team.

**Socially maladjusted.** A child who has a persistent pattern of violating societal norms with truancy, substance abuse, a perpetual struggle with authority, is easily frustrated, impulsive, and manipulative.

**Special education.** Specially designed instruction or speech/language therapy at no cost to the parent to meet the unique needs of a student with a disability including instruction in the classroom, the home, hospitals, institutions, and other settings; instruction in physical education; speech therapy and language therapy; transition services; travel training; assistive technology services; and vocational education.

**Special educational placement.** Refers to the provision of special education services along the continuum of placements under the least restrictive environment requirements, rather than a specific place or location, such as a specific classroom or school. The balance of setting and services to meet an individual student's needs.

**Specially designed instruction.** Adapting the content, methodology, or delivery of instruction to address the unique needs of an eligible student that result from the student's disability and to ensure access to the general education curriculum so that the student can meet the ~~education standards of that district~~ Idaho Content Standards that apply to all students.

**Specific learning disability (SLD).** A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional behavioral disorder, or of environmental, cultural, or economic disadvantage.

**Speech impairment.** A speech-language disorder, such as speech fluency, impaired articulation/phonology, a language impairment, or a voice impairment that adversely affects a student's educational performance.

**Speech-language pathologist.** A professional holding an Idaho Pupil Personnel Services Certificate who can assess and treat persons with speech, language, voice, and fluency disorders. This professional coordinates with and may be a member of the evaluation and IEP teams.

**Student (school-age).** For resident children with disabilities who qualify for special education and related services under the IDEA and subsequent amendments thereto, and applicable state and federal regulations, "school-age" shall begin at the attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.



**Stay put.** A requirement that a district or agency maintain a student with a disability in his or her present educational placement while a due process hearing or subsequent judicial proceeding is pending unless the parties agree otherwise.

**Substantial evidence.** A legal term that means “beyond a preponderance of the evidence” or “beyond more likely than not.”

**Summary of performance (SOP).** A document given to secondary students when a student exits special education as a result of earning a diploma or aging out. This document describes the academic achievement and functional performance along with recommendations to assist the student in meeting post-secondary goals.

**Supplementary aids and services.** Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

**Surrogate parent.** An individual assigned and trained by a district or an agency to assume the rights and responsibilities of a parent under the IDEA when no parent can be identified or located for a particular student or when the child is a ward of the state.

**Suspension.** A temporary stop, delay, interruption, or cessation of educational service due to a violation of the student conduct code. This may include in-school suspension.

**Traditional public school.** "Traditional public school" means any school that is operated and controlled by a school district in this state as per Section 33-5202A(10), Idaho Code.

**Transition age student.** A student whose upcoming IEP will be in effect when the student is sixteen (16) to twenty-one (21) years of age.

**Transition services.** A coordinated set of activities for a student with a disability designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate the student’s movement from school to post-school activities. Services are based on individual student needs addressing instruction, related services, community experiences, employment, post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

**Traumatic brain injury (TBI).** An IDEA disability category that refers to an injury to the brain caused by an external physical force and resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perception and motor abilities,

psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

**Travel training.** Instruction to students with significant cognitive **impairments disabilities** and any other students with disabilities who require instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within the home, school, and community.

**Twice exceptional.** Twice exceptional students are identified as gifted/ talented in one or more areas of exceptionality (specific academics, general intellectual ability, creativity, leadership, visual or performing arts) and also identified with a disability defined by State eligibility criteria (SLD, ED, Autism, Orthopedic Impairments, etc.) that qualifies the student for an IEP.

**Unilateral placement.** A decision by a parent, at his or her own discretion, to remove his or her child with a disability from a public school and enroll the student in a private facility because the parent believes that the district did not provide FAPE in a timely manner.

**Universal design.** A concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and service that are made usable with assistive technologies.

**Visual impairment including blindness.** An IDEA disability category characterized by an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes partial sight, which refers to the ability to use vision as one channel of learning if educational materials are adapted, and blindness.

**Voice disorder.** (See "speech impairment") Refers to the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

**Voluntary enrollment in a private placement.** Enrollment by a parent of a student with a disability in a private facility or homeschool for religious, philosophical, curricular, or other personal reasons.

**Ward of the state.** A child who, as determined by the State where the child resides, is a foster child (unless the foster parent meets the definition of a "parent" in Section 34 CFR §300.30), a ward of the State, or in the custody of a public child welfare agency.

**Weapon.** (See "dangerous weapon")

**Written expression.** For the purpose of specific learning disability eligibility, the processes related to the transcription of ideas and thoughts into a written product, such as handwriting and spelling. It also involves generative processes such as the communication of ideas, thoughts, and feelings. Required skills include using oral language, thought, grammar, text fluency, sentence construction, and planning to produce a written product.

**Written notice.** A written statement provided by the district to a parent/adult student within a reasonable amount of time before proposing or refusing to initiate or change to the identification, evaluation, educational placement, or the provision of FAPE.

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## LEGAL CITATIONS

### Introduction

The legal citations and topical reference for this Manual follow the chapter outlines and present references to federal and state statutes, regulations and rules for the enforcement of IDEA. The citations listed are the primary references for each chapter and section, not an all-inclusive reference list.

The entire IDEA and regulations are posted on the [U.S. Department of Education website](#).

[Idaho statutes and rules](#).

Some of the policies/procedures stated in this Manual are based upon case law and letters of clarification from the U.S. Office of Special Education Programs (OSEP).

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Chapter 1: Legal Citations

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Child Find	300.111	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.d
2.	Procedural Safeguards	300.121 300.504	IDAPA 08.02.03.109.05
3.	Student Eligibility under the IDEA	300.8 300.122	Idaho Code § 33-2001(3) Idaho Code § 33-2001(5) IDAPA 08.02.03.109.03
4.	Free Appropriate Public Education (FAPE)	300.17 300.101-300.102 300.148	Idaho Code § 33-201 Idaho Code § 33-202 Idaho Code § 33-210 Idaho Code § 20-504A(3) IDAPA 08.02.03.109.02.a
5.	District Programs and Services	300.107-300.110 300.117	Idaho Code § 33-202
6.	Individualized Education Program (IEP)	300.22 300.320-300.328	IDAPA 08.02.03.109.04
7.	Least Restrictive Environment (LRE)	300.114-300.120	IDAPA 08.02.03.109.04.c
8.	Summary of Activities that May Lead to Special Education Services	300.102(a) 300.112 300.116 300.300-300.307 300.309-300.311 300.320-300.324 300.503-300.504 300.622	IDAPA 08.02.03.109.02.h Idaho Code § 33-202 IDAPA 08.02.03.109.03 IDAPA 08.02.03.109.04

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**Chapter 2 Free Appropriate Public Education (FAPE)**

**Legal Citations**

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definition of Free Appropriate Public Education (FAPE)	300.17	
2.	Provision of FAPE	300.101-300.111 300.132 300.209	Idaho Code § 33-201 Idaho Code § 33-2002 Idaho Code § 33-2009 Idaho Code § 33-2010 Idaho Code § 20-504a IDAPA 08.02.03.109.02.c
3.	FAPE Considerations	300.101-300.111	IDAPA 08.02.03.109.02 a IDAPA 08.02.03.109.02 c

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Chapter 3 Child Find

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Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	District Responsibility	300.111 300.131	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c IDAPA 08.02.03.109.02.d IDAPA 08.02.03.109.02.h
2.	Locating Students	300.111 300.124 300.154	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c IDAPA 08.02.03.109.02.d IDAPA 08.02.03.109.02.h
3.	Identification	300.302 300.226	IDAPA 08.02.03.109.02.h
4.	Referral to Consider a Special Education Evaluation	300.174 300.301 300.302 300.305 300.306 300.308 300.309 300.504	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.h

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**Chapter 4 Eligibility**

**Legal Citations**

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Evaluation Team	300.306(a)(1) 300.304(c)(1)(iv)	IDAPA 08.02.03.109.03
2.	Purpose of an Evaluation	300.15	IDAPA 08.02.03.109.03
3.	Written Notice and Consent for Assessment	300.9 300.300 300.503	IDAPA 08.02.03.109.02.a
4.	Information from Other Agencies or Districts	300.622	IDAPA 08.02.03.109.02.a
5.	Evaluation and Eligibility Determination Procedures	300.8 300.39 300.300-300.301 300.304-300.311	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.03
6.	Reevaluation and Continuing Eligibility	300.300 300.303 300.305-300.306 300.308	IDAPA 08.02.03.109.02.a
7.	State Eligibility Criteria	300.8 300.307	IDAPA 08.02.03.109.03

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Chapter 5 Individualized Education Programs

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	IEP Initiation	300.320-300.328 300.22 300.39 300.501 300.306(c)(2)	IDAPA 08.02.03.109.04
2.	IEP Development	300.320-300.325 300.34 300.154(d)(e) 300.42 300.5-300.6 300.105(b) 300.44 300.113 300.106 300.114-300.116 300.327 300.536 300.43 300.300(b) 300.300(e)(2) 300.305(e) 300.323(d)	IDAPA 08.02.03.109.04 Idaho Code § 33-1304 IDAPA 08.02.03.109.05 Idaho Code § 33-2002(4)
3.	IEP Reviews	300.324	
4.	IEPs for Transfer Students	300.323(e)-(g)	IDAPA 08.02.03.109.04 (e) IDAPA 08.02.03.109.04 (f)
5.	IEPs for Children from the Infant/Toddler Program	300.323(b)	
6.	Students with Disabilities in Adult Prisons	300.102(a)(2)(i)(A)(B) 300.324(d)	20 U.S. Code § 1412

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**Chapter 6 Least Restrictive Environment**

**Legal Citations**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Least Restrictive Environment Considerations	300.114-300.120	IDAPA 08.02.03.109.04.a IDAPA 08.02.03.109.04.c
2.	District Responsibility for Continuum of Settings and Services	300.115-300.116	IDAPA 08.02.03.109.04.a IDAPA 08.02.03.109.04.c
3.	Federal Reporting of LRE	300.600-604	IDAPA 08.02.03.109.04.g

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**Chapter 7 Discontinuation of Services, Graduation, and Grading**

**Legal Citations**

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Discontinuation of Services	300.305 300.306 300.102 (a)(3) 300.503	Idaho Code § 33-201 Idaho Code § 33-209 <b>IDAPA08.02.03.109.07</b>
2.	Graduation	300.102. (a)(3) (i-iii) 300.320 (b)(2)	<b>IDAPA 08.02.03.109.07</b>
3.	Transcripts and Diplomas		<i>Letter to Runkel</i> , 25 IDELR 387 (OCR 1996) 20 U.S. Code § 1412
4.	Grades, Class Ranking, and Honor Roll		<i>Letter to Runkel</i> , 25 IDELR 387 (OCR 1996)

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Chapter 8 Charter Schools

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definition and Parent/Student Rights	300.7 300.209(a)	Idaho Code § 33-5202A Idaho Code § 33-5203 Idaho Code § 33-5205 Idaho Code § 33-5206
2.	Responsibility for Services	300.2 300.209(b-c)	Idaho Code § 33-5205 IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c
3.	Essential Components of a Special Education Program	300.209	Idaho Code § 33-5205 IDAPA 08.02.03.109.02.c
4.	Charter Schools and Dual Enrollment		Idaho Code § 33-203 Idaho Code § 33-2002
5.	Funding	300.704(b)(4)(ix) 300.705 300.209	Idaho Code § 33-5207 Idaho Code § 33-1002B Idaho Code § 33-2004 Idaho Code § 33-2005 Idaho Code § 33-5207(10)

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Chapter 9 Private School Students

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Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definitions Private School Placements	300.13 300.36 300.130 300.145-300.148	IDAPA 08.02.03.109.02.d
2.	Students Voluntarily Enrolled by Parents	300.133 300.134 300.135 (a-b) 300.137 (b)(2) 300.136 (a)(1-2) 300.136 (b)(1-3) 300.111 (1)(i-ii) 300.131 (a-f) 300.137 (a) 300.138 (a)(1-2) 300.138 (c)(2) 300.132 (a-b) 300.138 (2) (b) 300.132 (b) 300.138 (b) (2) 300.320 300.323 (b) 300.139 (b) (1-2) 300.140 (a-c) 300.133 300.144	IDAPA 08.02.03.109.02.d
3.	Students Placed by the District	300.145-300.146 300.320-300.325	IDAPA 08.02.03.109.02.d
4.	Dual Enrollment by Parents	300.137(a)	Idaho Code § 33.203 IDAPA 08.02.03.109.02.d
5.	Students Unilaterally Placed by their Parents when FAPE is Issued	300.148 300.101	IDAPA 08.02.03.109.02.d
6.	Out of State Students Residing in Residential Facilities	300.131	IDAPA 08.02.03.109.02.d

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**Chapter 10 Improving Results**

**Legal Citations**

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Monitoring Priorities and Indicators	300.600-604	IDAPA 08.02.03.109.02
2.	Early Intervening Services	300.226 300.205 (d) 300.208 (a) (2) 300.711	IDAPA 08.02.03.109.02
3.	Personnel	300.156 300.704 (b) (4) (vii)	IDAPA 08.02.03.109.02 IDAPA 16.03.09

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Chapter 11 Procedural Safeguards

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Procedural Safeguards Notice	300.504	IDAPA 08.02.03.109.05
2.	Domestic Considerations	300.30 300.519 300.320 300.520 300.030	Idaho Code § 32-717A Idaho Code § 32-717B <i>Letter to Cox</i> 54 IDLER 60 (110 LRP 10357)
3.	Informed Consent	300.9 300.300	
4.	Written Notice	300.508(e) 300.503 300.300	IDAPA 08.02.03.109.05a
5.	Confidentiality and Access to Records	300.611 300.622 300.614 300.613 300.616 300.623-300.625 300.618-300.621	IDAPA 08.02.03.109.05k Idaho Code § 32-717A
6.	Independent Educational Evaluations	300.502	IDAPA 08.02.03.109.05j

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Chapter 12 Discipline

Legal Citations

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	General Discipline Provisions	300.530(b) 300.534	Idaho Code § 33-205
2.	Actions Involving a Change of Placement	300.530-300.532 300.536	
3.	FAPE Considerations	300.530-531 300.101	Idaho Code § 33-205
4.	Procedures for a Manifestation Determination	<del>300.503(c- f)</del> 300.530(c-f)	Idaho Code § 33-205
5.	Other Considerations	300.532(a) 300.532(c) 300.533 300.534	IDAPA 08.02.03.109.5.c IDAPA 08.02.03.109.5.f Idaho Code § 33-209

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Chapter 13 Dispute Resolution

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1.	Facilitation		
2.	Informal Conflict Resolution	300.506	IDAPA 08.02.03.109.05.b
3.	Mediation	300.506 300.151-300.152	IDAPA 08.02.03.109.05.b
4.	State Complaints	300.151-300.153 300.507-300.508 300.510-515 300.518	IDAPA 08.02.03.109.05
5.	Due Process Hearings	300.507-300.518	IDAPA 08.02.03.109.01.d IDAPA 08.02.03.109.05.c,e,f
6.	Expedited Due Process Hearings	300.516 300.532	IDAPA 08.02.03.109.05.g
7.	Appeals and Civil Action	300.517	
8.	Attorney Fees	300.517	

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## CHAPTER 1: OVERVIEW

Three (3) federal laws have been passed to ensure educational opportunities for individuals with disabilities:

- the Individuals with Disabilities Education Act (IDEA)
- Section 504 of the Rehabilitation Act of 1973 (Section 504)
- the Americans with Disabilities Act of 1990 (ADA)

The last reauthorization of the IDEA was in 2004 and aligned the law with the Elementary and Secondary Education Act of 2001. In 2015, the Every Student Succeeds Act (ESSA) was passed. Revisions to the IDEA regulations were issued in 2007, 2008, 2013, ~~and 2014~~, 2015, 2016, and 2017 ~~with additional regulatory changes to the IDEA currently pending~~. The IDEA preserves the basic structure and civil rights of previous reauthorizations and emphasizes both *access* to education and *improved results* for students with disabilities based on data and public accountability.

This Manual provides information regarding district responsibilities under the IDEA and relevant Idaho legal requirements.

### Section 1. Child Find

The district is responsible for establishing and implementing an ongoing Child Find system. Child Find activities are conducted to create public awareness of special education programs; to advise the public of the rights of students; and, ~~7~~ to alert community residents of the need for identifying and serving students with disabilities from the age of three (3) through the semester in which they turn twenty-one (21).

The district is also responsible for coordinating with the Department of Health and Welfare regarding the Child Find system for children ages birth through two (2) years. The Child Find system includes children with disabilities who are homeless, as defined by the McKinney-Vento Homeless [Assistance](#) Act (see Glossary), wards of the state, or attending private schools, regardless of the severity of the disability.

See Chapter 3 for more information on Child Find.

### Section 2. Procedural Safeguards

A parent/adult student has specific procedural safeguards assured by the IDEA and state law. The district provides a document titled *Procedural Safeguards Notice* to parents/adult students

that contain a full explanation of special education rights.

See Chapter 11 for more information on procedural safeguards.

### Section 3. Student Eligibility under the IDEA

To be eligible for services under the IDEA, a student must have a disability that:

1. meets the ~~Idaho~~ State **disability eligibility** criteria as established in this manual;
2. adversely affects educational performance; and
3. results in the need for specially designed instruction and related services.

The process used to make this determination is called “eligibility evaluation.” During an eligibility evaluation, an evaluation team (which includes educators and the parent/adult student) reviews information from multiple sources including, but not limited to, general education interventions, formal and informal assessments, and progress in the general curriculum in making the eligibility determination.

See Chapter 4 for more information on eligibility and evaluation.

### Section 4. Free Appropriate Public Education (FAPE)

The district (LEA) is required to ensure that a free appropriate public education (FAPE) is available to students who reside in the district and are eligible for special education. FAPE is individually determined for each student that qualifies for special education. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

See Chapter 2 for more information on FAPE.

### Section 5. District Programs and Services

The district shall ensure that the same array of academic, nonacademic, and extracurricular activities and services is available to students with disabilities as is available to students without disabilities.

#### A. Educational Programs and Services

The district shall take steps to ensure that students with disabilities have the variety of

educational programs and services that are available to all other students served by the district. These may include art, music, industrial arts, consumer and homemaking education, vocational education, and other programs in which students without disabilities participate.

### **B. Physical Education**

Physical education services, specially designed if necessary, shall be made available to every student with a disability receiving FAPE, unless the district enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

### **C. Nonacademic and Extracurricular Services and Activities**

The district shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's Individualized Education Program (IEP) team, to provide nonacademic and extracurricular services and activities in a manner that affords students with disabilities equal opportunity to participate in those services and activities. This includes counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to persons with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.

## **Section 6. Individualized Education Program (IEP)**

The IEP is a document that outlines how a particular student with a disability will receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). It is a working document that can be amended as the student's needs change. The IEP is created collaboratively by IEP team members, including parents, the student, if appropriate, the student's teachers, and other district personnel.

See Chapter 5 for more information on IEP development.

## **Section 7. Least Restrictive Environment (LRE)**

The IDEA states that, to the maximum extent appropriate, students with disabilities are to be educated with students who are not disabled. The IEP team determines what constitutes LRE for the individual student. This includes considering that a continuum of alternative placements is available to meet the needs of children with disabilities and for special education and related services.

See Chapter 6 for more information on LRE.

## Section 8. Summary of Activities That May Lead to Special Education Services

This section describes the steps that may lead to special education services. The activities that are within each step are often sequential, but could occur simultaneously. The process might occur in a different sequence for emergency or interim placements. A flowchart of these steps is provided at the end of this chapter.

### A. General Education Interventions (carried out by the problem-solving team)

A general education problem-solving team addresses student learning needs and ensures that referrals to consider special education are appropriate. The general education problem-solving process may include comprehensive early intervening services based on whole-school approaches such as: a three-tiered model using scientifically based reading (and other content area) programs, positive behavior supports, and a response-to-intervention system.

Accommodations and instructional and/or behavioral interventions shall be attempted during the problem-solving process. These accommodations and interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and shall be clearly documented.

If the student shows adequate progress with general education interventions and accommodations, a referral to consider a special education evaluation may be unnecessary. However, if general education interventions and accommodations need to be provided on an ongoing basis or if the student shows limited or no progress *and* the student's performance is significantly discrepant from peers, a referral to consider a special education evaluation may be warranted. Also, a parent of a student may initiate a referral for special education at any time and a district may not deny that referral simply because the student had not gone through the general education intervention process.

See Chapter 4 for more information on problem-solving activities and the three-tiered model.

### B. Referral to Consider a Special Education Evaluation

Following the problem-solving team's review of the student's response to general education interventions, if the team suspects that the student has a disability and may be in need of special education, the problem-solving team shall initiate a referral to consider a special education evaluation. The purpose of this referral is to bring a student to the attention of an evaluation team so that it can determine whether to conduct a special education evaluation.

A referral for a special education evaluation marks the point at which procedural safeguards are provided to the parent. The parent/adult student shall be involved in decisions once a written referral has been made to the evaluation team to consider a special education evaluation.

The evaluation team shall review existing data, which may include progress monitoring data ~~from the student's IEP,~~ and/or clinical assessments and information provided by the

parent/adult student, and shall document the review process, ~~to and consider determine~~ the need for further assessment. The evaluation team ~~will procure shall obtain the necessary~~ written consents ~~prior to conducting for additional any~~ assessments.

See Chapter 3 for more information on the referral process to consider a special education evaluation and who can make a referral.

**C. Written Notice and Written Consent** (completed by an evaluation team)

Before administering assessments as part of the special education evaluation, written notice shall be provided to the parent/adult student along with the procedural safeguards and written consent shall be requested from the parent/adult student. The district may use a single form that meets the requirements of written notice and consent for assessment. In addition, if the evaluation team needs information for an evaluation from a non-educational agency or an individual, such as a doctor, written consent for the release of information shall be obtained from the parent/adult student.

See Chapter 4 and Chapter 11 for more information.

**D. Evaluation and Eligibility Determination** (completed by evaluation team)

After receiving consent, the evaluation team shall schedule assessments and ensure they are conducted. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs. Next, the evaluation team reviews the assessment data, the response to general education targeted interventions, and parent/adult student input and recommendations to determine whether the student is eligible for special education services. Then the evaluation team compiles an *Eligibility Report* using data collected from individual assessments and provides the parent/adult student with a copy of the report. The eligibility report shall address, to the extent required, the general education classroom, targeted interventions previously employed, and the student's response to those interventions.

For children transferring from the Infant Toddler Program (ITP), eligibility shall be determined, and an IEP developed or IFSP adopted by the child's third (3<sup>rd</sup>) birthday. See Chapter 5 for guidance on expectations. If a child turns three (3) during the summer, and the child does not require Extended School Year (ESY) services, special education and related services may begin in the new school year.

For children ages three (3) through twenty-one (21), the time between receiving consent for initial assessment and determining eligibility cannot exceed sixty (60) calendar days, ~~excluding periods when regular school is not in session for five (5) or more consecutive school days (IDAPA 08.02.03.109.03),~~ with the exception of ITP referrals which must be completed by the child's third (3<sup>rd</sup>) birthday. The parent and district may agree, in writing, to extend the sixty (60) day period. See Chapter 4 for guidance on timeline exceptions.

If the student is not eligible, the district shall provide written notice to the parent/adult student

that the evaluation data does not indicate eligibility under the IDEA even though the parent is a member of the team that determines eligibility. The district shall maintain documentation in permanent records.

If the parent/adult student disagrees with the district's evaluation and/or the eligibility determination, he or she has the right to request ~~SDE~~ [Idaho Department of Education mediation](#), file a due process hearing challenging the decision, or seek an independent educational evaluation (IEE). See Chapter 11 for more information.

#### **E. IEP Development and Implementation** (completed by IEP team)

The following activities are included in the development and implementation of the IEP:

1. Conduct an IEP team meeting to develop and implement an IEP within thirty (30) calendar days of a determination that the student is eligible for special education and related services. For eligible students, the IEP can be developed at the same meeting at which eligibility is determined if all required IEP team members are present and agree to proceed.
2. After determining goals and services, determine the [student's](#) placement in the LRE in which the IEP can be implemented. ~~For those goals that are aligned to the alternate academic achievement standards, objectives and benchmarks shall be written.~~
3. Obtain documentation indicating participation in the IEP team meeting.
4. Obtain [initial consent in writing](#) from the parent/adult student for ~~initial~~ provision of special education services.
5. Provide copies of the IEP to the parent/adult student and other participants, as appropriate.
6. Provide written notice to the parent/adult student before implementing the IEP if the provision of FAPE or the educational placement is proposed to change or if the team refused to make a change based on the parent's request.
7. Make arrangements for IEP services by informing staff of their specific responsibilities under the IEP.
8. Implement the IEP as soon as possible, but no later than within thirty (30) days of eligibility [determination](#). (See Chapter 4 for guidance on timeline exceptions.)
9. Provide the parent/adult student with periodic reports of the student's progress towards IEP goals (such as quarterly or other periodic reports, [provided, at a minimum](#), concurrent with the issuance of report cards).



See Chapter 5 for more information on IEP development.

**F. Review and Revision of IEP and Placement Decision** (completed by IEP team)

1. Send the parent/adult student a *Procedural Safeguards Notice* with an invitation to attend an IEP team meeting (required at least once annually).
2. Convene an IEP team meeting under these circumstances:
  - a. when changes in the IEP are requested or if the student is not making progress. In addition, the IDEA allows changes to the IEP without an IEP team meeting between the annual review dates if the district and parent agree; and
  - b. at least annually to develop a new IEP
3. Provide a copy of the revised IEP to the parent and the adult student when an IEP is amended or rewritten. In addition, written notice is required if the district is proposing to change or refusing to change the educational placement or the provision of FAPE.
4. Under Idaho regulations, the parent/adult student has the right to file a written objection to an IEP program change or placement change. If, within ten (10) calendar days of receiving written notice from the district, the parent/adult student files a written objection, the district shall not implement the change(s) to which the parent/adult student objects. See Chapter 11 for more information.

See Chapter 5 for more information on IEP reviews.

**G. Reevaluation** (completed by evaluation team)

Reevaluations are conducted by the evaluation team. A reevaluation shall be completed as follows: (a) at least every three years, (b) when requested by the student’s teacher or the parent/adult student, and (c) whenever conditions warrant. ~~Approximately one month b~~ Before conducting the reevaluation, the district shall inform the parent/adult student that a reevaluation is due. The parent/adult student and district may agree in writing that a three-year reevaluation is not necessary. In addition, a reevaluation need not be conducted more than once per year unless the district and the parents agree.

The evaluation team shall include the following activities in the reevaluation process:

1. Invite the parent/adult student to participate in the review of existing data and to determine what additional data, if any, is needed as part of the reevaluation. Unless the parent/adult student requests that the evaluation team members meet as a group in a formal meeting, data can be gathered from individual team members at various times using a variety of methods.

2. Obtain written consent from the parent/adult student if additional assessments shall be conducted. After gaining consent, ensure the completion of assessments and eligibility reports. The IDEA does not require consent for a reevaluation if the district has made documented attempts to get consent and the parent has not responded.
3. If the evaluation team determines that additional assessments are not needed, provide written notice to the parent/adult student of this decision and of the parent's/adult student's right to request assessments.
4. Prepare an *Eligibility Report* that details the eligibility requirements for the student, even when no new assessments are conducted. The report shall address each required eligibility component.
5. Provide the parent/adult student with a copy of the *Eligibility Report*.

Determine whether revisions to the IEP are necessary and implement an IEP, if the student continues to be eligible. If the student is not eligible, follow procedures to discontinue services.

See Chapter 4 for more information on reevaluation.

#### **H. Discontinuation of Services**

Provide prior written notice to the parent/adult student informing them of the discontinuation of services when:

1. The evaluation team determines the student no longer meets eligibility requirements for special education services; or
2. The student meets the district and State requirements that apply to all students for receipt of a regular high school diploma; or
3. The student completes the semester in which he or she reaches the age of twenty-one (21) years; or
4. Parent/adult student revokes consent for special education services.

When a student exits from special education as a result of graduating or aging out, the district shall provide the student with a summary of his or her academic achievement and functional performance, along with recommendations on how to assist the student in meeting postsecondary goals.

See Chapter 7 for more information on the discontinuation of services.

## CHAPTER 2: FREE APPROPRIATE PUBLIC EDUCATION – TABLE OF CONTENTS

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## CHAPTER 2: FREE APPROPRIATE PUBLIC EDUCATION

The district (local education agency) is required to ensure that a free appropriate public education (FAPE) is available to residents, homeless individuals and individuals from migrant families ages three (3) to twenty-one (21) in the district and who are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

### Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the IDEA means special education and related services that:

1. are provided at public expense (free);
2. are provided in conformity with an appropriately developed individualized education program, or IEP (appropriate);
3. are provided under public supervision and direction (public); and
4. include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the ~~State~~-Idaho Department of Education (education).

### Section 2. Provision of FAPE

#### A. District Obligation

The district is required to ensure that FAPE is available to students in the district who are eligible for special education. This includes students who reside in group, personal care, or foster homes, as well as institutions, if their legal guardian is a resident of Idaho, even though the guardian may reside in another Idaho school district. It also includes students who are migratory or homeless as defined by the McKinney-Vento Homeless Act (see Glossary). If a student from another state is placed in Idaho by an out-of-state agency, parent, or district, the placing district, parent, or agency is responsible for the educational costs. If a student is placed in a district by an Idaho agency, the student is entitled to FAPE and the responsible agency is determined by Idaho Code regarding the specific situation.

The district is obligated to make FAPE available to each eligible student in the district as follows:

1. The district shall provide FAPE to an individual who is at least three (3) years old and

who qualifies for special education services unless the parent/adult student has refused special education services. Students aged three (3) to five (5) must have their special education services identified on an IEP since Idaho does not have state-funded preschool programs.

2. The district shall offer FAPE to parentally placed private school students in accordance ~~to~~with statutory and regulatory language, which states that parentally placed private school students with disabilities do not have an individual right to some or all of the special education and related services that the student would receive if enrolled in a public school.
3. A free appropriate public education shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course and is advancing from grade to grade.

Note: Participation in Comprehensive Early Intervening Services neither limits nor creates a right to FAPE.

**B. Limit to District Obligation**

1. A student with a disability who has been placed in a private school or facility by the parent does not have an individual right to receive all or part of the special education and related services that the child would receive if enrolled in a public school. However, the district would have Child Find responsibilities. See Chapter 9 for more information.
2. Students who are homeschooled are considered nonpublic **school** students for the purpose of dual enrollment, however a student being homeschooled is not considered a private school student. Students who are dually enrolled in a school district’s general education program may be considered for a Section 504 plan if needed to provide supports and/or accommodations for those general education courses in which they are enrolled. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

Homeschool students who are dually enrolled are considered to be nonpublic school students. The district shall allow homeschool students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a Section 504 plan, if needed.

Homeschool students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a

disability. This means that there is no individual right to receive some or all of the special education services that the student would receive if enrolled in public school.

### C. When District Obligation to Provide FAPE Ends

The District’s obligation to provide FAPE to a student ends:

1. at the completion of the semester in which the student turns twenty-one (21) years old;
2. when the student meets the district requirements and the Idaho Content Standards that apply to all students for receipt of a high school diploma; a high school diploma does not include an alternative degree that is not fully aligned with the Idaho Content Standards, such as a general educational development credential (GED);
3. when the student no longer meets the eligibility criteria for special education services, as determined by the team after a reevaluation; or
4. when a parent/adult student has revoked consent for the continued provision of special education services.

### D. Temporary Suspension of FAPE

The district is not required to provide FAPE to an eligible student during the suspension of ten (10) cumulative school days or less during a school year (unless the district provides services to students who are not disabled who are also suspended); however, FAPE must be provided following this ten (10) day exception.

## Section 3. FAPE Considerations

### A. Case Law Interpretations of FAPE

The definition of FAPE has been further developed as a result of litigation between parents and districts.

In 1982, the United States Supreme Court in Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al. defined FAPE as:

1. an IEP developed in adequate compliance with the IDEA procedures; and
2. an IEP reasonably calculated to enable the student to receive educational benefit (the Rowley Standard).

In March 2017, the Court in Endrew F. v. Douglas County School District ~~applies~~ applied the Rowley Standard, indicating that a school must offer an IEP that is specially designed and reasonably calculated to enable a child to “make progress appropriate in light of the child’s

circumstances,”<sup>7</sup> emphasizing the unique needs of the child. The educational program offered “must be appropriately ambitious in light” of [Andrew F’s] unique circumstances just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom. They may differ [comparing Amy Rowley to Andrew F] but every child should have a chance to meet challenging objectives.

The Court ~~expresses~~<sup>expressed</sup> its confidence that school authorities will “be able to offer a cogent and responsive explanation for their decision,”<sup>7</sup> demonstrating that the IEP is reasonably calculated to enable the student to make progress in light of the student’s individual circumstances.

### **B. Applicability to Charter and Alternative Schools**

Federal law requires the district to provide students with disabilities educational choices comparable to those choices offered to students without disabilities. These choices include the opportunity to attend a public charter school or alternative public school. Students enrolled in public charter and alternative schools are entitled to FAPE and retain all the rights and protections that are available under the IDEA.

### **C. Applicability to Detained Youth**

Students with disabilities or suspected disabilities who are detained in city or county jails, juvenile detention centers, juvenile correctional facilities, or in Idaho prisons are entitled to FAPE.

#### **1. Services to Youth Detained in City or County Jails**

The district in which the facility is located has the responsibility for Child Find and the provision of FAPE to eligible youth.

#### **2. Services to Youth Detained in Juvenile Detention Centers (JDC)**

The district in which the facility is located has the responsibility for the provision of FAPE to eligible youth. Typically, detention in a JDC is short term, and the student most likely returns to his or her home district. If a district has a student who is detained in a JDC not located within the district boundaries, the district may find it beneficial to coordinate school assignments through the JDC’s education staff while the student is in the facility.

#### **3. Services to Youth Placed in the Custody of the Department of Juvenile Corrections (DJC)**

When a student is placed in the custody of the Department of Juvenile Corrections, the responsibility for the provision of FAPE resides with the Department of Juvenile Corrections.

#### **4. Services to Youth in the Custody of the Department of Correction (DOC)**

When a student is placed in the custody of the Department of Correction, the responsibility for



the provision of FAPE resides with the Department of Correction through an agreement between the ~~SDE~~ Idaho Department of Education and the Department of Correction.

#### **D. Using Public and Private Insurance Funds to Provide FAPE**

If a student is covered by a parent's private or public insurance or benefits, the district may access this insurance only if the parent provides informed consent. The consent requirements are different for accessing a parent's private insurance as opposed to public insurance (such as Medicaid).

If a district proposes to access a parent's public insurance to cover any of the costs associated with the provision of special education and/or related services, the district must do the following:

1. Provide written notification regarding use of public benefits or insurance to the child's parents before accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent and annually thereafter. The written notification must explain all of the protections available to parents to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice must include a statement that the refusal to provide consent or the withdrawal of consent will not relieve the district's responsibility to ensure that all the required IEP services are provided at no cost to the parent. The notice must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.
2. Obtain a one-time written consent from the parent after providing the written notification regarding use of public benefits or insurance before accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (e.g., billing for services); and (c) the agency to which the disclosure may be made (e.g., Medicaid). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services. Such consent may be withdrawn at any time by the parent.
3. If the child on an IEP moves into a new district, the new district responsible for providing a FAPE must provide the parents with written notification regarding use of public benefits or insurance and must obtain consent before accessing the child's or parent's public insurance.

If a district is proposing to access a parent's private insurance to cover any of the costs associated with the provision of special education and/or related services, the district must ~~get~~ obtain parental consent each time the district proposes to access private insurance.

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## CHAPTER 3: CHILD FIND

The Child Find system involves three basic components leading to the determination of whether ~~or not~~ a student has a disability and requires special education. The components are location, identification, and evaluation. This chapter describes location and identification activities. The evaluation process is covered in Chapter 4.

### Section 1. District Responsibility

The district is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students suspected of having disabilities, ages three (3) through the semester during which they turn twenty-one (21), who may need special education, regardless of the severity of the disabilities. The district is also responsible for coordinating with the Department of Health and Welfare (DHW) regarding the Child Find system for children ages birth through two (2) years. The district may appoint an individual to coordinate the development, revision, implementation, and documentation of the Child Find system.

The Child Find system shall include all students within the district's geographic boundaries including students who are:

1. enrolled in the district, however this would not include a student who is placed in that public school by another district;
2. enrolled in charter and alternative schools;
3. enrolled in homeschool;
4. enrolled in parentally placed private elementary and secondary schools (including religious schools) located in the district; including out-of-state ~~parentally placed~~ **parentally placed** private school ~~children~~ **students** with disabilities;
5. not enrolled in elementary or secondary school, including resident ~~children~~ **students** ages three (3) through five (5);
6. advancing from grade to grade;
7. highly mobile students (such as migrant and homeless as defined by the McKinney Vento Homeless Act [see Glossary]); and
8. wards of the state.

## Section 2. Locating Students

Locating students who may have disabilities involves coordinating with other agencies and promoting public awareness.

### A. Coordination

For infants and toddlers, birth through two (2) years of age, Child Find is provided by the Idaho ~~Infant/Toddler~~ Infant/Toddler Program (ITP). Although lead responsibility for the ITP has been designated to the DHW, interagency agreements provide for collaboration and coordination. The district shall use local interagency agreements for efficient use of resources and ease of service accessibility for students and families.

### B. Public Awareness

The district shall take and document the necessary steps to ensure that district staff and the general public are informed of the following:

1. the availability of special education services;
2. a student's right to a free appropriate public education (FAPE);
3. confidentiality protections; and
4. the referral process.

This information may be provided through a variety of methods such as distributing brochures or flyers, including information in school or district publications, disseminating articles and announcements to newspapers, arranging for radio and television messages and appearances, speaking at faculty meetings or district in-services, and making presentations.

## Section 3. Identification

The identification component of Child Find includes screening, early intervening through a problem-solving process, and referral to consider a special education evaluation. The procedural rights under the IDEA are afforded when the student is referred for a special education evaluation by the parent/adult student or the district.

### A. Screening

Screening is an informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards or Idaho Early Learning Guidelines (eGuidelines). A variety of methods may be used to screen students, including performance on statewide assessments, curriculum-based measures, daily work in the

classroom, teacher observations, hearing and vision screeners, developmental milestones, and/or kindergarten readiness measures.

Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Although screening is an important part of the Child Find system, screening cannot be used to delay processing a referral to consider a special education evaluation where immediate action is warranted.

### **B. General Education Intervention (Comprehensive Early Intervening Services)**

Under the Local Education Agency (LEA) funding option, early intervening services are services for K-12 students who need additional academic and behavioral support to succeed in the *general education environment*. When a school's screening process reveals that a student or groups of students are at risk of not meeting the Idaho Content Standards, the general education problem-solving team shall consider the students' need for "supported" instructional and/or behavioral interventions in order to help the students succeed. These interventions are referred to as early intervening services or general education interventions, accommodations, and strategies. It is important to remember that students who receive early intervening services are not currently identified as needing special education or related services and do not have a right to a free appropriate public education. Therefore, the IDEA procedural safeguards are not applicable at this time.

Districts shall implement comprehensive coordinated services and activities that involve providing educational and behavioral evaluations, services, and supports. These services may also include professional development for teachers and other staff to enable them to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software. Comprehensive Early Intervening Services (CEIS) should be based on whole-school approaches such as; the three-tiered model, scientifically based curriculum and instruction, positive behavior supports, and a response-to-intervention system.

If a district chooses to use up to 15% of IDEA Part B funds for CEIS for students in K-12 who are not currently identified as needing special education, but who need additional support in the general education environment, additional requirements may apply that will affect maintenance of effort. In addition, if IDEA Part B funds are used, the district must annually report to the [SDE Idaho Department of Education](#):

1. The number of children receiving CEIS; and
2. The number of children who received CEIS and subsequently received special education services during the preceding two year period.

If a district is found to have a significant disproportionate representation in special education, there are additional requirements for use of funds in CEIS. Please see Chapter 10 for more information on CEIS.

### C. General Education ~~Problem-Solving~~ Problem-Solving

#### 1. Establishing a Problem-Solving Team

The district shall establish a problem-solving team and a process to plan accommodations and interventions in general education and to ensure that referrals to consider a special education evaluation are appropriate. Team membership is established by the school or the district and would likely involve general educators and administrators, and could include counselors, specialists, and special education personnel. While parent/adult student involvement is valuable and encouraged, the district is not required to include the parent/adult student on the team.

When ~~problem-solving~~ problem-solving involves a child three to five (3-5) years of age, the team should seek input from family members, ~~child care~~ childcare programs, private preschools, or Head Start Programs, as appropriate. An early childhood problem-solving process needs to consider early childhood environments and the preschool student's need for supported instructional interventions in order for the student to participate in appropriate activities. IDEA Part B funds cannot be used to provide CEIS to preschoolers.

#### 2. Referrals to the Problem-Solving Team

Referrals to the problem-solving team may come from a variety of sources including parents, students, other family members, public or private school personnel, agencies, screening programs, or as a result of annual public notice.

Referrals may be made for a variety of reasons dealing with academic and behavioral concerns and may involve, but are not limited to, teaching strategies, material accommodations, social skills training, cooperative learning concepts, classroom organization, and scheduling.

#### 3. Interventions

- a. Interventions in general education or an early childhood environment shall be attempted before a student is referred to an evaluation team, unless the student's performance indicates an evaluation is warranted or a parent makes a request for a referral for a special education evaluation.
- b. Interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and should be clearly documented.
- c. Documentation of the success or failure of accommodations and interventions shall be reviewed and discussed by the problem-solving team.



#### 4. Problem-Solving Team Decisions Following General Education Intervention

Based on a review of data and information presented by the referring party and others, the team has several decision options. In the case of a preschool student, data and information shall be gathered and reviewed from such settings as ~~child care~~ childcare programs, private preschools, Head Start Programs, or the home. Following an intervention, the problem-solving team shall review progress monitoring data from the intervention and other relevant information to determine what action is warranted. The team considers a variety of options, including whether to:

- a. continue the general education intervention because the student is making adequate progress but needs more time to reach goals;
- b. continue the intervention in a modified form;
- c. explore services or programs outside of special education (such as Title I of the Elementary and Secondary Education Act, including English language programs; Section 504 accommodations; counseling); or
- d. make a referral to consider a special education evaluation.

Although problem-solving activities are an important part of the system, they cannot be used to delay processing a referral for consideration of a special education evaluation where immediate action is warranted. Either a parent or a public agency may initiate a request for an initial evaluation. If a parent initiates a referral for a special education evaluation, the evaluation cannot be delayed or denied due to the child not completing the general education intervention process.

### Section 4. Referral to Consider a Special Education Evaluation

#### A. Evaluation Team

The evaluation team is the group of people established by the IDEA that has the responsibility for making decisions regarding evaluation, assessments, and eligibility. The composition of the evaluation team will vary depending on the nature of the student's suspected disability and other relevant factors. The evaluation team shall include the same membership (although not necessarily the same individuals) as the IEP team and other professionals as needed to ensure that appropriate, informed decisions are made.

Unlike an IEP team, an evaluation team has the flexibility of conducting business with or without a meeting. The case manager can gather input from evaluation team members in a variety of ways. The parent/adult student shall be included in the evaluation team and shall be given the opportunity to indicate whether he or she wishes the team to hold a meeting with all members attending.

## B. Referrals to Consider Special Education

The procedure for ~~handling~~ ~~processing~~ a ~~referrals~~ referral to consider a special education evaluation for students suspected of having a disability includes the following:

1. Unless immediate action is warranted and documented, a referral to consider a special education evaluation is sent to the evaluation team *after* the problem-solving team has determined:
  - a. the student's response to research-based interventions in general education (or age-appropriate activities for preschool) has not resulted in adequate progress; and
  - b. language and cultural issues are not the ~~main source of~~ primary factors in the student's academic or behavioral discrepancy from peers.
2. A Referral to Consider a Special Education Evaluation/Reevaluation form shall be completed.
3. Procedural safeguards are activated when a referral is made to consider a special education evaluation. If the referral came from someone other than the parent/adult student (see Glossary) the parent/adult student shall be notified. In either case, the parent/adult student shall be provided ~~with~~ a copy of the *Procedural Safeguards Notice*. At the same time, the parent/adult student shall be afforded an opportunity to provide input regarding the need for and scope of the initial evaluation, including the opportunity to hold a meeting if desired.
4. The evaluation team (including the parent/adult student) reviews all available records, including family and health history, past school experiences, the results of general education interventions, and previous assessments and evaluations. The evaluation team shall decide what additional assessments, if any, are needed. This review and determination process can take place at a face-to-face meeting of the evaluation team or through an alternate format, unless the parent/adult student desires that a meeting be held.
  - a. If the evaluation team determines that an evaluation is warranted, written notice shall be provided to the parent/adult student describing the proposed evaluation and written consent shall be obtained from the parent/adult student.
  - b. If the evaluation team determines that an evaluation is not warranted at this time, the team should seek other avenues for services to meet the student's needs. The person initiating the referral, if other than the parent/adult student, may be informed as to why the evaluation is not being conducted. Written notice of the district's refusal to evaluate a student for special education services shall be provided to the parent/adult student when he or she makes a referral

for a special education evaluation and the district determines that the evaluation is not warranted.

Note: Districts are prohibited from requiring that a student obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation, or receiving services under the IDEA.

See Chapter 4 for more information on evaluation and eligibility.

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## CHAPTER 4: EVALUATION AND ELIGIBILITY

Chapter 3 discusses Child Find procedures used to locate and identify students with suspected disabilities. This chapter contains the requirements for the special education evaluation and eligibility process, from referral to consider a special education **evaluation** through to the determination of eligibility. The Idaho ~~State~~-Department of Education has provided State Eligibility Criteria for special education services for eligibility consistent with the IDEA for districts to use while determining eligibility.

### Section 1. Evaluation Team

The evaluation team is a group of people outlined by IDEA ~~with the responsibility to make who~~ **make decisions** regarding evaluation, assessments, and eligibility. This team includes the same membership as the individualized education program (IEP) team (although not necessarily the same individuals) and other qualified professionals ~~as~~ needed to ensure that appropriate and informed decisions are made. The specific composition of the evaluation team reviewing existing data will vary depending upon the nature of the student's suspected disability and other relevant factors. The parent/adult student is a member of the evaluation team and shall be provided an opportunity to provide input and participate in making team decisions. The evaluation team may conduct its review without a meeting unless the parent/adult student requests that a meeting be held.

Additional Membership Requirements:

The determination of whether a student suspected of having a *specific learning disability* shall be made by the student's parents and a team of qualified professionals, which shall include:

- ~~1.~~ **1.** The student's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; ~~and~~
2. A school psychologist; ~~and~~
3. ~~is a required member of the team.~~ When considering oral expression and listening comprehension, a speech language pathologist is a required member who may collaborate with or replace the school psychologist as the professional required to conduct and interpret evaluative examinations.

### Section 2. Purpose of an Evaluation

The purpose of the evaluation process is to determine the eligibility of a student for special education services. This pertains to both initial determination and three-year review of eligibility, or re-evaluation. It is also a process for gathering important information about a

student's strengths and service needs. An evaluation process shall include a variety of assessment tools and strategies to gather relevant functional, developmental, **behavioral**, and academic information about the student, including information provided by the parent.

### A. Definitions

Although the terms "evaluation" and "assessment" are often interchanged, there are significant differences between the meanings of the two terms. ~~In an effort to clarify~~, The terms are defined as follows:

1. Evaluation refers to procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
2. Assessment is integral to the evaluation process and includes the formal and informal processes of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. A test is one method of obtaining credible information. ~~within the assessment process~~. Tests may be standardized or non-standardized, criterion-referenced (e.g. curriculum-based measures), or norm-referenced, and usually elicit responses from students to situations, questions, or problems to be solved. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal data.

The screening of a student by a teacher or specialist to determine appropriate *instructional* strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

### B. Evaluation Components

The district shall conduct a full, **comprehensive**, and individual initial evaluation before ~~the provision of~~ special education and related services are provided to a student suspected of having a disability. A parent or a public agency may initiate a request for an initial evaluation to determine eligibility.

To be eligible for services under the IDEA, a student must have a disability that:

1. meets the ~~Idaho s~~State **disability eligibility** criteria;
2. adversely affects educational performance; and
3. results in the need for specially designed instruction and related services.

In addition, the information from the evaluation can be used to consider the following:

1. the nature and extent of special education and related services needed by the student in order to participate and progress in the general education curriculum or



curriculum aligned to the Idaho Content Standards, or the Idaho Early Learning Guidelines (eGuidelines); and

2. the least restrictive environment (LRE) for the student.

The above information also pertains to evaluations for determining Part B eligibility for children transitioning from the Infant/Toddler Program (ITP).

### Section 3. Written Notice and Consent for Assessment

Written notice shall be provided and informed consent shall be obtained before assessments are administered to a student as part of an evaluation.

#### A. Written Notice Requirements

Written notice shall be provided to the parent/adult student within a reasonable time before the district proposes to initiate the evaluation or ~~re-evaluation~~ reevaluation of a student. Written notice shall be in words understandable to the general public. It shall be provided in the native language or other mode of communication normally used by a parent/adult student unless it is clearly not feasible to do so.

If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:

1. the notice is translated orally or by other means in the native language or other mode of communication;
2. the parent/adult student understands the content of the notice; and
3. there is written evidence that the above two requirements have been met.

The written notice shall include the following:

1. a description of the evaluation or reevaluation proposed or refused by the district;
2. an explanation of why the district proposes to evaluate or reevaluate the student;
3. a description of any other options the district considered and the reasons why those options were rejected;
4. a description of each assessment procedure, test, record, or report that the district used as a basis for the proposed or refused evaluation or reevaluation;
5. a description of any other factors relevant to the evaluation or reevaluation;

6. a statement that the parent/adult student has special education rights and how to obtain a copy of the *Procedural Safeguards Notice* (Note: If this is the initial evaluation, the parents should get a copy of the procedural safeguards with the initial notice of the ~~referral to consider a special education evaluation process~~ ~~special education evaluation~~); and
7. sources for parents to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

Written notice shall be provided to the parent/adult student within a reasonable time in the following instances:

1. to conduct any additional assessments and review initial information as part of the initial evaluation or reevaluation;
2. to explain refusal to initiate assessment; and
3. when the evaluation team determines that additional assessments are not required

See Chapter 11 for more information on written notice.

## B. Consent Requirements

1. Definition of Consent. Consent means that the parent/adult student:
  - a. has been fully informed in his or her native language or other mode of communication of all information relevant to the assessment for which consent is sought;
  - b. understands and agrees in writing (as indicated by signature) to the activities described; and
  - c. understands that granting of consent is voluntary and may be revoked in writing at any time *before* the assessment is completed. However, once the assessment has been completed, revocation of consent cannot be used to ~~have the assessment disregarded~~ ~~disregard the results of assessments already administered~~.
2. Consent for initial evaluation
  - a. Informed written consent shall be obtained from the parent/adult student before the district conducts ~~assessments as a part of~~ an initial evaluation of the student to determine if he or she qualifies as a child with a disability, ~~whether or not the team determines that new assessment is necessary~~;
  - b. Parental consent for initial evaluation should not be construed as consent for

initial provision of special education and related services;

- c. The school district shall make reasonable documented efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child has a disability and to identify the educational needs of the child. If a parent refuses consent, the district does not violate its obligation to provide FAPE if it declines to pursue the evaluation. If the parent does not provide consent, the district may offer an [SDE Idaho Department of Education](#) facilitated meeting, mediation, or request a due process hearing to challenge the decision.
- d. If the child is a ward of the State and is not residing with the child's parent, the district is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility if:
  - 1) despite reasonable efforts to do so, the district cannot locate the parent;
  - 2) the rights of the parents of the child have been terminated in accordance with Idaho law; or
  - 3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Idaho law and consent for initial evaluation has been given by an individual appointed by the judge to represent the child.
- e. If a district is using any data gathered during general education interventions for a student suspected of being a student with a disability, and that data may be used for a later eligibility determination, the district shall promptly request consent to evaluate the student.

### C. Consent for Reevaluation

1. Written consent shall be sought for reevaluation that requires new assessments. Reevaluation consisting solely of review of existing data does not require written consent. [This includes a review of the student's educational files/records.](#)
2. Informed parental consent for a reevaluation need not be obtained if the public agency can demonstrate through documentation that it made reasonable efforts to obtain consent and the child's parent has failed to respond.

### D. When Consent Is Not Required

Parental consent is *not* required for:

1. the review of existing data as part of an evaluation or reevaluation;
2. the administration of a test or other assessment that is administered to all students,

unless consent is required of parents of all students;

3. teacher or related service provider observations, ongoing classroom evaluations, or criterion-referenced tests that are used to determine the student’s progress toward achieving goals on the IEP; and
4. screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation, which may include group or individual curriculum-based or norm-referenced measures.

**E. Refusing Consent or Failure to Respond to a Request for Consent**

1. The parent/adult student can refuse consent for assessment(s).
2. For an initial evaluation, if consent is refused or the parent/adult student fails to respond, the student cannot be assessed. However, the district may request ~~SDE~~Idaho Department of Education facilitation, mediation, or a due process hearing. If the mediation results in consent to assess, or if a hearing officer’s decision indicates that assessment is appropriate and there is no appeal, then the student may be assessed. However, the district does not violate its obligations to provide FAPE if it declines to pursue the evaluation. Consent for the initial evaluation shall not be construed as consent for the initial provision of special education services should the student be deemed eligible.
3. If a parent of a child who is homeschooled or placed in a private school by the parents at their own expense does not provide consent for initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the district may not use ~~SDE~~Idaho Department of Education mediation or due process procedures in order to gain consent and the district is not required to consider the child eligible for services.

Note: A district shall not use a parent’s refusal for consent to one service or activity to deny the parent or student any other service, benefit, or activity.

See Chapter 11 for more information on consent and reasonable efforts.

**F. Timeline**

The time between receiving written consent for initial assessment and eligibility determination cannot exceed sixty (60) calendar days, ~~except in unusual circumstances, listed below. excluding periods when regular school is not in session for five (5) or more consecutive school days.~~ The time between eligibility determination and the development ~~and implementation~~ of the IEP cannot exceed thirty (30) calendar days. ~~The implementation of the IEP shall not exceed thirty (30) calendar days from the eligibility determination, unless all parties agree to an extension.~~ For children transferring from ITP, eligibility shall be determined and an IEP developed by the child’s third birthday. If a child turns three during the summer, ~~is eligible for special education,~~

and the child does not require Extended School Year (ESY) services, special education and related services may begin in the new school year. [See Chapter 5 for additional information on collaboration with the ITP throughout the transition process.](#)

In unusual circumstances, all parties may agree in writing to an extension of the sixty (60) day period for the purpose of initial assessment. These circumstances may include the following:

1. The child enrolls in a school in another school district after the sixty (60) day timeline ~~began~~ [begins](#) and prior to the determination by the child's eligibility in the previous school district. If the new school district is making sufficient progress in determining eligibility, the parent and district may agree to a different timeline.
2. The parent repeatedly fails or refuses to produce the student for an evaluation after the district has made reasonable efforts to schedule an evaluation.

#### Section 4. Information from Other Agencies or Districts

Consent for release of information shall be received before the district seeks to obtain information about the student from other agencies, unless otherwise authorized by law. Upon receipt of consent, the case manager will send [an authorization to exchange confidential information form](#) requesting information to individuals or agencies that have relevant information about the student. A copy of the signed [authorization to exchange confidential information form](#) ~~for release of information shall be included with the letters and a copy~~ shall be retained in the student's confidential file. Sources of this additional information may include records from health and social service agencies, private preschool programs, legal service agencies, and non-school professionals such as physicians, social workers, and psychologists.

Federal laws and regulations do not require consent for the district to:

1. request information from other districts that the student has attended; or
2. send information to other districts in which the student intends to enroll.

~~For children transferring from the ITP, eligibility shall be determined and the IEP developed by the date that the child turns three (3) years of age. See Chapter 5 for additional information on collaboration with the ITP throughout the transition process.~~

#### Section 5. Evaluation and Eligibility Determination Procedures

##### A. Areas to Assess

The student shall be assessed in all areas related to the suspected disability, which includes areas such as functional, [behavioral](#), developmental, and academic skills needed to participate

and progress in the general education curriculum. If needed, qualified personnel shall conduct ~~an individual assessment of assistive technology needs, including~~ a functional evaluation in the individual's customary environment ~~to determine the need for assistive technology~~. The evaluation of each student with a suspected disability shall be full and individualized and sufficiently comprehensive to identify all of the student's suspected special education and related service needs whether or not commonly linked to the disability category in which the student may be classified. ~~For youth with IEPs, no later than age sixteen (16), appropriate transition assessments shall be conducted.~~ Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), appropriate transition assessments shall be conducted.

Evaluation teams shall be especially mindful of cultural and linguistic differences during the evaluation and eligibility process. Caution is advised in the selection of informal or formal assessments that are nonbiased, administration of assessments, interpretation, and application of outcomes in order to appropriately identify culturally or linguistically diverse students for special education services.

#### **B. Determination of Needed Initial or Reevaluation Data**

As part of an initial evaluation or reevaluation, the evaluation team shall review existing evaluation data regarding the student including:

1. assessments and information provided by the parent/adult student concerning the student;
2. current classroom-based assessments and observations, and/or data regarding the student's response to scientific research-based interventions;
3. observations by teachers and related service providers; and
4. results from statewide and district wide testing.

Based on that review, and input from the parent/adult student, the evaluation team will decide on a case-by-case basis what additional data, if any, are needed to determine:

1. whether the student meets eligibility criteria for special education;
2. the student's present levels of academic and functional performance, including academic achievement and related developmental needs of the student;
3. whether the student needs specially designed instruction; or
4. whether any additions to the special education and related services are needed to enable the student to:
  - a. meet the measurable annual goals set out in the student's IEP; and

- b. be involved in and progress in the general education curriculum (for preschool students, to participate in [age-appropriate activities](#)).

If the evaluation team determines additional assessments are not required for the purpose of determining whether the student meets eligibility criteria during an initial evaluation or a reevaluation, the district shall provide written notice to the parent/adult student of the decision and the reasons for that decision. [In the case of an initial evaluation, written consent to conduct an initial evaluation for special education must be obtained.](#) The parent/adult student shall also be informed of his or her right to request assessments to determine eligibility and to determine the child's educational needs. The district will provide written notice if a parental request for additional assessment is denied.

### C. Assessment Procedures and Instruments

The district shall ensure the evaluation or reevaluation meets the following requirements:

1. The child shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and transition needs.
2. Assessments and other materials shall be selected and administered so as not to be discriminatory on a racial or cultural basis.
3. Assessments and other materials shall be provided and administered in the student's native language, and in the form most likely to yield accurate information on what the student knows and can do academically, [behaviorally](#), developmentally, and functionally unless it is not feasible to provide or administer. Attempts to provide a qualified examiner in the student's native language or mode of communication shall be documented.
4. In all direct contact with a student, the language normally used by the student in the home or learning environment shall be used. For an individual with blindness or deaf or hard of hearing, or for an individual with no written language, the mode of communication is that which is normally used by the individual (e.g., sign language, Braille, or oral communication).
5. Materials used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than solely measuring the student's English language skills.
6. A variety of assessment tools and strategies shall be used to gather relevant academic, developmental, [behavioral](#), and functional information about the student, including information provided by the parent/adult student and information related to enabling the student to be involved in and progress in the general education curriculum (or, for a

preschooler, to participate in [age](#)-appropriate activities).

7. Assessments are used for the purposes for which the assessments or measures are valid and reliable.
8. Assessments shall be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
9. Assessments and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient or standard score.
10. Assessments shall be selected and administered to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those are the factors that the test purports to measure).
11. No single measure or assessment may be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.
12. The district shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.
13. The district shall provide and use assessment tools and strategies that produce relevant information that directly assists persons in determining the educational needs of the student.
14. All services and assessments shall be provided at no expense to the parent/adult student.
15. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with the child's prior and subsequent schools to ensure prompt completion of the full evaluation.
16. The evaluation shall be full and individualized and sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category.

#### **D. Eligibility Determination**

1. Upon completion of the student's initial evaluation or reevaluation, the evaluation team will consider the findings and determine whether the student meets or continues to meet eligibility criteria found in Section 7 of this chapter. The evaluation team will draw



upon information from a variety of sources, such as norm-referenced, standardized tests, parent/adult student input, teacher input, physical condition, social or cultural background, adaptive behavior, [behavioral performance](#), and functional assessments to interpret evaluation data and determine eligibility.

## 2. Special Rule for Eligibility Determination

A student cannot be identified as a student with a disability if the primary reason for such a decision is:

- a. lack of appropriate instruction in reading, including the essential components of reading instruction as defined by the Elementary and Secondary Education Act—phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies;
- b. lack of appropriate instruction in math; or
- c. Limited English Proficiency.

## 3. Related Services

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes [speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy](#). Related services also include [counseling services, orientation and mobility services, school health services, social work services, and parent counseling and training](#). An IEP team may determine that a student found eligible for special education has a need for a related service. However, if a student with a disability needs only a related service and not special education, then the student is not eligible for the related service, unless it is considered to be special education under State standards, as in the case of speech therapy and language therapy.

### E. The Eligibility Report

The evaluation team shall prepare an Eligibility Report and provide a copy of the report to the parent/adult student.

The Eligibility Report shall include:

1. names and positions of all evaluation team members;
2. information regarding the student's need for specially designed instruction (special education and related services);
3. confirmation and supporting data that the disability is not primarily due to lack of appropriate instruction in reading, including the essential components of reading —

phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies, or math;

4. information about how the student's disability adversely affects his or her educational performance;
5. all data on the student as required in the ~~State Eligibility Criteria~~ State eligibility criteria for the area of suspected disability;
6. confirmation and supporting data that the student's learning difficulties are not primarily due to Limited English Proficiency;
7. the date of the eligibility determination;
8. the name and position of all those administering assessments; and
9. in the case of Specific Learning Disability eligibility determination, certification in writing that the report reflects each member's conclusions (agreement), and in the case of team member disagreement with the conclusions, a written statement shall be attached to the eligibility report presenting the dissenting team member's conclusions.

## Section 6. Reevaluation and Continuing Eligibility

### A. Reevaluation Requirements

The district shall ensure that an individual reevaluation of each student with a disability is conducted in accordance with all the required evaluation procedures outlined in this chapter.

A reevaluation:

1. shall occur at least once every three (3) years. ~~unless the parent/adult student and the district agree in writing that a three (3) year reevaluation is not necessary.~~ The evaluation team shall complete the reevaluation consideration process and form to determine whether new assessment(s) are needed for the reevaluation; and
  - a. The evaluation team may agree that new assessment is not required to determine eligibility. Written notice shall be provided to the parent/adult student stating this decision and the reasons for it. The parent/adult student shall be notified of the right to request new assessment(s) as part of the reevaluation. ~~However, an~~ An updated Eligibility Report, documenting all eligibility criteria, shall be completed by the reevaluation due date to establish and document continuing eligibility,
2. a reevaluation is not required more than once per year unless the parent/adult student

and the district agree otherwise. If the parent makes a request within the year and the district does not agree, the district shall send written notice of refusal.

The district shall ensure a reevaluation is conducted more frequently than every three (3) years if:

1. it is determined that the education or related service needs, including academic achievement and functional performance, of the student warrants a reevaluation; or
2. if the parent/adult student or the student's teacher requests a reevaluation.

### B. Reevaluation Prior to Discontinuation

1. The district shall **conduct a reevaluation of a** ~~evaluate a~~ student with a disability before the team determines that the student is no longer eligible for special education.
2. Reevaluation is not required in the following two circumstances:
  - a. before the termination of a child's eligibility due to graduation, if the student meets comparable academic requirements that are equally as rigorous as those required of nondisabled students and the **student meets state standards for graduation** ~~receives a regular diploma~~;
  - b. the student has reached the end of the semester in which he or she turns twenty-one (21) years of age.

Note: Although a reevaluation is not required in these two cases, the district shall provide the student with a summary of his or her academic achievement and functional performance, including recommendations on how to assist the student in meeting his or her post ~~school~~ **secondary** goals.

### C. Informing the Parent/Adult Student

~~Approximately one month b-~~ Before the reevaluation is due, contact shall be made with the parent/adult student informing him or her that:

- ~~1-~~ the reevaluation will be **scheduled conducted** ~~within the month, unless the district and parent/adult student agree it is unnecessary~~;
2. **whether new assessments are required for the reevaluation with appropriate written notice and/or written consent based on this decision**; and
3. input will be sought from the parent/adult student.

Note: The IDEA allows the process of reviewing existing data and determining what, if any, additional, assessments are required without a meeting.

#### D. Nature and Extent of Reevaluation

Before any ~~reassessment~~ reevaluation of the student, the evaluation team will determine the nature and extent of the student's needs by reviewing existing data using the reevaluation consideration process and form. See Section 5 of this chapter for more information regarding the determination of needed data.

1. No ~~New Assessment~~ or Additional Information Needed
  - a. If the evaluation team decides that no new or additional assessments are needed to determine whether the student continues to be eligible for special education services, the district shall provide written notice to the parent/adult student of his or her right to request further assessment.
  - b. If the parent/adult student requests ~~an~~ new or additional assessment to determine whether the student continues meet criteria for special education services under the IDEA, then the district shall conduct the assessment.
  - c. If the parent/adult student requests an additional assessment for reasons other than eligibility, such as admission to college, then the district shall consider the request and provide written notice of its decision.
2. ~~Additional~~ New Assessments Needed

Based on recommendations from the evaluation team, the district will seek consent to administer the needed assessments and provide the parent/adult student with written notice regarding proposed assessments. If the parent/adult student fails to respond after the district has taken reasonable measures to obtain consent for assessments as part of a reevaluation, the district may proceed with the assessments. The district shall maintain documentation of its measures to seek consent. See section 3B of this chapter for a definition of reasonable measures.

If the parent/adult student denies consent to reassess, new assessment cannot be conducted ~~the student cannot be assessed~~. However, the district may request SDE Idaho Department of Education mediation or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates the assessment is appropriate and there is no appeal, then the student may be assessed. All reevaluation procedures shall be provided at no cost to the parent/adult student.

#### E. Eligibility Report for Reevaluations

The evaluation team will consider evaluation findings and determine whether the student continues to meet criteria for special education services.

The evaluation team is ~~required to~~ shall prepare an Eligibility Report detailing how review of

existing data demonstrates that the student continues to meet eligibility requirements even if no new assessments were conducted. The report shall address each required eligibility component and include results of previous assessments if they are being used to determine eligibility. Refer to Section 5 of this chapter for eligibility requirements.

## Section 7. State Eligibility Criteria

The district ~~will~~ shall use the eligibility criteria and assessment procedures set forth by the ~~SDE~~ Idaho Department of Education for ~~placement in~~ determining eligibility for special education. This section contains a definition and the eligibility criteria for each specific disability that shall be used to determine whether an individual qualifies as a student with a disability in need of special education.

All disabilities except ~~Specific Learning Disability (SLD) and~~ Developmental Delay (DD) are applicable for students three (3) through twenty-one (21) years of age. ~~For Specific Learning Disability, students must be legal kindergarten age through twenty one (21) years.~~ Only students ages three (3) through nine (9) can be identified in the Developmental Delay (DD) category. Use of the DD category is optional for the district. If the district elects to use the DD category, it applies only to students from age three (3) up until their tenth (10<sup>th</sup>) birthday, in addition to the criteria outlined in this chapter.

### A. Three-Prong Test of Eligibility

To demonstrate eligibility for special education services all three of the following criteria shall be met and documented. This is often called the three-prong test for eligibility.

The Eligibility Report shall document each of the following three criteria:

1. the student has a disability according to the established ~~Idaho~~ State eligibility criteria;
2. the student's ~~condition~~ disability adversely affects educational performance; and
3. the student needs specially designed instruction.

Meets State Eligibility Requirements: The state eligibility requirements for specific disabilities are listed in this chapter.

Adverse Impact: A determination made by the evaluation team that the student's progress is impeded by the disability to the extent that the student's educational performance measures significantly and consistently below the level of similar age peers preventing the student from benefiting from general education. Educational performance refers to the student's performance in academic achievement, developmental, behavioral, communication, and or functional skills. The phrases "adverse impact" and "adverse effect" are used interchangeably in this Manual and have the same meaning.

Needs Specially Designed Instruction: Special education is specially designed instruction, provided at no cost to the parents, to meet the unique needs of a student with a disability. Specially designed instruction means adapted, as appropriate to meet the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability and to ensure access of the child to the general curriculum so that he or she can meet Idaho Content Standards that apply to all students.

## B. Disability Categories

### 1. Autism Spectrum Disorder

**Definition:** An Autism Spectrum Disorder is a developmental disability, generally evident in the early developmental period, significantly affecting verbal or nonverbal communication and social interaction, and adversely affecting educational performance.

- a. Persistent deficits in social communication and social interaction across multiple contexts, currently or by history:
- b. Symptoms must be present in the early developmental period but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life.
- c. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and hyper- or hypo-reactivity to sensory input.
- d. Characteristics vary from mild to severe as well as in the number of symptoms present and are not primarily the result of intellectual disability, developmental delay, or an emotional behavioral disorder.

**State Eligibility Criteria for Autism:** An evaluation team will determine that a student is eligible for special education services as a student with autism when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;
- b. The student has a developmental disability, generally evident in the early developmental period that significantly affects social communication and social interaction;
- c. The student must meet the disability definition (above) of an autism spectrum disorder as determined by an evaluation team to include a school psychologist and a speech-language pathologist. A team must consider a private evaluation or diagnosis

- provided by a parent from a psychiatrist, a physician or a licensed psychologist as meeting the definition of autism spectrum disorder;
- d. The student's ~~condition~~ disability adversely affects educational performance;
  - e. The student needs specially designed instruction

## 2. Intellectual Disability

**Definition:** Intellectual Disability is defined as significantly sub-average intellectual functioning that exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period, and adversely affect the student's educational performance.

**State Eligibility Criteria for Intellectual Disability:** An evaluation team will determine that a student is eligible for special education services as a student with an intellectual disability when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student has a full-scale intelligence standard score (IQ) at or below 70, plus or minus the standard error of measurement ~~(at the 95 percent confidence level)~~ of the test being used, based on an assessment by a licensed psychologist or certified school psychologist using an individually administered intelligence test.
- c. The student exhibits concurrent deficits in adaptive functioning unexpected for his or her age in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, or safety. Concurrent deficits means 2 SD below the mean plus or minus the standard error of measurement at the 95 percent confidence level.
  - i. If, due to the severity and complexity of a student's disability, an IQ score cannot be obtained, the school psychologist may determine the presence of Intellectual Disability using a preponderance of evidence which must include:
    - i. an explanation why an IQ score cannot be obtained;
    - ii. evidence supporting the presence of an Intellectual Disability; and
    - iii. scores indicating severe and global adaptive deficits at least 2 standard deviations below the mean as measured by a norm-referenced assessment of adaptive skills.
- d. The student's ~~condition~~ disability adversely affects educational performance.

- e. The student needs specially designed instruction.

Caution is advised when assessing students with cultural and language ~~issues~~ differences to prevent inappropriate identification of these students as having an intellectual disability. When determining eligibility, tests measuring intellectual ability shall be used with care; that is, only those tests designed and normed for the population being tested may be used. Tests measuring intellectual ability that are translated into another language by the examiner or an interpreter yield invalid test results and shall not be used.

### 3. Deaf-Blindness

**Definition:** A student with deaf-blindness demonstrates both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be appropriately educated with special education services designed solely for students with deafness or blindness.

**State Eligibility Criteria for Deaf-Blindness:** An evaluation team will determine that a student is eligible for special education services as a student with deaf-blindness when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student exhibits simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.
- c. The student is diagnosed by an optometrist or ophthalmologist for vision loss and by an otologist, audiologist, or physician for hearing loss to make a final diagnosis as deaf-blindness.
- d. The student's ~~condition~~ disability adversely affects educational performance.
- e. The student needs specially designed instruction.

### 4. Deaf or Hard of Hearing

**Definition:** Deaf or Hard of Hearing means a child with a hearing loss, whether permanent or fluctuating, that impairs the access, comprehension, and/or use of linguistic information through hearing, with or without amplification, and that adversely affects a child's educational performance.

**State Eligibility Criteria for Deaf or Hard of Hearing:** An evaluation team will determine that a student is eligible for special education services as a student who is deaf or hard of hearing



when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student exhibits a hearing loss that hinders his or her ability to access, comprehend, and/or use linguistic information through hearing, with or without amplification.
- c. The student has been diagnosed by an audiologist as having a hearing loss..
- d. The student's ~~condition~~ disability adversely affects educational performance.
- e. The student needs specially designed instruction.

## 5. Developmental Delay

**Definition:** The term developmental delay may be used only for students ages three (3) until their tenth (10<sup>th</sup>) birthday who are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following broad developmental areas:

- a. cognitive development – includes ~~skills involving~~ perceptual discrimination, memory, reasoning, pre-academic/academic skills, and conceptual development;
- b. physical development – includes ~~skills involving~~ coordination of ~~both~~ the large and/or small muscles of the body (~~i.e., e.g.,~~ gross, fine, and perceptual motor skills);
- c. communication development – includes ~~skills involving~~ expressive and/or receptive communication abilities, verbal and/or nonverbal;
- d. social or emotional development – includes ~~skills involving~~ meaningful social interactions with adults and/or other children as well as those involved in emotional/behavioral regulation; and/or
- e. adaptive development – includes ~~skills involved in~~ independent functioning in major life activities, as well as self-help/daily living skills (e.g., eating, dressing, toileting, etc.).

The category of developmental delay should not be used when the student clearly meets the eligibility criteria for another specific disability category.

A student cannot qualify for special education services under developmental delay beyond his or her tenth (10<sup>th</sup>) birthday unless he or she has been determined to be eligible as having a disability other than developmental delay. **If the student turns ten (10) before the due date of**

his or her next reevaluation, the evaluation team must conduct a reevaluation to determine whether the student is eligible under another disability category prior to the student's tenth (10<sup>th</sup>) birthday.

**State Eligibility Criteria for Developmental Delay:** An evaluation team may determine that a student is eligible for special education services as a student with a developmental delay when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student is at least three (3) years of age but less than ten (10) years of age.
- c. The student has developmental and/or learning problems that are not primarily the result of limited English proficiency, cultural difference, environmental disadvantage, or economic disadvantage.
- d. The student meets either of the following two criteria, in one or more of the broad developmental areas listed below.

1) Criteria:

- i. The student functions at least 2.0 standard deviations below the mean in one broad developmental area (30 percent delay in age equivalency, or functions at or below the ~~3rd~~ 2<sup>nd</sup> percentile).
- ii. The student functions at least 1.5 standard deviations below the mean in two or more broad developmental areas (25 percent delay in age equivalency, or functions at or below the 7th percentile).

2) Broad Developmental Areas:

- i. Cognitive development; ~~skills (e.g., perceptual discrimination, memory, reasoning, pre-academic/academic, and conceptual development);~~
- ii. Physical development; ~~skills (i.e., fine, gross, and perceptual motor skills);~~
- iii. Communication development ~~skills (includes skills involving expressive and receptive communication abilities, both verbal and nonverbal);~~
- iv. Social or emotional development; ~~and/or skills; or~~
- v. Adaptive development. ~~skills, including daily living/self-help skills.~~

- e. The student's ~~condition~~ disability adversely affects educational performance.
- f. The student needs specially designed instruction.

## 6. Emotional Behavioral Disorder

**Definition:** A student with an emotional behavioral disorder exhibits one or more of the following characteristics over a long period of time, and to a marked degree, that adversely affects his or her educational performance:

- a. an inability to learn that cannot be explained by intellectual, sensory, or health factors. ~~that is not primarily the result of intellectual disability; hearing, vision, or motor impairment, or other health impairment;~~
- b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- c. inappropriate types of behavior or feelings under normal circumstances;
- d. a general pervasive mood of unhappiness or depression;
- e. a tendency to develop physical symptoms or fears associated with personal or school problems; or
- f. Schizophrenia.

The term *does not* include students who are socially maladjusted unless it is determined they have an emotional behavioral disorder.

**State Eligibility Criteria for Emotional Behavioral Disorder:** An evaluation team will determine that a student is eligible for special education services as a student with emotional behavioral disorder when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student has been documented exhibiting characteristics consistent with the criteria (a-f in this section) by one or more of the following: school psychologist, licensed psychologist, psychiatrist, physician, or certified social worker.
- ~~c.~~ The student has been observed exhibiting one or more of the six (6) behavioral or emotional characteristics listed in the definition of emotional behavioral disorder. ~~emotional behavioral disability.~~
- d. The characteristic(s) has been observed:
  - 1) for a long period of time (at least 6 months); and

- 2) by more than one knowledgeable observer; and
  - 3) in more than one setting; and
  - 4) at a level of frequency, duration, and/or intensity that is significantly different from other students' behavior in the same or similar circumstances.
- e. The student's ~~condition~~ disability adversely affects educational performance in the area(s) of academics, peer and teacher interaction, participation in class activities, and/or classroom conduct.
  - f. The student needs specially designed instruction.

### 7. Other Health Impairment (OHI)

**Definition:** A student classified as having Other Health Impairment exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. These health problems may include, but are not limited to, asthma, attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, and stroke to such a degree that it adversely affects the student's educational performance.

A student with ADD/ADHD may also be eligible under another category (generally specific learning disability or emotional behavioral disorder) if he or she meets the criteria for that other category and needs special education and related services. All students with a diagnosis of ADD/ADHD are not necessarily eligible to receive special education under the IDEA, just as all students who have one of the other conditions listed under other health impairment are not necessarily eligible, unless it is determined to adversely affect educational performance and require specially designed instruction.

**State Eligibility Criteria for Other Health Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with an Other Health Impairment when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems.
- c. The student has been diagnosed by a physician with a condition consistent with an Other Health Impairment described above. In the case of ADD/ADHD, an educational

determination may be provided by a school psychologist. Diagnosis from a licensed psychologist or other diagnostician must be considered by the evaluation team.

- d. The student's ~~condition~~ disability adversely affects educational performance.
- e. The student needs specially designed instruction.

## 8. Specific Learning Disability

**Definition:** Specific Learning Disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

IDEA recognizes dyslexia as a type of SLD characterized by “difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction.” When considering SLD, particularly in the areas of Basic Reading Skills and Reading Fluency, the evaluation team may determine if there is a need to conduct assessment(s) specific to dyslexia.

Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional behavioral disorder, or of environmental, cultural, or economic disadvantage.

~~Only a school-age child may be identified as a student with a specific learning disability.~~

**State Eligibility Criteria for Specific Learning Disability:** In determining whether a child has ~~an~~ ~~SLD~~ a Specific Learning Disability, the ~~child~~ student must meet at a minimum, the following criteria:

a. **Exclusionary Factors.** The student's lack of achievement is not primarily the result of:

- 1) A visual, hearing, or motor impairment;
- 2) Intellectual disability;
- 3) Emotional behavioral disorder;
- 4) Environmental, cultural or economic disadvantage;
- 5) Limited English Proficiency;
- 6) A lack of appropriate instruction in reading, including the essential components of reading; and/or
- 7) A lack of appropriate instruction in math.

AND

- b. **Evidence of Low Achievement.** The student demonstrates low achievement in the area(s) of suspected disability listed below as evidenced by a norm-referenced, standardized achievement assessment.

- 1) Oral expression;
- 2) Listening comprehension;
- 3) Written expression;
- 4) Basic reading skills;
- 5) Reading comprehension;
- 6) Reading fluency;
- 7) Mathematics calculation; and/or
- 8) Mathematics problem solving.

AND

- c. **Observation.** The student has been observed in their learning environment to document academic performance and behavior in the area(s) of concern.

AND

- d. **Response to Intervention OR Pattern of Strengths and Weaknesses.**

**1) Response to Intervention.** The student does not make sufficient progress in response to effective, evidence-based instruction and intervention for the student's age or to meet state-approved, grade-level standards in one or more of the following areas:

- 1) Oral expression;
- 2) Listening comprehension;
- 3) Written expression;
- 4) Basic reading skills;
- 5) Reading comprehension;
- 6) Reading fluency;
- 7) Mathematics calculation; and/or
- 8) Mathematics problem solving.

OR

**2) Pattern of Strengths and Weaknesses.** The student demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning.

AND

- e. **Adverse Impact.** The disability adversely impacts the student's educational performance.

AND

- f. **Need for Specially Designed Instruction.** The student requires specially designed instruction.

~~a. The student does not make sufficient progress in response to effective, evidence-based instruction and intervention for the child's age or to meet state-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standards in one or more of the following areas:~~

- ~~1) Oral expression;~~
- ~~2) Listening comprehension;~~
- ~~3) Written expression;~~
- ~~4) Basic reading skills;~~
- ~~5) Reading comprehension;~~
- ~~6) Reading fluency~~
- ~~7) Mathematics calculation; or~~
- ~~8) Mathematics problem solving.~~

~~AND~~

~~b. The student demonstrates low achievement in the area(s) of suspected disability listed above as evidenced by a norm-referenced, standardized achievement assessment. For culturally and linguistically diverse students, the preponderance of evidence must indicate low achievement.~~

~~AND~~

~~c. The student demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning.~~

~~AND~~

~~d. The student's lack of achievement is **not** primarily the result of:~~

- ~~1) A visual, hearing, or motor impairment;~~
- ~~2) Intellectual disability~~
- ~~3) Emotional behavioral disorder~~
- ~~4) Environmental, cultural or economic disadvantage~~
- ~~5) Limited English Proficiency~~

~~6) A lack of appropriate instruction in reading, including the essential components of reading;~~

~~7) A lack of appropriate instruction in math.~~

~~AND~~

~~e. The disability adversely impacts the student's educational performance and the student requires specially designed instruction.~~

~~Evaluation Procedures:~~

~~In order to demonstrate the initial eligibility criteria under this category, the following procedures must be followed.~~

~~1) The evaluation for determining SLD eligibility and requirements for parent notification and involvement shall be conducted in accordance with the procedures detailed in Chapter 4, Section 3, of this Manual.~~

~~2) The evaluation must address the eligibility criteria as listed in the *SLD Eligibility Criteria* (see above). To meet these criteria, the following information is required:~~

~~i. Evidence of insufficient progress in response to effective, evidence-based instruction and intervention indicates the student's performance level and rate of improvement are significantly below that of grade-level peers. This is documented/demonstrated with the following data:~~

~~a) Data that helps establish that the core curriculum is effective for most students. The most recent whole grade performance data to verify appropriate instruction in the area(s) of concern may include results from the standards-based assessment system. If the referred student belongs to a population of students whose performance is regularly disaggregated, whole grade data for the disaggregated group should also be reviewed and considered.~~

~~b) Information documenting that prior to, or as part of, the referral process, the student was provided appropriate instruction in general education settings. Appropriate instruction includes consideration of both child-specific information and whole grade performance data. Child-specific data regarding appropriate instruction may include: (1) verification that core (universal) instruction was provided regularly; (2) data indicating that the student attended school regularly to receive instruction; (3) verification that core instruction was delivered according to its~~



~~design and methodology by qualified personnel; and (4) verification that differentiated instruction in the core curriculum was provided.~~

~~c) Data-based documentation of student progress during instruction and intervention using standardized, norm-referenced progress monitoring measures in the area of disability.~~

~~d) A record of an observation of the student's academic performance and behavior in the child's learning environment (including the general classroom setting) has been conducted by an evaluation team member other than the student's general education teacher. The purpose of the observation is to document how the areas of concern impact the student's performance in the classroom. The observation should also document the name and title of the observer and the site, date, and duration of the observation. The team must decide to:~~

~~1. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was conducted before the child was referred for an evaluation; or~~

~~2. Have at least one member of the team conduct an observation of the child's academic performance in the educational environment after the child has been referred for an evaluation, and parental consent has been obtained.~~

~~AND~~

~~ii. Evidence of low achievement in one or more of the suspected area(s). These include:~~

~~a) Oral expression;~~

~~b) Listening comprehension;~~

~~c) Written expression;~~

~~d) Basic reading skills;~~

~~e) Reading comprehension;~~

~~f) Reading fluency~~

~~g) Mathematics calculation; or~~

~~h) Mathematics problem solving~~

~~This evidence must indicate performance that is significantly below the mean on a cluster, composite, or two (2) or more subtest scores of a norm-referenced, standardized, achievement assessment in the specific academic area(s) of suspected disability. There are cases when the use of norm-referenced assessment is not appropriate, for example, students who are culturally and linguistically diverse. Refer to guidance documents regarding procedures on evaluating students who are culturally and linguistically diverse and the use of preponderance of evidence.~~

AND

~~iii. Evidence of a pattern of strengths and weaknesses in psychological processing skills that impact learning.~~

~~An assessment of psychological processing skills is linked to the failure to achieve adequately in the academic area(s) of suspected disability and must rely on standardized assessments. These assessments must be conducted by a professional who is qualified to administer and interpret the assessment results. The student's performance on a psychological processing assessment demonstrates a pattern of strengths and weaknesses that help explain why and how the student's learning difficulties occur. Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test psychological processing.~~

AND

~~iv. The following criteria must be considered when evaluating the student's low achievement. The team must determine that the student's learning difficulty is **not** primarily the result of:~~

- ~~a) a visual, hearing, or motor impairment~~
- ~~b) an intellectual disability~~
- ~~c) an emotional behavioral disorder~~
- ~~d) environmental or economic disadvantage~~
- ~~e) cultural factors~~
- ~~f) Limited English Proficiency (LEP)~~

## Required Evidence

**Required Evidence.** The evaluation for determining initial Specific Learning Disability eligibility and requirements for parent notification and involvement shall be conducted in accordance with the procedures detailed in Chapter 4 of this Manual. To demonstrate initial student eligibility under this category, the following evidence must be provided:

- a. **Exclusionary Factors.** The team must provide evidence that the student’s learning difficulty is not primarily the result of:

1) A visual, hearing, or motor impairment;

If prior to or during the *Referral to Consider a Special Education Evaluation* process, a vision, hearing, and/or motor impairment was suspected or identified as an area of concern for the student, provide evidence that such impairment is not the primary factor in the student’s learning difficulties.

2) Intellectual disability;

Provide evidence that the student does not have an intellectual disability that is best served under the category of Intellectual Disability as defined in this *Manual*.

3) Emotional behavioral disorder;

If prior to or during the *Referral to Consider a Special Education Evaluation* process, an emotional behavioral disorder was suspected or identified as an area of concern for the student, provide evidence that such impairment is not the primary factor in the student’s learning difficulties.

4) Environmental, cultural or economic disadvantage;

If prior to or during the *Referral to Consider a Special Education Evaluation* process, an environmental, cultural, and/or economic disadvantage was suspected or identified as an area of concern for the student, provide evidence that such factors are not the primary factor(s) in the student’s learning difficulties.

5) Limited English Proficiency;

If the student is an English Learner, provide evidence that English language acquisition is not the primary factor in the student’s learning difficulties.

If the student is an English Learner, provide evidence that the student received meaningful and equitable access to general education curriculum and English Learner services.

6) A lack of appropriate instruction in reading, including the essential components of reading; or

**Attendance.** Provide evidence that the student has attended school regularly. If the student meets the criteria as a student who is or has been chronically absent, provide evidence that attendance is not the primary factor in the student’s learning difficulties.

**General Education Instruction.** Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in reading. If the student has not received grade-level, standards-aligned instruction in reading, provide evidence that lack of access to general education instruction in reading is not the primary factor in the student's learning difficulties.

**Qualified Personnel.** Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in reading from a qualified teacher. If the student has not received grade-level, standards-aligned instruction in reading from a certified teacher, provide evidence that lack of instruction from qualified personnel in reading is not the primary factor in the student's learning difficulties.

7) A lack of appropriate instruction in math.

**Attendance.** Provide evidence that the student has attended school regularly. If the student meets the criteria as a student who is or has been chronically absent, provide evidence that attendance is not the primary factor in the student's learning difficulties.

**General Education Instruction.** Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in math. If the student has not received grade-level, standards-aligned instruction in math, provide evidence that lack of access to general education instruction in math is not the primary factor in the student's learning difficulties.

**Qualified Personnel.** Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in math from a qualified teacher. If the student has not received grade-level, standards-aligned instruction in math from a certified teacher, provide evidence that lack of instruction from qualified personnel in math is not the primary factor in the student's learning difficulties.

**AND**

b. **Evidence of Low Achievement.** Provide evidence of low achievement in each area of concern. These include:

- 1) Oral expression;
- 2) Listening comprehension;
- 3) Written expression;
- 4) Basic reading skills;
- 5) Reading comprehension;

- 6) Reading fluency;
- 7) Mathematics calculation; and/or
- 8) Mathematics problem solving.

This evidence must indicate performance that is significantly below the mean on a norm-referenced, standardized academic achievement assessment in each area of concern. Significantly below the mean is defined as 1.5 standard deviations (SD) below the mean, with a standard score (SS) of 78 or lower. When the preponderance of evidence indicates the likely presence of a Specific Learning Disability (SLD), a more lenient threshold of 1.0 standard deviations below the mean or a standard score of 85 or lower may be used.

Scores must be reported for each area of concern using:

- 1) A cluster or composite score comprised of two or more subtests; or
- 2) Two or more subtest scores.

There are cases when the use of norm-referenced assessment is not appropriate. For example, this may not be appropriate for students who are culturally and linguistically diverse. In such cases, teams may consider the preponderance of evidence when providing evidence of low achievement.

**AND**

- c. **Observation.** Provide a record of an observation in the student’s learning environment (including the regular education setting) of the student’s behavior and academic performance in EACH academic area of concern. The observation(s) must be conducted by an evaluation team member other than the student’s general education teacher and may be conducted in one or both of the following ways:
  - 1) Use information from an existing, current, and relevant observation in routine classroom instruction and monitoring of the student’s performance that was conducted before the student was referred for an evaluation; or
  - 2) Have at least one member of the team conduct observation(s) after the student has been referred for an evaluation and written parental consent has been obtained.

**AND**

- d. **Response to Intervention OR Pattern of Strengths and Weaknesses in Psychological Processing.** All students being considered for Specific Learning Disability must participate in grade-level instruction and evidence-based intervention in general education in a tiered system of support (e.g., RtI or MTSS) prior to or as part of the referral process. Provide

documentation of either failure to respond to scientific, evidence-based intervention (RtI) or the presence of a pattern of processing strengths and weaknesses that impact learning.

*Provide evidence for items 1 and 2. Then provide evidence for **either** item 3 **OR** item 4, listed below.*

- 1) **Parent Notification of General Education Instruction and Intervention.** Documentation that prior to or as part of the intervention and referral process, parents were notified about:
  - a. The state’s policies regarding the amount and nature of student performance data collected and the general education services provided;
  - b. Strategies for increasing the student’s rate of learning; and
  - c. The parents’ right to request an evaluation.

*This requirement may be met by providing such notification to parents using the document provided by the Idaho Department of Education or through an LEA-created document that addresses the above-listed requirements.*

- 2) **Effectiveness of Core Curriculum.** Provide documentation that instruction in the core curriculum is effective for most students. This is demonstrated using current data that helps establish that the grade-level, standards-aligned core curriculum is effective for most (50% plus 1) students based on growth and/or proficiency.

*If the referred student belongs to a population of students whose performance is regularly disaggregated, data for the disaggregated group shall also be reviewed and considered.*

- 3) **Option 1: Response to Intervention.** Provide evidence that the student failed to respond to scientific, evidence-based intervention in specific area(s) of concern.
  - a. Provide a description of each targeted intervention that was provided to address specific skill deficit(s) in each area of concern; and
  - b. Provide evidence that progress was monitored on identified skill deficits in each area of concern using a standardized, norm-referenced or criterion-referenced progress monitoring measure.
    - i. For each area of concern, provide information about the progress made during the intervention(s). The information must include a visual representation (e.g., graph or table) and description of each of the following:
      1. Aimline;
      2. Trendline;
      3. Decision points;
      4. The student’s rate of improvement; and

- 5. National or local norms describing expected performance for grade level peers.
- ii. Provide a summary of how the evaluation team used this information to determine that the student has not made sufficient progress toward grade-level expectations and performs significantly and consistently below grade level peers.

OR

- 4) **Option 2:** Pattern of Processing Strengths and Weaknesses. Provide evidence of a pattern of strengths and weaknesses in psychological processing skills that impact learning.

Provide evidence that the student’s psychological processing skills are linked to the failure to achieve adequately in the academic area(s) of concern. Evidence must rely on standardized assessments. These assessments must be conducted by a professional who is qualified to administer and interpret the assessment results. The student’s performance on a psychological processing assessment demonstrates a pattern of strengths and weaknesses that help explain why and how the student’s learning difficulties occur. Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test psychological processing.

- a. Report and describe processing strengths and weaknesses.
- b. Provide a description of how the identified pattern of strengths and weaknesses help explain learning difficulties in the area(s) of concern.

AND

- e. **Adverse Effect.** The disability adversely affects the student’s educational performance.

AND

- f. **Need for Specially Designed Instruction.** The student requires specially designed instruction.

## 9. Multiple Disabilities

**Definition:** Multiple disabilities are two or more co-existing, severe impairments, one of which is **usually includes** an intellectual disability, such as intellectual disability/blindness, intellectual disability/orthopedic, etc. Students with multiple disabilities exhibit impairments that are **likely to be** life long, significantly interfere with independent functioning, and **may** necessitate environmental accommodations or adaptations to enable the student to participate in school and society. The term does not include deaf-blindness.

**State Eligibility Criteria for Multiple Disabilities:** An evaluation team will determine that a

student is eligible for special education services as a student with multiple disabilities when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student meets eligibility criteria for severe concomitant impairments, **one of which is an intellectual disability**, and the combination of which causes such significant educational problems that the student cannot be accommodated by special education services designed solely for one of the disabilities.
- c. The student meets State **E**ligibility **C**riteria as outlined for each disability category.
- d. The student's **condition** **disability** adversely affects educational performance.
- e. The student needs specially designed instruction.

### 10. Orthopedic Impairment

**Definition:** Orthopedic impairment means a severe physical limitation that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (clubfoot, or absence of an appendage), an impairment caused by disease (poliomyelitis, bone tuberculosis, etc.), or an impairment from other causes (cerebral palsy, amputations, and fractures or burns that cause contracture).

**State Eligibility Criteria for Orthopedic Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with an orthopedic impairment when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student exhibits a severe orthopedic impairment. The term includes congenital anomalies, impairments caused by disease, and impairments from other causes that are so severe as to require special education services.
- c. The student has documentation of the condition by a physician or other qualified professional.
- d. The student's **condition** **disability** adversely affects educational performance.
- e. The student needs specially designed instruction.



### 11. Speech or Language Impairment: Language

**Definition:** A language impairment exists when there is a disorder or delay in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems. The impairment may involve any one or a combination of the following:

- a. the form of language (morphological and syntactic systems);
- b. the content of language (semantic systems); and/or
- c. the function of language in communication (pragmatic systems).

A language disorder does not exist when language differences are due to non-standard English or regional dialect or when the evaluator cannot rule out environmental, cultural, or economic disadvantage as primary factors causing the impairment. The evaluation team is encouraged to ask if a hearing screening has been completed. Also note, a student can be considered as having a Language Impairment if the criteria for Deaf or Hard of Hearing have not been met.

**State Eligibility Criteria for Language Impairment:** An evaluation team will determine that a student is eligible for special education and related services as a student who has a language impairment when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. At least two procedures, at least one of which yields a standard score, are used to assess receptive language and/or expressive language.
- c. The student has attained scores on a standardized measure that are 1.5 standard deviations or more below the mean, or at or below the 7<sup>th</sup> percentile, in either receptive or expressive language.
- d. The student's disability adversely affects educational performance.
- e. The student needs specially designed instruction. (Speech/language therapy can be specially designed instruction or a related service.)

Caution is advised when evaluating a student whose native language is other than English. The acquisition of the English language is not to be mistaken as a language impairment.

### 12. Speech or Language Impairment: Speech

The term speech impairment includes articulation/phonology disorders, voice disorders, or fluency disorders that adversely impact a child's educational performance. The following eligibility criteria and minimum assessment procedures have been established for all three types of speech impairments.

**a. Articulation/Phonology Disorder**

**Definition:** Articulation is the ability to speak distinctly and connectedly. Articulation disorders are incorrect productions of speech sounds including omissions, distortions, substitutions, and/or additions that may interfere with intelligibility. Phonology is the process used in our language that has common elements (sound patterns) that affect different sounds. Phonology disorders are errors involving phonemes, sound patterns, and the rules governing their combinations.

- 1) An articulation/phonology disorder exists when:
  - i. the disorder is exhibited by omissions, distortions, substitutions, or additions;
  - ii. the articulation interferes with communication and calls attention to itself; and
  - iii. the disorder adversely affects educational or developmental performance.
- 2) An articulation/phonology disorder does not exist when:
  - i. errors are temporary in nature or are due to temporary conditions such as dental changes;
  - ii. differences are due to culture, bilingualism or dialect, or from being non-English speaking; or
  - iii. there are delays in developing the ability to articulate only the most difficult blends of sound or consonants within the broad range for the student's age.

**State Eligibility Criteria for Articulation/Phonology Disorder:** An evaluation team will determine that a student is eligible for special education and related services as a student who has an articulation/phonology disorder (speech impairment) when all of the following criteria are met:

- 1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- 2) At least two procedures are used to assess the student, one of which yields a standard score.
- 3) The student must have a score that is at least 1.5 standard deviations below the mean, or at or below the 7th percentile, on a standardized articulation/phonological assessment, or the speech impairment is judged as

moderate on the standardized measure for students ages three (3) through twenty-one (21) years.

- 4) The student’s disability adversely affects educational performance.
- 5) The student needs specially designed instruction. (Speech/language therapy can be specially designed instruction or a related service.)

**b. Fluency Disorder**

**Definition:** A fluency disorder consists of stoppages in the flow of speech that ~~is~~ are abnormally frequent and/or abnormally long. The stoppages usually take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

- 1) A fluency disorder exists when an abnormal rate of speaking, speech, interruptions, repetitions, prolongations, blockages of airflow and/or voicing interferes with effective communication.
- 2) A fluency disorder does not exist when developmental dysfluencies are part of normal speech development and do not interfere with educational or developmental performance.

**State Eligibility Criteria for Fluency Disorder:** An evaluation team will determine that an individual is eligible for special education and related services as a student who has a fluency disorder (speech impairment) when all of the following criteria are met:

- 1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- 2) The student has a fluency rating of moderate or severe on the Fluency Communication Rating Scale for student’s age three (3) through twenty-one (21) years. See the documents [and resources provided on the SDE- Idaho Department of Education website under ~~section of this~~ chapter four](#) for the Fluency Communication Rating Scale.
- 6) The student’s disability adversely affects educational performance.
- 7) The student needs specially designed instruction. (Speech/language therapy can be a ~~primary~~ special education service or a related service.)

**c. Voice Disorder**

**Definition:** Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

A student who has a suspected laryngeal-based voice disorder and has not been evaluated by an ear, nose, and throat (ENT) physician (otorhinolaryngologist/otolaryngologist) may not receive voice therapy services from a speech-language pathologist.

- 8) A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:
  - i. interfere with communication;
  - ii. draw unfavorable attention to the speaker;
  - iii. adversely affect the speaker or listener; or
  - iv. are inappropriate to the age and gender of the speaker.
- 9) A voice disorder ~~does not exist~~ **exists** when the vocal characteristics of quality, pitch, intensity, or resonance:
  - i. are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;
  - ii. are the result of regional dialectic or cultural differences or economic disadvantage; or
  - iii. do not interfere with educational or developmental performance.

**State Eligibility Criteria for Voice Disorder:** An evaluation team will determine that a student is eligible for special education and related services as a student who has a voice disorder (speech impairment) when all of the following criteria are met:

- 1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- 2) The student has a voice production rating of moderate or severe on the Voice Rating Scale for students aged three (3) through twenty-one (21) years. See the documents [and resources provided on the SDE-Idaho Department of Education website under ~~section of this~~ chapter four](#) for the Voice Rating Scale.
- 3) An ear, nose, and throat (ENT) physician's (otorhinolaryngologist) statement documents that voice therapy is not contraindicated.
- 4) The student's disability adversely affects educational performance.
- 5) The student needs specially designed instruction. (Speech/language therapy can be a **primary special education** or a related service.)

See the documents [and resources provided on the SDE-Idaho Department of Education website under chapter 4 section of this chapter](#) for information on documenting adverse effects on educational performance for students with speech/language disorders.

NOTE: A student may receive speech or language services if he or she is eligible for special education under another disability category and needs speech or language services as a related service in order to benefit from special education without meeting the eligibility criteria for speech and language impairment.

### 13. Traumatic Brain Injury (TBI)

**Definition:** Traumatic brain injury refers to an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

**State Eligibility Criteria for Traumatic Brain Injury:** An evaluation team will determine that a student is eligible for special education services as a student who has a traumatic brain injury when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student has an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both.
- c. The student has documentation of a traumatic brain injury.
- d. The student's ~~condition~~ disability adversely affects educational performance.
- e. The student needs specially designed instruction.

### 14. Visual Impairment Including Blindness

**Definition:** Visual impairment refers to an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. Partial sight refers to the ability to use vision as one channel of learning if educational materials are adapted. Blindness refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials.

**State Eligibility Criteria for Visual Impairment:** An evaluation team will determine that a

student is eligible for special education services as a student with blindness or a visual impairment when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student has documentation of blindness or a visual impairment, as determined by a qualified professional, including one or more of the following:
  - i. Blindness – visual acuity of 20/200 or less in the better eye with the best possible correction at distance and/or near, or visual field restriction of 20 degrees or less in the better eye;
  - ii. Visual Impairment – visual acuity better than 20/200 but worse than 20/70 in the better eye with the best possible correction at distance and/or near, or visual field restriction of 70 degree or less but better than 20 degrees in the better eye;
  - iii. Eye condition – including oculomotor apraxia, cortical visual impairment, convergence insufficiency, or other condition;
  - iv. Progressive loss of vision which may affect a student’s educational performance in the future;
  - v. Functional vision loss where acuity or visual field alone may not meet the criteria above.
- c. The student’s ~~eye condition~~ disability, even with correction, adversely affects educational performance.
- d. The student needs specially designed instruction.

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## CHAPTER 5: INDIVIDUALIZED EDUCATION PROGRAMS

If a student is eligible for special education services, they have met the requirements of eligibility under the IDEA. Eligibility requires a student to meet the following three prongs: 1) the student has a disability that meets the criteria; 2) the disability adversely affects the student's educational performance; and 3) the student requires specially designed instruction.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability including instruction conducted in the classroom, the home, hospitals, institutions, and other settings. The definition of special education also includes the following: instruction in physical education, speech/language pathology, travel training, and vocational education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from his or her disability and to ensure access to the general curriculum so that the student can meet the Idaho Content Standards that apply to all students.

The Individualized Education Program (IEP) is a written document developed for each eligible student with a disability and documents the specially designed instruction and related services. The IEP is the product of team collaboration among a parent/adult student, district personnel, and other IEP team members who, through full and equal participation, identify the unique needs of a student with a disability and plan the special education services to meet those needs.

In developing each student's IEP, the IEP team shall consider:

- 1) the strengths of the student;
- 2) the concerns of the parents for enhancing the education of their child;
- 3) the results of the initial or most recent evaluation of the student;
- 4) the unique circumstances of the student; and
- 5) the academic achievement, developmental, and functional needs of the student.

### Section 1. IEP Initiation

#### A. Purpose of Meeting

The primary purpose of an IEP team meeting is to design an appropriately ambitious IEP that meets the unique needs of a student with a disability. The IEP team determines the special education and related services reasonably calculated to enable the student to receive

educational benefits in the least restrictive environment. The parent/adult student shall be invited to the meeting and participate meaningfully. (Note: transition age students must be invited to the IEP team meeting). The IEP team members should come prepared to discuss specific information about the student's unique circumstances and the type of services to be provided to address the student's unique circumstances.

The meeting format should invite open discussion that allows participants to identify and consider the unique circumstances of the student related to his or her disability and what is necessary ~~to provide~~ **for the student to have** access to, participate in, and make progress in the general education curriculum. Placement decisions shall be considered *after* the special education services are determined and shall not be the determining factor in developing the IEP content.

Informal or unscheduled conversations involving district personnel on various issues (e.g., teaching methodology, lesson plans, or coordination of service provisions) are not considered a meeting as long as no decisions are made regarding issues addressed on the student's IEP. A meeting does not include preparatory activities in which district personnel engage to develop a proposal or a response to a parent/adult student proposal that will be discussed at a later meeting.

### **B. Team Decision Making**

The IEP team meeting serves as a communication ~~vehicle~~ **tool** between IEP team members enabling them to make joint, informed decisions regarding the student's special education services as equal participants. All members of the IEP team are expected to work toward consensus regarding IEP decisions to ensure the student receives a free appropriate public education (FAPE). Consensus means consent of all IEP team members to support the decision of the team, which requires that all members of the team have an opportunity for meaningful participation.

If there is lack of consensus between the parent/adult student, district personnel, and other IEP team members regarding an IEP decision, then school personnel on the IEP team should seek consensus within the school team and provide written notice to the parent/adult student. If there is lack of consensus among school personnel, then the district representative on the IEP team shall make the decision and provide written notice to the parent/adult student. The parent/adult student should be made aware of the procedures in Section 2J of this chapter, "Parent/Adult Student Objection to the IEP" and their procedural safeguards, including due process rights.

### **C. When IEP Team Meetings Are Held**

An IEP team meeting shall be held for one or more of the following reasons:

1. to develop an IEP within thirty (30) calendar days of determination that the student is eligible for special education and related services;

2. to complete an annual review of the IEP, ~~review the IEP periodically, but no longer more than one year (365 days) from the date of development of the current IEP, with the IEP in effect at the beginning of each school year;~~
3. when another agency fails to deliver transition or other services outlined in the IEP;
4. to consider revisions to the IEP if there is any lack of expected progress toward annual goals and/or in the general education curriculum, where appropriate;
5. at the reasonable request (as determined by the district) of any member of the IEP team (Note: Written notice shall be provided to the parent/adult student who requests an IEP team meeting when a district refuses to hold one);
6. to review behavioral intervention strategies and/or develop a behavioral plan as part of the IEP;
7. to address the IDEA discipline requirements (see Chapter 12); and/or
8. to review the results of any reevaluation or independent educational evaluation (IEE).

NOTE: Under the IDEA, an IEP team meeting may not be required to amend the IEP (see IEP Amendments).

#### D. IEP Team Members and Roles

The IEP team is a group of individuals responsible for developing, reviewing, or revising an IEP for a student with a disability.

Role	Description
Parent of the student or Adult Student if rights have transferred	The term “parent” refers to a biological or adoptive parent, foster parent, a judicially decreed guardian (does not include State agency personnel if the student is a ward of the state), a person acting in place of a parent, or a surrogate parent who has been appointed by the district. The term “acting in place of a biological or adoptive parent” includes persons such as a grandparent, stepparent, or other relative with whom the student lives, as well as persons who are legally responsible for a student’s welfare. A foster parent may act as a parent if the natural parent’s authority to make educational decisions on behalf of his or her child has been terminated by law. A foster parent shall be an individual who is willing to make educational decisions required of a parent, and has no interest that would conflict with the interests of the student. If more than the biological or adoptive parents meet the definition of parent, the biological or adoptive parents serve as the parents in

Role	Description
	<p>the IEP process, unless a judicial decree or order identifies a specific person or persons to make educational decisions for the student.</p> <p>An “adult student” is a student with a disability who is eighteen (18) years of age or older to whom special education rights have transferred under the IDEA and Idaho Code. (See Chapter 11, Section 2C, for more information.) In this case, the parent may attend the IEP team meeting as an individual who has knowledge or special expertise regarding the student, at the invitation of the adult student or the district.</p>
District Representative	<p>The district representative or designee shall be qualified to provide or supervise the provision of special education to meet the unique needs of students with disabilities. The representative shall be knowledgeable about the general education curriculum and about the availability of resources in the district. They shall have the authority to allocate resources and to ensure that the IEP will be implemented. Examples of the district representative include the building principal, the special education director, the district superintendent, or others who meet the criteria described above. The district representative may be another member of the IEP team if all the criteria above are met.</p>
Special Education Teacher/Provider—not less than one	<p>This individual <del>generally will be</del> <b>will generally be</b> the student’s special education teacher or service provider who is responsible for implementing the student’s IEP. For example, in the case of a student receiving primary services from a speech-language pathologist, it is more appropriate for the speech-language pathologist to fill this role on the IEP team.</p>
General Education Teacher—not less than one	<p>A general education teacher of the student is required to participate in developing the IEP if a student is, or may be, participating in the general education environment. Regardless, a representative that is knowledgeable of the general education curriculum at the student’s grade level shall be present.</p> <p>For preschool-age students, the general education teacher may be the kindergarten teacher or an appropriate designee. Designees at the preschool level may include a care provider, Head Start teacher, or community preschool teacher, if that person meets State and/or national licensing standards.</p>

Role	Description
Individual who can interpret <b>implications of evaluation results and implications</b>	This person may be someone who participated in the evaluation of the student. He or she shall be able to explain the results, the instructional implications, and the recommendations of the evaluation.
Student	Whenever appropriate, the IEP team includes the student with a disability. A student shall be invited by the district to attend any IEP team meeting at which post-secondary goals, and transition services needed to assist the student in reaching those goals, will be discussed. If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student’s preferences and interests are considered.
Representative of a Private School  (if applicable)	If a student is enrolled in or referred to a private school, the district shall ensure that a representative of the private school is invited to the IEP team meeting. If a representative cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
Representative of Transition Agency(s) (Parent/Adult student <b>written</b> consent shall be obtained prior to inviting the Transition Agency Representative to participate in the IEP team meeting).	If transition services are being discussed, a representative of any participating agency likely to be responsible for providing or paying for transition services shall be invited (with the prior <b>written</b> consent of a parent/adult student). If a representative does not attend, steps should be taken to obtain participation from the agency in transition planning.
Part C Coordinator or Representative	A Part C coordinator or other representative may be invited by the district to participate in the team IEP meeting for a preschooler transitioning to Part B services. Parents shall be informed of their right to request an invitation for an Infant Toddler Program representative(s) to <b>attend</b> the initial IEP team meeting.
Other	At the discretion of the parent/adult student or the district, other individuals who have knowledge or special expertise regarding the student, including related service personnel, may be included as IEP team members. The determination of having knowledge and special expertise regarding the student shall be made by the parent/adult student or district person who invited the individual to be a member of the IEP team.

NOTE: The general education teacher, special education teacher, district representative, or individual who can interpret implications of evaluation results may be excused from an IEP team meeting, in whole or in part, if the parent/adult student and district agree in writing. If the meeting deals with the excused member's areas of the curriculum and/or services, he or she shall provide written input to the IEP team prior to the meeting. Written input shall include substantive data (e.g., interpreting assessment findings, providing meaningful guidance to the team, regarding the purpose of the meeting, reflecting on general education curriculum). If a district representative is excused, a staff member in attendance shall have the authority to bind the district to the decisions of the team.

### **E. The General Educator's Role in IEP Development**

If a student is or may be participating in the general education curriculum or environment, not less than one of the student's general education teachers shall participate in developing the IEP, to the extent appropriate. The general education teacher's role in the development, review, and revision of the IEP includes:

1. discussion of the student's involvement and progress in the general education curriculum, if known;
2. discussion of appropriate positive behavioral interventions and other strategies for the student; and
3. discussion of supplementary aids and services, program accommodations/adaptations, ~~to be provided by~~ and supports for school personnel in the general education classroom.

### **F. Invitation to IEP Team Meetings**

To the extent possible, the district should encourage the consolidation of all team meetings, including meetings that may involve eligibility, reevaluation, and IEP development.

The district shall meet the requirements outlined below.

1. Schedule the meeting at a place and time mutually agreed upon by the parent/adult student and the district.
2. Invite the parent/adult student and the secondary transition age student, if applicable, to the meeting early enough to ensure that he or she can attend. The district shall keep a record of this invitation. The invitation shall include the following:
  - a. the purpose(s), time, and location of the meeting;
  - b. who will attend the meeting, by role;

- c. information regarding the parent's/adult student's right to bring other people to the meeting and invite a Part C representative, if appropriate; and
- d. notification that post-secondary goals and transition services will be discussed, as applicable.

The invitation should clarify the parent's/adult student's (or secondary transition age student's) role on the team and request that he or she come prepared to discuss the unique needs and characteristics of the student, the types of services needed, and the goals that would **indicate support** the success of ~~the~~ **those** services.

3. Invite the student, if appropriate or required, to attend and participate in his or her IEP team meeting. If the student is a minor, the parent shall make the decision regarding the student's attendance. If **a one** purpose of the meeting is to consider transition but the student does not attend, the district shall take other steps to ensure that the student's preferences and interests are considered.
4. The invitation may be written or oral. In either case, the district shall document that all the required components noted in item 2 above were included in the invitation. In addition, the parent/adult student shall be given a physical copy of the *Procedural Safeguards Notice* at least annually, preferably at the annual review, unless the parent requests additional copies.
5. When one purpose of the IEP team meeting is to consider transition services, the invitation shall:
  - a. indicate this purpose;
  - b. invite the student; and
  - c. identify any other agency that will be invited to send a representative, with parent's/adult student's consent.
6. The district shall take appropriate action to ensure that a parent/adult student understands the proceedings at an IEP team meeting, including arranging for an interpreter for a parent/adult student who has hearing loss or whose native language is other than English.
7. The IEP team may meet without the parent/adult student if he or she cannot attend the meeting or cannot be convinced to attend the meeting. However, the district shall document its attempts to arrange a mutually agreed upon time and place for the meeting. Documentation could include records of telephone calls or conversations, copies of correspondence sent to the parent/adult student and any responses received, and/or detailed records of any visits made to the parent's/adult student's residence. If a meeting is held without the parent/adult student, the district shall offer and document

alternative methods, such as conference calls, to gain his or her participation in the development of the IEP.

Alternatives to physical meetings, such as video and telephone conferencing, may take the place of physical IEP team meetings if the parent/adult student and district agree.

## Section 2. IEP Development

The IDEA clearly defines the required components of an IEP and the Idaho IEP form is designed to include only those IDEA required components. Therefore, no additional information may be required in a student's IEP beyond what is explicitly required by IDEA, nor can information be required under one component of a student's IEP that is already contained under another component of the student's IEP.

NOTE: IEP team meeting minutes are not part of the official IEP document.

### A. General Demographic Components for All IEPs

All IEPs shall include the date of the IEP team meeting and the following general demographic components: the student's name as it appears in school records, native language, birth date, and identification number (for State reporting or Medicaid purposes only), names of parents, address, phone number, school, and grade.

### B. Documentation of Participants

The district shall ensure the attendance and participation of the IEP team members at the IEP team meeting. Documentation of attendance can be accomplished by listing team member roles on the IEP and checking their attendance status. Prior to the beginning of the meeting, an excusal form identifying any required district members not present at the IEP team meeting, with the parent/adult student's signature of approval, shall be attached.

The attendance list is not a reflection of agreement or disagreement with the IEP; it is only an indication of attendance. As with any team member, the parent's/adult student's inclusion on the list does not indicate agreement or disagreement with the IEP contents. If the parent/adult student disagrees with all or part of the IEP, the district should remind the parent/adult student that he or she may file a written objection. Any participant at the IEP team meeting may file a minority report if he or she disagrees with a program decision. A minority report shall not prevent the implementation of an IEP team decision.

NOTE: See Section 2J of this chapter for additional information on parent/adult student objections.



### C. Present Levels of Academic Achievement and Functional Performance, Goals, Objectives and Benchmarks

The IEP identifies present levels of academic achievement and functional performance (PLAAFP) and measurable goals that enable the IEP team to track the effectiveness of services and to report progress toward goals.

1. Statements of PLAAFP in an area of need include:
  - a. How a school-age student's disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).
  - b. For preschool students, PLAAFP should describe how the disability affects the student's participation in age-appropriate activities.
2. Although the content of present levels of academic **achievement** and functional performance statements are different for each student, individual present levels of academic **achievement** and functional performance statements will meet the following requirements:
  - a. The statement shall be written in objective, measurable terms using easy-to-understand non-technical language;
  - b. The other components of the IEP, including special education services, annual goals, and objectives and benchmarks for students who participate in alternate assessments (AA), shall show a direct relationship to the content of present levels of academic **achievement** and functional performance;
  - c. The statement shall provide baseline data for goal development;
  - d. The statement shall reference Idaho Content Standards, Idaho Workplace Skills for Career Readiness Standards, Idaho Extended Content Standards **Core Content Connectors**, or Idaho Early Learning Guidelines (eGuidelines), as applicable;
  - e. The statement shall include the student's strengths and needs; **and**
  - f. The statement shall include parental concerns for enhancing the student's education; and
  - g. The statement shall address how a student's disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).
3. Annual IEP goals shall be appropriately challenging and reflect the needs described in the present levels of academic **achievement** and functional performance statements.

Measurable academic achievement, developmental, and functional annual goals are designed to meet the student’s unique needs that result from the student’s disability, to enable the student to be involved in and make progress in the general education curriculum, and to meet each of the student’s other educational needs that result from the student’s disability.

- a. A goal is a written, measurable statement, developed from the baseline data, describing what a student is reasonably expected to accomplish within the time period covered by the IEP, generally one year.
  - b. Goals are written to enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability.
  - c. A goal shall be appropriately challenging given the circumstances of the student and include the behavior, the performance criteria, and the evaluation procedure.
4. Objectives and benchmarks are required for students taking AAs. Objectives and benchmarks shall align with the PLAAFP and the annual goal, as a progression toward meeting the annual goal.

**D. Progress Toward Goals**

The IEP shall include a statement describing:

1. How the student’s progress toward IEP goals will be measured and the progress monitoring schedule;
2. How and when the parent/adult student will be informed of the student’s progress toward the annual goals, including the extent to which progress is sufficient to enable the student to achieve the goals by the end of the IEP time period.

At minimum, periodic written progress statements related to progress toward annual goals will be reported concurrent with the issuance of report cards.

**E. Statements of Special Education and Related Services**

Each student’s IEP shall describe the specific special education and related services that will be provided to or on behalf of the student, based on peer-reviewed research to the extent practicable. Special education includes specially designed instruction to meet the unique needs of the student.

The term “related services” refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education as described in the IEP. These services include, but are not limited to:

- Audiology
- early identification and assessment of student’s disabilities
- interpreter services
- language therapy
- medical services for diagnostic or evaluative purposes
- occupational therapy
- orientation and mobility services
- parent counseling and training. Parent counseling and training includes helping a parent understand child development and the special needs of his or her child and acquire skills to support the implementation of his or her child’s IEP.
- physical therapy
- psychological services
- rehabilitation counseling services
- school nurse services
- social work services in school
- speech therapy
- supports for school staff
- therapeutic recreation

The above list of related services is not exhaustive and may include other developmental, corrective, or supportive services, transition services or assistive technology. Although services may be of benefit to a student with a disability, all of the services listed above may not be required for each individual student. Related services are the responsibility of the district only if the IEP team determines they are required to assist the student to benefit from special education. Further, the student is not entitled to related services if he or she is not eligible for special education or the parent/adult student does not consent to initial provision of special education services.

EXCEPTION: “Related Services” does not include a medical device that is surgically implanted or the replacement of such device, the optimization of that device’s functioning (e.g., mapping), or maintenance of that device, ~~or the replacement of that device~~. The district is responsible to

appropriately monitor and check devices to make sure the devices are functioning properly. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

THIRD PARTY PAYERS: Consent from the parents/adult student is required when the district bills Medicaid or the parent's insurance for services provided. See Chapter 11 for details.

#### **F. Supplementary Aids, Services, and Other IEP Considerations**

Supplementary aids and services may include general education curriculum accommodations and/or adaptations, support for school staff, positive behavioral intervention plans, extended school year services, transportation, transition services, assistive technology services, and travel training services deemed appropriate by the IEP team and shall be provided whether or not the district currently has these services in place.

The description of services in the IEP shall:

1. Identify the program accommodations and supplementary aids to be provided to the student in the areas of need.
2. List the specific services that will meet the unique needs of the student, allowing him or her to advance appropriately toward attaining the annual goals, and:
  - a. be involved in and make progress in the general education curriculum;
  - b. participate in extracurricular and other nonacademic activities; and
  - c. be educated and participate with other students with disabilities and with students without disabilities to the maximum extent appropriate.

NOTE: The public agency shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

3. State the projected starting date and expected duration of the services, accommodations, and/or adaptations.
4. List the anticipated time and frequency of sessions per week or month. The amount of service may not be stated as a range.
5. State the location where services and accommodations/adaptations will be provided (such as a general education classroom, resource room, etc.) Note: Location does not mean specific site.

Based on the unique needs of each student, the IEP team shall consider any services listed

below that may be appropriate for the student and shall document such services on the IEP accordingly.

### 1. Supplementary Aids and Services

“Supplementary aids and services” are aids, services, and other supports that are provided in general education classes, other education-related settings and extracurricular and nonacademic settings to enable students with disabilities to be educated with students without disabilities to the maximum extent appropriate in accordance with LRE requirements.

The determination of which supplementary aids and services are appropriate for a particular student shall be made on an individual basis. Supplementary aids and services may include the following: assistance of an itinerant special education teacher, related service provider, or paraprofessional; support or training for the general educator; use of resource services; provision of note takers; supports for extracurricular or other nonacademic activities; and supports for participation in state- or district-wide assessments.

### 2. Accommodations and Adaptations

NOTE: “Modifications” include accommodations and adaptations. Idaho uses the terms accommodations and adaptations to describe two separate instructional and assessment practices.

Accommodations and adaptations include any changes that allow students with disabilities the same opportunity as students without disabilities to participate in and benefit from the educational program, activities, and services of the district.

Accommodations are intended to make educational opportunities more accessible. This may involve the setting, communication modality, equipment, and/or supplemental aids and services. Examples include Braille editions, large print, pencil grips, audio recording, note takers, and computers with spell check.

Accommodations are changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology, as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results and do not fundamentally alter the requirements or course expectations.

Adaptations are changes in educational expectations for the student with a disability compared to peers without disabilities. These adaptations include actual changes in the general education curriculum and instruction or the use of an alternative or supplemental curriculum. Adaptations include strategies such as reading aloud the reading portion of a test, using spell/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and may invalidate assessment results or provide non-

comparable results. Examples include fewer concepts to be mastered, different test questions, and material at a different reading level.

Whenever the IEP team determines that accommodations and/or adaptations are needed to ensure academic progress, these shall be indicated in the IEP. Any accommodations and/or adaptations required in physical education, vocational education, and state- or district-wide assessments shall be documented in the IEP.

### 3. Assistive Technology Devices and/or Services

The district shall ensure that assistive technology devices and/or services are made available to a student, if required, as special education, related services, or supplementary aids and services. The following points are definitions and clarifications of terms:

- a. “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a device that is surgically implanted or the replacement of such device.

The district shall permit the student to use school-purchased assistive technology devices at home and in other settings if the IEP team determines that the student needs access to these devices in non-school settings to receive FAPE. An example of this would be to complete homework. The district may hold a parent/adult student liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the district if it is lost, stolen, or damaged because of negligence or misuse at home or in another setting outside of school.

Assistive technology devices should be designed using “universal design” principles. The term “universal design” means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities. This includes products and services that are directly accessible (without requiring assistive technologies) and products and services that are compatible with assistive technologies.

- b. “Assistive technology service” means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:
  - 1) an evaluation of the student’s assistive technology needs, including a functional assessment in the student’s customary environment;
  - 2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

- 3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
  - 4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
  - 5) training or technical assistance for a student with a disability or, if appropriate, that student's family; and
  - 6) training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services or are otherwise substantially involved in the major life functions of a student with a disability.
- c. The district shall ensure that the hearing technology worn by students who are deaf or hard-of-hearing in school are functioning properly.
  - d. The district is responsible for appropriately monitoring and checking surgically implanted devices to make sure the devices are functioning properly, if the team has determined that those services are necessary. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is at school or being transported to and from school.

#### 4. Extended School Year Services

The district shall provide extended school year (ESY) services for students with disabilities who qualify for such services. The ESY programs for eligible students shall meet the requirements of FAPE. The student's educational program is based on individual needs and is not determined by what programs are readily available within the district. The student cannot be required to fail or to go for an entire school year without ESY services, simply to prove a need. The IEP team shall consider the following in the development and provision of an ESY program:

- a. The term "extended school year services" means special education and/or related services that are provided beyond the regular school year:
  - 1) to a student with a disability;
  - 2) in accordance with the student's IEP; and
  - 3) at no cost to the parent/adult student.

The goal of ESY services is to assist students with disabilities with the emergence and maintenance of specific IEP goals addressed during the school year preceding the ESY. These may include goals related to independence, behavior, socialization, communication, and

academics. The ESY services for special education students provide a different focus from general summer school programs.

- b. The ESY services shall be considered in light of the totality of the circumstances, including the following:
  - 1) Emerging skill: Few, if any, gains are made during the regular school year. A skill is in the process of emerging, and the IEP team believes that with ESY services the student would make reasonable gains; or
  - 2) Regression-recoupment: The student, **in the absence of an educational program**, will experience significant regression, and the amount of time required to relearn a skill or behavior becomes so significant that the student would be unable to benefit from his or her special education; or
  - 3) Self-sufficiency: An interruption in services would threaten the acquisition of critical life skills that aid in the student's ability to function as independently as possible, thereby continuing the student's reliance on caretakers, including institutionalized care. Critical life skills relate to those skills that lead to independent functioning. Development of these skills can lead to reduced future dependency on caretakers and enhance the student's integration with individuals without disabilities. Skills may include toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.
- c. Decisions concerning ESY services shall be based on student performance data and written documentation. Types of data and information may include, but are not limited to, those listed below.
  - 1) Criterion-referenced test data: Consider daily/weekly probes or pre-test/post-test data.
  - 2) Norm-referenced test data: Consider pre-test/post-test data.
  - 3) Anecdotal records: Consider information collected throughout the school year.
  - 4) Physical, mental, or emotional health factors: Consider the **student's** educational, medical, and psychological records **of the student** as well as the prognosis or **judgments judgements** of educators, medical personnel, parents, and others who work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.



- 5) History: Consider evidence of past regression or past ESY services. The IEP team should not automatically assume that a student who has received ESY services in the past will be eligible for ESY services in the future, but it is a factor to consider.
  - 6) Data on observed performance: Consider data maintained on the student concerning performance observed in the classroom, during community-based activities, and as part of IEP progress monitoring.
  - 7) Teacher interviews and recommendations: Consider progress reports by teachers, therapists, and others who have direct contact with the student before and after breaks in educational programming.
  - 8) Parent/Adult student input: Consider parent observations of the student, as well as parent/adult student requests for ESY services.
- d. The ESY services shall be clearly described in **an the** IEP. ~~The district can meet this requirement by amending the current IEP using an amendment form or by developing a complete ESY IEP. See Section 1C of this chapter for more information.~~
- e. The district may not limit ESY services to particular categories of disability or unilaterally limit the amount or duration of these services.

## 5. Transportation

Transportation is a related service intended for a student whose disability requires special arrangements for him or her to benefit from special education. The student’s individual needs concerning his or her education are the main considerations in determining services—this includes transportation services.

The IEP team shall consider how the student’s disability affects his or her need for transportation, including determining whether the student’s disability prevents the student from using the same transportation provided to students without disabilities, or from getting to school in the same manner as students without disabilities. This includes transporting a preschool-age student to the site at which the district provides special education and related services to the student, if that site is different from the site at which the student receives other preschool or day-care services.

When the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA shall be afforded to the student in matters concerning transportation.

Transportation needs may include, but are not limited to, the following:

- a. travel to and from school and between schools to access special education;

- b. travel in and around school buildings;
- c. specialized equipment including lifts and ramps, if required to provide special transportation; or
- d. other services that support the student's use of transportation, such as:
  - 1) special assistance (e.g., an aide on the bus and/or assistance getting on and off the bus);
  - 2) safety restraints, wheelchair restraints, and/or child safety seats;
  - 3) accommodations (e.g., preferential seating, a positive behavioral support plan for the student on the bus, and/or altering the bus route);
  - 4) training for the bus driver regarding the student's disability or special health-related needs; or
  - 5) attending non-academic and extracurricular activities, if required by the IEP.

#### 6. Special Considerations

As appropriate, ~~the IEP team shall also consider and include the issues listed below in the IEP.~~  
the IEP team shall consider the following in the development of the IEP:

- a. If the student's behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, supports and other strategies to address that behavior.
- b. If the student has limited English proficiency, the IEP team shall consider the language needs of the student. A student's cognitive academic language proficiency (CALP) shall be determined using the State adopted English language proficiency assessment.
- c. If the student is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines that Braille is not appropriate for the student. This determination can only be made after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille).
- d. The IEP team shall consider the communication needs of the student. In the case of the student who is deaf or hard of hearing, the IEP team shall consider the language needs of the student, opportunities for direct communication with

peers and professional personnel in the student's language and communication mode, the student's academic level, and his or her full range of needs including opportunities for direct instruction in the student's language and communication mode.

### G. Statewide and Districtwide Achievement Testing

Section 1111(b)(2) of the Every Student Succeeds Act (ESSA) ~~requires~~ includes requirements that all students participate in statewide assessments.

Students with disabilities shall participate in all state- and district-wide assessments. Participation rates and performance data, both aggregate and disaggregate, for students with disabilities are reported to the public annually.

The IEP team shall determine how the student will participate in state- and district- wide assessments: without accommodations, with supports and accommodations, or by means of the AA. The IEP team determines the supports and accommodations a student will use based on those that are used regularly by the student during instruction or classroom testing and on what is documented in the accommodations section of the IEP.

The following guidelines shall be used to determine how the student will participate in state- and district-wide assessments:

#### 1. General Assessment without Accommodations

The IEP team determines and documents in the IEP that a student with a disability can adequately demonstrate his or her knowledge, abilities, or skills on state- and district-wide assessments without accommodations.

#### 2. General Assessment with Supports and Accommodations

Appropriate supports and accommodations for students with disabilities shall be based on the individual needs of each student. Supports and accommodations decisions are made by the IEP team and shall be recorded in the IEP. Accommodations should facilitate an accurate demonstration of academic achievement, developmental, and functional performance on state- and district-wide assessments. They should not provide the student with an unfair advantage or change the underlying skills that are being measured by the test. Supports and accommodations shall be the same or nearly the same as those used by the student in completing classroom assignments and assessment activities. The supports and accommodations shall be necessary for enabling the student to demonstrate knowledge, ability, skill, or mastery of academic content. Accommodations *do not* invalidate test results.

Students taking state- and district-wide assessments with supports and/or accommodations

shall be given opportunities to practice and become familiar with said supports and/or accommodations in the relevant test delivery system before they begin testing.

### 3. Alternate Assessments based on Alternate Academic Achievement Standards (AAs)

AAs are a statewide testing option intended only for those students with the most significant cognitive ~~impairments~~ disabilities, in lieu of the general education assessment, with or without supports and accommodations. Participation in AAs reflects the pervasive nature of a significant cognitive ~~impairments~~ disabilities and requires that a student meet all participation eligibility criteria. Students with the most significant cognitive ~~impairments~~ disabilities represent about 1% of the total student population.

The IEP team shall consider a student's participation in AAs on an annual basis using the participation criteria listed below. The IEP team shall document the student's testing status in the appropriate sections of the IEP.

a. A student must meet **all four** of the following participation criteria to qualify for the AA.

1) The student has a significant cognitive ~~impairments~~ disability.

a) Definition of significant cognitive disability: A designation given to a small number of students with disabilities for the purposes of their participation in alternate assessments. Having a significant cognitive disability is not solely determined by an IQ test score nor based on a specific disability category, but rather a complete understanding of the complex needs of a student. Students with significant cognitive disabilities have a disability or multiple disabilities that significantly impact their adaptive skills and intellectual functioning. These students have adaptive skills significantly below average in two or more skill areas and intellectual functioning well below average (typically associated with an IQ below 55).

i. This reference to an IQ typically below 55 is not intended to be a hard cut score, but to provide IEP teams with guidance.

ii. In circumstances when an IQ cannot be obtained, the IEP team may use a preponderance of evidence to determine if a student has a significant cognitive disability. (See eligibility criteria for Intellectual Disability in Chapter 4 of this manual).

2) The student is receiving academic instruction that is aligned with the Idaho Extended Content Standards.

a) The student's instruction and IEP goals/objectives/benchmarks address knowledge and skills that are appropriate and challenging for the student.

- 3) The student's course of study is primarily **focused on** adaptive skills **oriented** typically not measured by state or district assessments.
  - a) Adaptive skills are essential to living independently and functioning safely in daily life, and include, but are not limited to motor skills, socialization, communication, personal care, self-direction, functional academics, and personal health and safety.
- 4) The student requires extensive, direct, individualized instruction and substantial supports to achieve measurable gains in the grade- and age-appropriate curriculum.
  - a) The student consistently requires individualized instruction in core academic and adaptive skills at a substantially lower level relative to other peers with disabilities.
  - b) It is extremely difficult for the student to acquire, maintain, generalize, and apply academic and adaptive skills in multiple settings, across all content areas, even with high-quality extensive, intensive pervasive, frequent, and individualized instruction.
  - c) The student requires pervasive supports, substantially adapted materials, and individualized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate, and transfer skills across multiple settings.
- b. Students shall not qualify to participate in Alternate Assessments based on Alternate Achievement Standards solely based on any of the following reasons:
  - 1) Having a disability
  - 2) Poor attendance or extended absences
  - 3) Native language/social, cultural or economic differences
  - 4) Expected poor performance or past basic/below basic performance on the regular education assessment
  - 5) Academic and other services student receives
  - 6) Educational environment or instructional setting
  - 7) Percent of time receiving special education services
  - 8) English **Language** Learner (EL~~L~~) status
  - 9) Low reading level/achievement level

- 10) Anticipated disruptive behavior
- 11) Impact of student scores on the accountability system
- 12) Administrative decision
- 13) Anticipated emotional distress
- 14) Need for accommodations (e.g., assistive technology/AAC) to participate in the assessment

#### **H. LRE Explanation and Placement Decisions**

The IEP shall explain the extent, if any, to which the student will *not* participate in the general education classroom, the general education curriculum, and/or extracurricular or other nonacademic activities.

In recommending the appropriate placement in the least restrictive environment (LRE) for the student with a disability, the IEP team shall consider the student's unique circumstances and the continuum of services available to meet those unique circumstances. The parent/adult student shall be involved in the placement decision. Removal from the general education environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. A student with a disability is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and adaptations in the general education curriculum. In addition, a student with a disability shall be educated with students without disabilities in the general education classroom to the maximum extent appropriate.

NOTE: The district's reassignment of students (with or without disabilities) to another classroom or building in the district is *not* a change of placement for a student with a disability, as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; or going to a different school as a result of moving from one grade level to another grade level.

See Chapter 6 for more information on placement in the LRE

#### **I. Consent for Initial Provision of Special Education and Related Services**

The district shall make reasonable efforts to obtain informed consent from the parent/adult student before the initial provision of special education and related services for the student.

If the parent/adult student communicates in writing that he or she refuses special education and related services following the evaluation and eligibility determination, the district shall not provide special education and related services to the student. If the parent/adult student fails

to respond to a district's documented efforts to gain consent for initial provision of special education and related services, the district shall not provide special education and related services to the student. In both cases:

1. The district shall not be in violation of the requirement to provide FAPE to the student or the requirement to provide special education and related services;
2. The district shall not be required to convene an IEP team meeting or develop an IEP for the student; and
3. The district shall not use mediation and/or due process in order to obtain consent or a ruling allowing initial placement.

If the parent/adult student wishes to move forward with the provision of services stated on the IEP and placement in special education, consent for initial placement in special education shall be obtained after the development of an IEP. Consent means that the parent/adult student understands and agrees in writing to the carrying out of the activity for which consent is sought.

#### **J. Parent/Adult Student Objection to the IEP**

If the parent/adult student disagrees with an IEP team's proposed IEP for the student, the parent or adult student may file a written objection to all or parts of the proposed IEP. If the parent/adult student files a written objection that is emailed, postmarked or hand delivered within ten (10) days of the date he or she receives written notice from the district of the proposed IEP, the changes to which the parent/adult student objects cannot be implemented for fifteen (15) calendar days, or as extended through mutual agreement by the district and the parent or adult student, while parties work to resolve the dispute. If the changes have already been implemented, implementation of those changes shall cease. The district and parent/adult student may use methods such as additional IEP team meetings, IEP facilitation, or [SDE Idaho Department of Education](#) mediation to resolve the disagreement. If these attempts to resolve the dispute fail or are refused, the proposed IEP shall be implemented after fifteen (15) calendar days unless a due process hearing is filed to obtain a hearing officer's decision regarding the proposed IEP, unless it is an initial IEP. The written objection cannot be used to prevent the district from placing a student in an interim alternative educational setting (IAES) in accordance with the IDEA procedures for discipline of a student, or to challenge an eligibility/identification determination.

If the parent/adult student files a written objection to an IEP change or placement change proposed by the district any time *after* ten (10) calendar days of receiving written notice, the student shall remain in the placement described in the disputed IEP, and that IEP is implemented as written until the disagreement is resolved unless the parent/adult student and the district agree otherwise.

See Chapter 11 for information about the prior written notice requirements regarding the provision of FAPE and educational placement.

See Chapter 13 for more information about the various forms of dispute resolution including facilitation and mediation.

### **K. Additional Transition Components for Secondary-Level IEPs**

Secondary transition services are defined as a coordinated set of activities for a student with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post school activities including postsecondary education, vocational education, integrated employment (including supported employment), continuing in adult education, adult services, independent living, or community participation. The activities include instruction, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These activities are based on the individual student's needs, taking into account the student's strengths, preferences, and interests. The following are required components for all secondary students receiving special education services.

1. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), the IEP shall include:
  - a. present levels of academic and/or functional performance and a functional vocational evaluation where appropriate;
  - b. appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
  - c. transition services, including a course of study, that will reasonably enable the student in reaching postsecondary goals identified on the IEP which may include postsecondary education and training, employment and career counseling, community participation, independent living or adult services;
  - d. evidence that the student was invited to the IEP team meeting where transition services are to be discussed; if the student does not attend the IEP team meeting, the IEP team must take other steps to ensure the student's preferences and interests are considered;
  - e. evidence that a representative of any participating agency was invited to the IEP team meeting with a prior written consent of the parent or student who has reached the age of majority; and
  - f. the graduation requirements for the student receiving special education services. Refer to Chapter 7 for more detailed information on documentation of high school graduation in the IEP.



The postsecondary goals and transition services shall be updated on the IEP annually.

2. Not later than the student’s seventeenth (17th ) birthday, the IEP shall include a statement that the student and parent has been informed whether or not special education rights will transfer to the student on his or her eighteenth (18th ) birthday. Special education rights will transfer from the parent to the student when the student turns eighteen (18) years old unless the IEP team determines that:
  - a. the student is unable to provide informed consent with respect to his or her special education program; or
  - b. the parent has obtained legal guardianship.

(For more information on the transfer of rights, see Chapter 11)

3. When a student exits from special education as a result of complying with the Idaho Content Standards and such applicable district graduation requirements or aging out, the district shall provide the student with a summary of his or her academic achievement and performance along with recommendations concerning how to assist the student in meeting postsecondary goals.

**L. Following the Meeting**

Following the IEP team meeting, a copy of the IEP and written notice of proposed or refused actions shall be given to the parent/adult student. IEPs and written notice should also be given to the parent/adult student whenever a change is made to the IEP or upon request.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the IEP shall have access to the IEP and be informed of his or her specific responsibilities. This includes being informed of any specific accommodations, adaptations, or supports that shall be provided to the student to ensure that the IEP is implemented appropriately.

**Section 3. IEP Reviews**

**A. Annual Reviews**

Each student’s IEP shall be reviewed at least annually by the IEP team, once every year (365 days). Meetings may be held any time throughout the school year, as long as the IEP is reviewed annually and is in effect at the beginning of each school year. Either at or after the annual review, written notice that the new IEP changes will be implemented shall be provided to the parent/adult student.

The IEP review includes the following purposes:

1. to determine whether the student's annual goals have been achieved;
2. to revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. to determine whether any additional assessments are necessary and to address the results of those conducted;
4. to address information about the student provided to, or by, the parent/adult student;
5. to address the student's anticipated needs;
6. to monitor the continuing eligibility of the student based on an evaluation or review of a variety of data, which may include formal or informal assessment, progress toward IEP goals and, [when applicable](#), objectives and benchmarks;
7. to write a new IEP; and
8. to consider a reevaluation to determine if a student is no longer eligible and special education services should be discontinued.

#### **B. IEP Amendments**

In making changes to a student's IEP after the annual IEP team meeting for a school year, the parent/adult student and the district may agree in writing not to convene an IEP team meeting for the purposes of making such changes, and instead may develop a written document to amend the student's current IEP. The parent/adult student will be provided with a revised copy of the IEP with the amendments incorporated. The annual review date remains the date of the original IEP.

If the parent/adult student believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP team meeting. The district shall grant any reasonable request for such a meeting. If the district refuses to convene an IEP team meeting requested by the parent/adult student, the district shall provide written notice to the parent/adult student, including an explanation of why the district has determined the meeting is unnecessary.

If any other member of the IEP team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP team meeting.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the amended IEP shall have access to the amendment and be informed of his or her specific responsibilities.

## Section 4. IEPs for Transfer Students

Idaho Administrative Procedures Act [IDAPA 08.02.03.109.04(f)] requires the new (receiving) district to request a copy of the eligibility documentation and most current IEP within two (2) school days. Within five (5) school days of receiving this information, the new district shall determine if ~~a new assessment is required. it will adopt the existing eligibility documentation and IEP. If the district disagrees with the existing eligibility documentation or if the documentation is not available within a reasonable time period,~~ If eligibility documentation is not received within a reasonable time period, is expired, or is insufficient to demonstrate eligibility for special education in Idaho, written consent for a reevaluation shall be sought. During the reevaluation process, the district shall implement an interim IEP to provide services comparable to those provided in the student's most recent IEP. ~~e meantime, if the parent agrees, an interim IEP may be developed and implemented, or the existing IEP implemented. If there is no agreement, the student is placed in general education.~~ Within fourteen (14) calendar days the receiving district will request the full educational record of the transferring student from the former school.

### A. Transfer from an Idaho School District

When a student with a disability transfers school districts in Idaho with a current eligibility and IEP in Idaho, the district shall presume eligibility and provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent/adult student, until ~~such time as~~ the district adopts the previously held IEP or develops, adopts, and implements a new IEP or interim IEP. If eligibility documentation is expired, written consent for reevaluation shall be sought. During the reevaluation process, the district shall implement an interim IEP to provide services comparable to those provided in the student's most recent IEP. The receiving district shall request, as soon as possible, but no more than two (2) school days, the eligibility documents and the most current IEP from the sending district. Once the district has formally received a request for a student's record from another Idaho district, the district shall forward copies ~~of~~ of the original documents as soon as possible, but within no more than five (5) school days, of the request. Within fourteen (14) calendar days the receiving district will request the full educational record of the transferring student from the former school. If originals are sent, the sending district shall maintain a copy for audit purposes.

Note: The current IEP shall be implemented if a new IEP or an interim IEP cannot be developed within five (5) school days of the student's enrollment or if a reevaluation will be taking place.

### B. Transfer from an Out-of-State District

When a student with a disability transfers from out of state to an Idaho school district with a current eligibility and IEP in that other state, the district shall provide the student with FAPE. This includes services comparable to those described in the ~~previously held current~~ IEP, in consultation with the parent/adult student, until such time as the district conducts an

evaluation, if determined necessary, and develops, adopts, and implements a new IEP or interim IEP. If eligibility documentation is expired, written consent for reevaluation shall be sought. During the reevaluation process, the district shall implement an interim IEP to provide services comparable to those provided in the student's most recent IEP.

### C. Transfer to an Out-of-State District

Within ten (10) school days of receiving a request from an [out-of-state](#) school district for copies of eligibility documentation and a transferring student's IEP, a district shall send the requested information to the receiving district.

## Section 5. IEPs for Children from the Infant/Toddler Program

### A. Interagency Agreement and Protocols

The school district, as the local lead agency for Part B, shall initiate the development of a signed interagency protocol with the regional Infant/Toddler Program (ITP) of the Department of Health and Welfare (DHW), the lead agency under Part C of the IDEA. The protocol shall be in accordance with the current state Interagency Agreement for Early Childhood Special Education Services and Early Intervention for Children Ages Two through Five.

The protocol will outline the obligations of each agency to ensure:

1. a smooth and effective transition of children served under Part C to early childhood special education services (ECSE) under Part B;
2. by the child's third birthday, eligibility for Part B services has been determined and an IEP or Individual Family Service Plan (IFSP) has been developed and implemented; and
3. each district and agency shall participate in transition planning conferences.

NOTE: A child, who turns three (3) after May 1, has been determined eligible for Part B services, and [for whom written](#) parental consent has been obtained for initial placement for Part B services, can be served as outlined in the IFSP by the ITP until school starts in the fall. This is the case unless specified differently in the local interagency protocol.

### B. Part C to Part B Transition Planning

In the case of a child who may be eligible for ECSE services, the district shall participate in a transition planning conference with the family arranged by the ITP. The conference will be conducted at least ninety (90) calendar days (and up to nine (9) months at the discretion of all parties) before the child's third (3<sup>rd</sup>) birthday to discuss eligibility requirements under Part B of the IDEA, needs and concerns of the child and family, and any services the child may receive.

The ITP has the responsibility to:

1. notify the school district and ~~SDE~~ the Idaho Department of Education of potentially eligible children;
2. invite and coordinate a transition planning meeting to review the process to determine eligibility and assess service options available;
3. establish a plan for facilitating the transition of the toddler with a disability to early childhood special education services;
4. provide the district with current IFSP, all addendums/outcomes to the most recent IFSP, other progress reports, evaluations and assessments ~~if~~ completed within the last six months; and
5. upon invitation, attend the initial IEP team meeting.

The school district has the responsibility to:

1. ~~make contact with~~ contact the family and provide notice of procedural safeguards and written information about the Part B and early childhood special education services (this information may be ~~provide~~ provided in person, at a transition conference, or by mail);
2. attend and participate in the transition planning meeting;
3. determine eligibility and develop an IEP or IFSP prior to the child's third birthday;
4. invite ITP representatives, at the request of the parent, to the initial IEP team meeting; and
5. obtain consent for initial provision of special education and related services under Part B.

### C. IEP or IFSP Required

1. By the child's third (3<sup>rd</sup>) birthday, the district shall have an IEP or IFSP in place for each student three (3) through five (5) years old who is eligible for ECSE services.
2. In developing the IEP, the IEP team shall consider the content of the IFSP including:
  - a. the least restrictive environment statement; and
  - b. the educational component that promotes school readiness, pre-literacy, language, and numeracy skills.
3. The IFSP may serve as the IEP of the child, if:
  - a. agreed by the district and the child's parents;

- b. a detailed explanation of the differences between the IFSP and the IEP is provided to the parents);
- c. parental written informed consent is obtained; and
- d. developed according to the IEP procedures outlined in Section 2 of this chapter. If the district elects to use an IFSP, the district is required to implement only the educational components of the IFSP.

#### D. Consent and Notice Requirements

1. Notice Announcing Initial IEP Team Meeting: The district shall inform the parents of their rights to request the participation of ITP representatives at the initial IEP team meeting for children previously served by Part C.
2. Release of Information: The district shall obtain written parental consent for the release of information to obtain pertinent student records from non-educational agencies such as ITP, developmental disabilities agencies, medical providers, day-care centers, and Head Start.
3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility, the student's present levels of academic achievement and functional performance, and goals or services on the IEP, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier under Part ~~C~~ C.) Otherwise, only written notice to inform the parent of the district's decision to use the current evaluation data, and not to conduct any further assessments, shall be provided to the parent. The parent shall also be informed of his or her right to request additional assessments.
4. Consent for Initial Provision of Special Education and Related Services: ~~Parental~~ Written parental consent for the initial provision of special education and related services and written notice for the implementation of the IEP or IFSP under Part B is required. Eligibility, initial provision of services, and LRE placement shall be documented for Part B services.

### Section 6. Students with Disabilities in Adult Prisons

The following requirements apply for students with disabilities ages eighteen (18) to the semester when they turn twenty-one (21) who are convicted as adults under Idaho law and incarcerated in adult prisons:

1. A student identified as a student with a disability, who is eligible for special education, and who is convicted as an adult and incarcerated in an adult prison, is not subject to

child find, but if already identified is entitled to FAPE until age twenty-one (21).

2. The student will not participate in statewide assessments.
3. Transition planning and services do not apply if the student will remain in prison beyond the semester of his or her twenty-first (21<sup>st</sup>) birthday.

The IEP team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

## CHAPTER 6: LEAST RESTRICTIVE ENVIRONMENT - TABLE OF CONTENTS

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## CHAPTER 6: LEAST RESTRICTIVE ENVIRONMENT

The IDEA states that, to the maximum extent appropriate, all students with disabilities, three (3) to twenty-one (21) years of age, are to be educated with ~~age-appropriate~~ **age-appropriate** peers who are nondisabled. This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The district shall have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student.

An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an individualized education program (IEP) while being educated with peers who are nondisabled to the maximum extent appropriate as determined by the IEP team on a ~~case-by-case~~ **case-by-case** basis. The student's IEP shall indicate the LRE for the student and explain to what extent, if any, the student will or will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. This provision includes students with disabilities placed in public or private institutions or other care facilities.

Special classes, separate schooling, and other removals of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education ~~class-environment~~, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

### Section 1. Least Restrictive Environment Considerations

#### A. When to Make and Review Placement Decisions

1. Placement decisions for a student with a disability are made following the determination of the individual needs, goals, and required services.
2. Placement decisions are revisited at least annually by the IEP team, which includes the parent/adult student and other persons **who are** knowledgeable about the student, the meaning of the evaluation data, and the placement options available.
3. Placement decisions are reconsidered, as appropriate, when an IEP team is convened to review a student's academic, functional, or developmental progress.

#### B. Considerations in Placement Decisions

LRE decisions are made, at least annually, individually for each student. The IEP team shall consider the following when determining the LRE in which the IEP can be implemented:

1. IEP Goals and Services: The student's goals and services are developed prior to the

determination of the services and settings. The services and settings needed by each student with a disability must be based on the student's unique needs that result from his or her disability, not on the student's category of disability.

2. ~~Age-Appropriate~~ Age-Appropriate Peers: Students with disabilities shall be educated with age-appropriate peers to the maximum extent appropriate. A student with a disability is not removed from age-appropriate general education environments solely because of needed accommodations and/or adaptations in the general education environment/curriculum.
3. School of Attendance: A student with a disability shall be educated in the school he or she ~~should~~ would attend if not disabled, unless the IEP requires some other arrangement. In such case, the child's placement shall be based on the child's IEP and as close ~~to~~ as possible to the child's home.
4. Harmful Effects: Consideration shall be given to any potential harmful effect on the student or on the quality of services the student needs.
5. Accommodations and/or Adaptations: A student with a disability is not removed from general education settings solely because of needed accommodations and/or adaptations in the general education environment/curriculum.
6. Participation in Nonacademic and Extracurricular Services and Activities:
  - a. A student with a disability shall be allowed to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development, and assistance in making outside employment available.
  - b. The IEP team determines the supplementary aids and services that are appropriate and necessary for the student to participate in nonacademic settings and extracurricular services and activities.

### C. Documentation of Placement Decisions

If the student will not participate *entirely* in the general education classroom, curriculum, and/or nonacademic and extracurricular activities, the IEP shall include a written explanation justifying the IEP team's decisions including the consideration of supplementary aids and services. The district shall provide the parent/adult student with prior written notice whenever the IEP team proposes to change or refuses to change the educational placement of the student.

## Section 2. District Responsibility for Continuum of Settings and Services

The continuum of settings includes instruction in general classes, special classes, special schools, home instruction and instruction in hospitals and institutions. In addition, the continuum makes provision for supplemental services, such as resource services or itinerant instruction, to be provided in conjunction with the general classroom. In determining appropriate settings and services for a student with a disability, the IEP team shall consider the student's needs and the continuum of alternate placements and related services available to meet those needs. Regardless of placement, the student shall be given appropriate access to the general education curriculum, as determined by the IEP team. The district shall be able to justify the available continuum of services and placement decisions for individual students.

All LRE considerations also apply to preschool students ages three (3) to five (5) years with disabilities who are entitled to receive a free appropriate public education (FAPE). Settings for implementing IEPs for students of legal ~~kindergarten-age~~ kindergarten age are the same as for all other school-age students. Settings for implementing IEPs for preschool-age students may include public or private early childhood programs. Public schools that do not operate early childhood programs for preschool students without disabilities are not required to initiate such programs solely to satisfy LRE requirements. IEP teams in public schools that do not have an inclusive public preschool that can provide all the appropriate services and supports to meet the individual needs of preschool students with disabilities, shall explore alternative methods to ensure LRE requirements are met for preschool students ages three (3) to five (5) years, which may include:

1. providing opportunities for participation (even part-time) of preschool students with disabilities in public or private regular early childhood programs operated for preschool students without disabilities by other agencies, such as Head Start;
2. placing preschool students with disabilities in the following:
  - a. private early childhood programs for preschool students *without* disabilities; or,
  - b. private early childhood programs or other community-based early childhood settings that integrate students *with and without* disabilities; and,
3. locating classes for preschool students with disabilities in elementary schools.

See Chapter 11 for information regarding prior written notice requirements that apply to proposed or refused changes in educational placement.

## Section 3. Federal Reporting of LRE

The IEP includes a section for reporting the educational environments required for the Federal

Child Count (annual report of children served, collected on any date between October 1 and December 1 of each year). This section is for reporting the amount of time the student spends in the general education environment, with or without special education and related services. After determining the LRE and the educational environments in which the student will receive their general education instruction and special education services, the IEP team will document the educational environment for federal reporting.

## CHAPTER 7: DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING - TABLE OF CONTENTS

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## CHAPTER 7: DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

### Section 1. Discontinuation of Services

#### A. Students Who Are No Longer Entitled to Services

The district will follow appropriate procedures to discontinue special education services to students who are no longer entitled to those services.

##### 1. Student No Longer Meets Eligibility Criteria

If it is suspected that a student no longer meets the eligibility criteria for ~~special education~~ ~~the IDEA~~, the evaluation team ~~will~~ shall conduct a reevaluation and arrange to have ~~additional~~ new assessments conducted, if necessary. If the student is no longer eligible under the Idaho eligibility standards, the district will provide the parent/adult student with written notice of this decision prior to discontinuing special education services.

##### 2. Student Completes Requirements for a High School Diploma

The district's obligation to provide special education services ends when the student meets the district and State requirements that apply to all students for receipt of a high school diploma without adaptations. Although this is considered a change of placement, a reevaluation is not required. Prior to graduation and the discontinuation of special education services the district shall:

- a. provide the parent/adult student with written notice of the district's obligation to provide special education services ends when the student has met the Idaho High School Graduation and such applicable district requirements; and
- b. provide the parent/adult student with a written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

##### 3. Student Reaches Maximum Age

For students who have not yet met the Idaho High School graduation and such district's graduation requirements, the district's obligation to provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age. This is considered a change of placement that does not require a reevaluation. If a student is turning twenty-one (21), the district shall:

- a. provide the parent/adult student with written notice the district's obligation to



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provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age; and,

- b. provide the parent/adult student written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

## **B. Change in District Obligation to Provide Services**

Under certain circumstances, a student may continue to be eligible for special education services, but the district's obligation to provide services changes.

### **1. Transfer to Another District**

When a student is no longer a legal resident of the district, the district will forward the student's special education records electronically or by mail within five (5) calendar days of the request from the new district. The records shall include, at least, the student's most recent individualized education program (IEP) and eligibility documentation. The sending district will retain copies or originals of the most recent five (5) years of programmatic and fiscal records, including IEPs and eligibility documentation. During an audit or monitoring this documentation may be needed to demonstrate that the student was eligible for special education and received special education services from the district. Note: Districts are required to maintain Medicaid-related records for six (6) years. See Chapter 11 for more information.

### **2. Enrollment in Private School or Receives Homeschooling**

When a parent/adult student withdraws a student from public school and enrolls him or her in a private school or provides homeschooling, the district's responsibilities vary depending on the circumstances. See Chapters 2 and 9 for more information.

### **3. Dropouts**

When a student drops out of school, written notice will be sent to the parent/adult student and a copy of the notice will be placed in the student's special education confidential file. If the student reenrolls and is still eligible for special education, the previous IEP can be implemented if it is current and appropriate. A [reevaluation shall be conducted, and a](#) new IEP shall be developed if needed.

## **C. Parent/Adult Student Revokes Consent for Special Education Services**

When a parent/adult student revokes consent for special education services in writing, prior written notice shall be provided specifying when the special education and related services will cease. Note: A parent/adult student has the right to revoke consent for IEP services in their entirety, not service by service. The written notice shall include a statement indicating the

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district stands ready, willing, and able to provide FAPE should the student remain eligible for special education services.

Section 2. Graduation

Graduation means meeting district and State requirements for receipt of a high school diploma. If a student is not granted a high school diploma or if the high school diploma is granted based on completion of adapted graduation requirements, the student is entitled to receive a free appropriate public education (FAPE) through the semester in which he or she turns twenty-one (21) years of age or determined no longer eligible as a result of a reevaluation. A General Education Development (GED) certificate does not meet the Idaho Content Standards and district requirements that are comparable to a high school diploma. The IEP team considering a student with a disability’s graduation from high school shall include a district representative knowledgeable about Idaho Content Standards and such applicable district graduation requirements.

**A. Individualized Education Program (IEP) Team Requirements Regarding Graduation**

1. Determine whether the student will meet all state and local requirements to be eligible to graduate from high school and anticipated graduation date.
2. Develop the course of study. The course of study should be developed in collaboration with any state-required student learning plan, when applicable. ~~in collaboration with the Parent Approved Student Learning Plan required for every student prior to the end of eighth (8th) grade. The Student Learning Plan will be reviewed annually and may be revised at any time.~~
3. Beginning no later than the end of the student’s ninth (9th) grade, review annually the student’s course of study, identify and make changes to the course of study needed for the student to meet graduation requirements.
4. Document any accommodations and adaptations made to the district’s and State’s regular graduation requirements on the student’s behalf.

a. Graduation Requirements with Accommodations

Accommodations to graduation requirements are determined by the IEP team and are deemed necessary for the student to complete graduation requirements. Further:

- 1) Accommodations to graduation requirements must specifically address completion of the student’s secondary program.
- 2) Accommodations will maintain the same level of rigor to the

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district and State graduation requirements. For example, a teacher may use different instructional strategies or alternate methods for assessing the student's ~~mastery acquisition~~ of ~~skills standards~~ that are equally rigorous.

- 3) Accommodations made to any district or State graduation requirement shall be stated in the student's IEP.

b. Graduation Requirements with Adaptations

Long-term consequences for the student shall be considered when adaptations are made to graduation requirements. Further:

- 1) Adaptations to graduation requirements shall specifically address completion of the student's secondary program.
- 2) Adaptations may alter the level of rigor required in the district or State graduation requirements. Examples of adaptations include changes made to course content, objectives, or grading standard that alter the level of rigor or ~~grade-level standard but will~~ not include exempting or excluding the student from an opportunity to pursue or meet the Idaho Content Standards.

**B. Graduation Ceremonies**

A special education student who completes his or her secondary program through meeting graduation requirements or criteria established on his or her IEP will be afforded the same opportunity to participate in graduation ceremonies, senior class trips, etc., as students without disabilities. Participation in a graduation ceremony does not mean that the student will receive a high school diploma or indicate the completion of a secondary program.

**Section 3. Transcripts and Diplomas**

**A. Transcript**

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts shall adhere to the following conditions:

1. Accommodations that allow the student to complete and demonstrate that he or she has met graduation requirements will not be noted on the transcript.
2. Adapted course work may be noted on the transcript if the parent/adult student is informed in advance and the designation is not discriminatory or identify the student as having a disability or receiving special education.

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3. Course designations, titles, or symbols that are used solely to identify adapted course work that is taken by students with disabilities will not be used.

**B. Diploma**

1. ~~For students who are eligible for special education services, t~~The district will use the high school diploma ~~for students who are eligible for special education services~~ at the completion of their secondary program through meeting graduation requirements or ~~based on~~ criteria established on his or her IEP. ~~;~~~~t~~This includes students who meet the graduation requirements with accommodations and/or adaptations.
2. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities in the same graduating class.

**Section 4. Grades, Class Ranking, and Honor Roll**

Grades earned by students with disabilities will not be categorically disregarded or excluded from district wide grade point average (GPA) standing. The district may establish objective criteria for class rankings, honors, etc., that weight courses according to degree of difficulty or exclude non-core courses so long as such practices are nondiscriminatory.

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## CHAPTER 8: CHARTER SCHOOLS

Federal law requires that students with disabilities be offered educational choices comparable to those offered to students without disabilities. One of these choices is the opportunity to attend a public charter school. Each public charter school, whether a charter school within a district or a charter school LEA (Local Education Agency), shares in the obligation to accept and appropriately serve students with disabilities under the IDEA in the same manner as any other public school.

The LEA charter school board of directors/trustees is required to adopt and ensure that the LEA implements this Manual.

### Section 1. Definition and Parent/Student Rights

#### A. Definition of Charter Schools

In Idaho, a charter school is a public school authorized by Section 33-5203, Idaho Code. A charter school operates as a nonprofit, publicly funded, nonsectarian school in one of three ways:

1. as a school within a district, if authorized by the local board of trustees of a school district (LEA);
2. as a school authorized by the district, but operating as a separate LEA; or
3. as its own LEA, if authorized by the Idaho Public Charter School Commission or a college or university.

A charter school is bound by the conditions of its charter, and all applicable state and federal law.

#### B. The Rights of Charter School Students and Their Parents

A charter school student is a public school student. Students with disabilities who attend charter schools, and their parents, have all of the same rights granted to students who attend other public schools. These rights are provided under the IDEA; the Elementary and Secondary Education Act (ESEA); the Every Student Succeeds Act (ESSA); Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA); and the Family Education Rights and Privacy Act (FERPA). Idaho law specifically states that charter schools cannot discriminate against any student on any basis prohibited by federal or state constitutions or any federal, state or local law.

1. Charter schools must have open enrollment that includes:

- a. giving all students an equal opportunity to attend;
  - b. being open and accessible to all students, including students with disabilities; and
  - c. admitting students on the basis of a lottery if more students apply for admission than can be accommodated.
2. A charter school shall not adopt an admission standard, policy or procedure that would have the effect of prohibiting or discouraging a student with a disability from enrolling or attending, or have the effect of prohibiting or discouraging a parent of a student with a disability from enrolling his or her child in the charter school by:
- a. establishing an examination or other academic criteria for admission;
  - b. requiring any activity in which the school is unwilling to accommodate or adapt their curriculum or academic standards to meet the needs of the student with a disability; and/or
  - c. requiring any activity in which the school suggests implicitly or explicitly that another school district would be a better placement or more capable of providing special education services or delivering education instruction (commonly referred to as “counseling out”).
3. A charter school must provide every student with a disability a Free and Appropriate Public Education (FAPE), which shall include appropriate special education services starting the first day of school or upon the first day the student enrolls and begins attending school.

Under Idaho state law, the charter of an authorized charter school outlines specific mission statements, policies and procedures, and the manner by which special education services will be provided.

## Section 2. Responsibility for Services

### A. Charter School Authorized by the District and Not an LEA (See definition in Section 1.A.1)

The district is ultimately responsible to ensure that the requirements of the IDEA are met with respect to students attending charter schools authorized by the district. A charter school’s compliance with the IDEA, Part B, is required regardless of whether the charter school receives any Part B funds.

1. To ensure that a charter school authorized by the district meets the IDEA requirements,

the district shall ensure services to students with disabilities attending the charter schools are provided in the same manner as the district serves students with disabilities in its' other schools, including providing supplementary and related services ~~onsite on site~~ at the charter school to the same extent to which the district has a policy or practice of providing such services ~~on the site~~ to its' other public schools.

2. The district shall have information on file with the ~~State Department of Education (SDE)~~ Idaho Department of Education that demonstrates students with disabilities who attend charter schools authorized by the district will receive special education and related services from either the district or the charter school (or a combination of both).
3. The district will ensure that its charter schools participate in all monitoring activities conducted by the Idaho Department of Education ~~SDE~~.
4. The district shall provide Part B funds and comparable services to the charter school within the district on the same basis as it provides such funds to other public schools within the district.

**B. Charter School Operating as an LEA** (See definition in Section 1.A.2)

Charter schools authorized by the Idaho Public Charter School Commission are automatically LEAs. A charter school LEA, whether virtual or brick-and-mortar or a combination thereof, has an obligation to accept and appropriately serve students with disabilities and is solely responsible to ensure that the requirements of the IDEA are met with respect to students enrolled. Compliance with the IDEA, Part B, is required regardless of whether the public charter school receives any Part B funds. A charter school LEA shall ~~participate fully in all monitoring activities conducted by the SDE~~ Idaho Department of Education.

- ~~1. participate in all monitoring activities conducted by the SDE and,~~
- ~~2. in its first year of operation, participate in an onsite technical assistance visit by an SDE special education team to ensure that the essential components of special education program are in place.~~

**Section 3. Charter Schools and Dual Enrollment**

Under Section 33-203, Idaho Code, parents of public charter school students “shall be allowed to enroll the student in a public school for dual enrollment purposes.” Special education services (specially designed instruction and related services calculated to meet the unique needs of a student with a disability) shall be the obligation of the public charter school. The district shall allow public charter school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students

without disabilities; and

2. receive accommodations in the general education courses for which they are enrolled on a 504 plan, if needed.

Public charter school students may not dually enroll solely for special education [services](#). The Board of Directors/Trustees of the public charter school and the traditional school district shall adopt procedures governing dual enrollment.

For detailed requirements and responsibilities governing dual enrollment of charter school students, see Section 33-203, Idaho Code.

### ~~Section 4. Funding~~ Section 4- New Charter Verification

In the first year of operation, all newly established charter schools shall undergo an on-site special education verification process to ensure the establishment of essential components within their special education program. Designated personnel from the Idaho Department of Education will extend support to the charter in fulfilling the requirements of the new charter verification process which shall encompass the following:

1. timely completion of the new charter verification form; and,
2. evidence to support the substantive components of the new charter verification form including such items as facilities, personnel, curriculum, student discipline, and relevant IDEA and Section 504 policies, practices, and procedures; and,
3. a site visit from the Idaho Department of Education.

It is important to note that the allocation of the charter school's IDEA grant funds is contingent upon the successful completion and verification of all components of the new charter verification form and the associated site visit.

Upon successful verification, the Idaho Department of Education will issue written confirmation to the newly established charter school regarding the successful completion of the new charter verification form. Based on the outcome of the verification process, the Department reserves the right to mandate further reviews in subsequent years of the charter school's operation.

### Section 5. Funding

#### A. State Funds

The ~~SDE~~ Idaho Department of Education will make apportionment payments (from state

general funds) to each charter school based on attendance figures. The ~~SDE~~ Idaho Department of Education will pay state funds directly to charter schools using the funding formula described in state law. A charter school may also be eligible for the following funds:

1. state funds for special education students who live in licensed group, foster, or personal care services homes under the provision of Section 33-1002B, Idaho Code;
2. district-to-agency contract funds under a provision of Section 33-2004, Idaho Code;
3. funds to serve high numbers of students with emotional behavioral disorder under Section 33-2005, Idaho Code; and
4. state enhancement funding sources.

**B. Federal Funds**

The ~~SDE~~ Idaho Department of Education disburses federal flow-through funds to all authorized local education agencies (LEAs).

1. Charter School as Part of a District (not an independent LEA)

The district provides funds under Part B to those charter schools that are part of the district on the same basis as the district provides funds and comparable services to the other public schools. This includes proportional distribution based on relative enrollment of students with disabilities. This distribution is made at the same time as the district distributes funds to their other public schools and must be consistent with Idaho’s charter school law. The individual school’s approved charter will identify whether the district will provide funding or services of comparable value.

- a. The amount of funds or comparable services will generally be equal to the per student amount the district is allocated from the ~~SDE~~ Idaho Department of Education in the current year multiplied by the charter school’s Child Count from the previous school year.
- b. Under certain circumstances the district shall allocate Part B funds to an eligible charter school based on the number of special students enrolled and served in the current school year.
  - 1) The district will allocate funds to a charter school within five (5) months of opening or significantly expanding its enrollment if the charter school notifies the district at least 120 calendar days before it opens or significantly expands its enrollment due to a significant event that is unlikely to occur on a regular basis (such as the addition of one or more grades or educational programs in major curriculum areas), and it takes place before the first Friday in February.

- 2) When these conditions are met, the district will allocate funds to the charter school as follows:
    - i. If the opening or expansion occurs prior to the first Friday in November, the charter school will be allocated funds in the current school year based on the current school year's Child Count.
    - ii. If the opening or expansion occurs after the first Friday in November but before the first Friday in February, the charter school will be allocated a pro-rata share of funds in the current school year based on the number of enrolled special education students with active IEPs 30 days after the opening or expansion. The pro-rata share will be the number of days the charter school will be open or expanded, divided by the number of days in the school year, multiplied by the number of special education students.
  - 3) If the opening or expansion occurs on or after the first Friday in February, the charter school will be allocated funds in the following school year based on the following school year's Child Count.
- c. For school districts that have authorized a virtual charter school and the charter school's students are enrolled in the district but live outside district boundaries and receive education outside the district, the ~~SDE~~ Idaho Department of Education will determine the district's Part B funding in the following way:
- 1) The calculation of the district's allocation will be made exclusive of the charter school's enrollment and special education enrollment (student count).
  - 2) After calculating the allocations for all districts using the federal funding formula and the distribution formula for any supplemental award, the ~~SDE~~ Idaho Department of Education will determine the statewide average per-student allocation.
  - 3) The ~~SDE~~ Idaho Department of Education will add to the district's base allocation an amount equal to the statewide average per-student allocation times the number of students with disabilities enrolled in and determined to be eligible for and receiving special education services.

## 2. Charter School Operating as an LEA

Public charter schools that are LEA's are responsible for adopting and implementing approved policies and procedures for special education and providing an assurance that funds will be

used in accordance with Part B allowable uses.

- a. Under 34 CFR § 76.792, the Idaho Department of Education will allocate funds to eligible charter school LEAs. In order to obtain funding the first year of operations, the LEA will submit an estimated opening enrollment and low-income population to the Idaho Department of Education to be used towards an initial allocation. To qualify under Section 33-5207(7), Idaho Code, and § 76.788, the LEA must provide the Idaho Department of Education with written notification at least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment. The Idaho Department of Education will allocate funds to a charter school within five (5) months of opening or significantly expanding its enrollment if the charter school notifies the district at least 120 calendar days before it opens as required under 34 CFR §76.793.
- b. In the second and subsequent years of operation, Charter School LEAs will be allocated Part B funds in the same manner as all school districts – in accordance with the federally prescribed funding formula for the distribution of flow through funds. The funding formula that the state is required to use in calculating these subawards is outlined in 34 CFR §300.705.
- c. The policy for providing federal special education funds to new charter LEAs in the first year of operation, as required by federal regulation, includes the following steps:
  - 1) The LEA submits its Child Count as required by IDEA.
  - 2) ~~An SDE Special Education Monitoring Team visits the new LEA to review the files of the students reported on the Child Count. The LEA~~ submits its estimated enrollment and low-income data according to section 2a.
  - 3) ~~The monitoring team determines the number of students meeting all eligibility requirements and receiving appropriate special education and related services.~~
  - 4) ~~Based upon the number of students determined to be eligible, amounts of Part B funds for allocated to the charter LEA are calculated as follows:~~
    - i. ~~The statewide average per student amount of Part B funding in the current year is determined.~~
    - ii. ~~That amount is multiplied by the number of students who meet all eligibility requirements and are receiving appropriate special~~

~~education services to determine the total allocation.~~

- 5) **3)** The charter LEA then shall complete the Part B application documents. These include:
- i. Assurances, **checklist**, and Policies and Procedures Adoption
  - ii. Maintenance of Effort Assurance
  - iii. IDEA Part B Budget Form
- 6) **4)** Once all site verification requirements have been met as outlined in section 4, the LEA will receive a site verification approval notification. The IDEA Part B application shall then be reviewed for approval ~~is submitted and approved~~, at which time the charter LEA may begin drawing down the IDEA Part B ~~these~~ funds for ~~the approved~~ special education purposes.



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## CHAPTER 9: PRIVATE SCHOOL STUDENTS

Note: For the purposes of this Manual, the term “private school student” is the same as a “nonpublic school student.” A homeschool student is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

The IDEA and IDAPA include the following:

- statutory and regulatory language, which states that students who are voluntarily enrolled in private schools are not entitled to all of the same services, including the right to a free appropriate public education (FAPE), as public school students;
- district responsibilities for special education students under Idaho’s dual enrollment law; and
- the legal requirements that come into play when a parent unilaterally enrolls his or her child in a private school and asks the district for reimbursement of these costs.

### Section 1. Definitions of Private School Placements

In order to describe the district’s responsibilities for serving private school students, it is helpful to distinguish three separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why.

#### A. Definition of Voluntary Enrollment by a Parent

A parent may choose to enroll his or her child in a private school for a variety of personal reasons, such as to obtain a religious education, to attend a school with a particular philosophy or curriculum, or because the parent is dissatisfied with the services offered or provided by the district. This is considered a voluntary enrollment. See Section 2 and Section 4 of this chapter for district responsibilities. Note: The IDEA distinguishes between for profit and nonprofit private schools. If a student is placed in a for profit private school by their parents the service plan provisions do not apply.

#### B. Definition of District Placement

At times, the district may place a student in a private school or facility to fulfill its obligation to provide FAPE. These placements are always made by an individualized education program (IEP) team in accordance with the requirements of Section 3 of this chapter.

**C. Definition of Unilateral Placement by Parents when FAPE is an Issue**

A parent may enroll a student in a private school or provide services from a private provider at parental expense. The parent may initiate a due process hearing to seek reimbursement for the costs associated with the placement from the district. All students who are placed by a parent when FAPE is an issue are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of student enrollment in a private school in this situation is included in Section 5 of this chapter.

**Section 2. Students Voluntarily Enrolled by Parents****A. District Consultation with Private School Representatives** (may be done in coordination with Title 1 requirements for consultation)

To ensure timely and meaningful consultation a district will consult with private nonprofit elementary and secondary school representatives and representatives of parents of parentally placed private school students with disabilities during the design and development of special education and related services for the students. The consultation process shall include:

1. **Child Find:** The Child Find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
2. **Proportionate Share of Funds:** The determination of the proportionate amount of federal special education funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated. Refer to Section 2G of this chapter for information regarding the calculation of the proportionate share of funds.
3. **Determination of Special Education and Related Services:** Given the amount of funds to be dedicated by the district, the discussion will include the consideration of how, where, and by whom special education and related services will be provided for parentally placed private school students with disabilities, including:
  - a. types of services, including direct services and alternate service delivery mechanisms;
  - b. how such services will be apportioned if funds are insufficient to serve all students;
  - c. how and when these decisions will be made; and
  - d. how the provided services will be evaluated.

4. Ongoing Communication: Clarify how the private school and district will operate throughout the school year to ensure that parentally placed private school students with disabilities identified through the Child Find process can meaningfully participate in special education and related services. Annual consultation is not required to make these decisions. The district determines the period between consultations based on changing circumstances within the district, such as significant changes in the total amount of funds to be expended and/or the number and location of private school students with disabilities.
5. Written Affirmation: When timely and meaningful consultation has occurred:
  - a. the district will obtain a written affirmation signed by the representatives of participating private schools;
  - b. if the representatives do not provide the affirmation within a reasonable period of time the district will forward the documentation of the consultation process to the ~~State~~ Idaho Department of Education ~~(SDE)~~.
6. District Decisions: Following consultation with the private school representatives, the district will make final decisions concerning items a-d addressed above in number 3.
7. Written Explanation by the District Regarding Services: If the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

## B. Compliance with Consultation Process

1. General Compliance: A private school official has the right to submit a complaint to the Idaho Department of Education ~~SDE~~ that the district:
  - a. did not engage in consultation that was meaningful and timely; or
  - b. did not give due consideration to the views of the private school official.
2. Procedure for Complaint
  - a. If the private school official wishes to submit a complaint, the official will provide the basis of the complaint to the Idaho Department of Education ~~SDE~~ consistent with the procedures provided in Chapter 13.
  - b. In response the district will forward the appropriate documentation to the Idaho Department of Education ~~SDE~~.

- c. The Idaho Department of Education ~~SDE~~ will render a written decision determining whether the district complied with the consultation process requirements and provide the decision to the district and private school official.
- d. If the private school official is dissatisfied with the decision of the Idaho Department of Education ~~SDE~~, the official may submit a complaint to the Secretary of the US Department of Education by providing the basis of the complaint against the district to the Secretary, and the Idaho Department of Education ~~SDE~~ will forward the appropriate documentation to the Secretary.

### C. Child Find Requirements

The district shall have an ongoing Child Find system to locate, identify, and evaluate all students with disabilities ages three (3) through twenty-one (21) who are educated within the district's geographic boundaries. This includes students who have been placed by a parent in a private nonprofit elementary or secondary school (including a religious school) located in the district regardless of the student's state or local residency. Note: Parents can also ask the district of residence (assuming it is different than the district where the private school is located) to evaluate their student. Both districts would have Child Find responsibilities and cannot share information between the districts without written parental consent. The district of residence would have Child Find responsibilities for students placed in for-profit schools and for children aged three (3) to five (5).

The Child Find process will be designed to encompass the following:

1. The Child Find process will ensure the equitable participation of parentally-placed private and homeschool students with disabilities.
2. Child Find activities for private school students will be similar to Child Find activities for public school students, which include the evaluation process within ~~the same~~ ~~comparable~~ timelines.
3. The district will consult with private school representatives and representatives of parents who place their children in private schools regarding the Child Find procedures.

Note: The cost of Child Find is not counted toward the pro-rated proportionate share that the district must spend on services.

### D. Annual Count of Eligible Students

The district shall conduct an annual count of eligible students and report to the Idaho State Department of Education the number of private school children evaluated, the number found eligible and the number who are provided with special education services. Students aged three (3) to five (5) must have their special education services identified on an IEP or a Services Plan. This count will be used to determine the amount of funds the district shall expend providing

special education and related services to private school students in the next school year (see Section 2E). The district will consult with representatives of private school students to determine how to conduct the count.

### E. Provision of Services

Provision of services applies to all eligible students who attend non-profit private elementary and secondary schools within the district's geographical boundaries regardless of where they reside. Parentally placed private school students with disabilities do not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Services offered to parentally placed private school students are determined through the district and private school consultation process.

#### 1. District Responsibilities

- a. Private school students with disabilities may receive a different amount of services than public students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private school student to receive only a related service or piece of equipment.
- b. Special education and related services provided to parentally-placed private school students with disabilities, including materials and equipment, will be secular, neutral and non-ideological.
- c. The district is required to offer FAPE to private school students who reside in their district, including when the student attends a private school outside of the district boundaries. Unless the parent makes clear their intention to keep their child in the private school, the district of residence must develop an IEP.
- d. Services may be provided at a public school building or another agreed upon site (including parochial schools to the extent consistent with the law) determined by the district in consultation with appropriate representatives of private school students.
- e. Services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

#### 2. Eligibility for Services

If an evaluation team determines that a student needs special education and related services:

- a. ~~The district of residence shall offer to make FAPE available upon enrollment in a district public school.~~ The district of residence must develop an IEP and make an



offer of FAPE for the student who is parentally placed in private school unless the parent makes clear an intent not to consider public school enrollment. The district has no obligation to implement that IEP unless the student enrolls in the public school.

- b. If the parent chooses not to enroll the student in the district of residence and designated funds are available in the district in which the private school is located, a meeting will be held to develop a Services Plan (SP). The meeting will include a representative of the private school to develop a SP. The SP is developed by the same members that would constitute the IEP team.
- c. Any services the district provides to a private school student shall be in accordance with a SP.

### 3. Services Plan (SP) Development

The SP shall describe the specific special education and related services that will be provided to the student in light of the determinations that have been made by the district. To the extent appropriate, the district shall initiate and conduct meetings to develop, review, and revise SPs in accordance with the following requirements:

- a. Given the services that the district has elected to provide to private school students, the SP must meet the requirements of the IEP to the extent appropriate (see Chapter 5). The SP excludes sections pertaining to:
  - 1) extended school year (ESY) services;
  - 2) participation in statewide and district wide assessments;
  - 3) placement determination (least restrictive environment);
  - 4) Child Count federal report settings; and
  - 5) elements that, although typical for an IEP, would be inappropriate given the services the district has elected to provide.
- b. An SP shall be in effect at the beginning of each school year and accessible to each person responsible for its implementation.
- c. Meetings shall be held to review and revise SPs at least annually to address any lack of student progress toward goals and in the general education curriculum.
- d. The SP team members include the same members as an IEP team. The district will ensure that a representative of the private school attends these meetings or participates by some other means.

- e. A parent shall be invited to SP meetings at a mutually agreed upon date and time. The invitation must indicate the purpose, time, and location of the meeting. The parent shall be informed that he or she may bring other persons knowledgeable about the student to the meeting. A copy of the SP will be given to the parent.
- f. The team developing the SP will consider the student's strengths and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the SP.
- g. If necessary for a private school student to benefit from or participate in the services the district has elected to provide, the district shall provide transportation from the student's school or home to the site where services will be provided. The district shall take the student back to either the private school or the home, depending on the timing of the services. In this sense, transportation is not a related service but a means of making the services offered accessible. Transportation costs may be included in the district's expenditure requirement. The district is not required to transport the student from home to the private school.

#### **F. Dispute Resolution**

Due process hearings are available to parents of private school students only on the issue of Child Find and evaluation. Parents may challenge decisions regarding the provision of services by filing a state complaint with the [SDE Idaho Department of Education](#). (See Chapter 13 for more information on dispute resolution options.)

#### **G. Determining the Proportionate Funding for Private School Students**

IDEA requires school districts to dedicate at least a proportionate share of funds received under Part B to provide services for parentally-placed students with disabilities who attend private schools within the boundaries of the district, regardless of their place of residence. To determine this proportionate amount, the district shall first determine the number of these private school students through the Child Find activities developed in the consultation process with private school representatives.

The number of parentally-placed private school students is divided by the total (public and private) number of students with disabilities in the district to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by the district under Part B grants Section 611 (ages three (3) to twenty-one (21) and Section 619 (ages three (3) to five (5) to determine the district's obligation.

Example for the XYZ School District:

- a. The number of parentally placed private school children within the district on

December 1, 2017: **10**

- b. The number of public school children with disabilities on December 1, 2017: **90**
  - c. Percentage of private school children with disabilities: A divided by A+B = **10%**
  - d. Total Part B funds allocated for school year 2017-2018: **\$150,000**
  - e. Amount the district shall spend on providing special education and related services to parentally placed private school students in 2017-2018: C x D = **\$15,000**
1. State and local funds may supplement but may not supplant the proportionate amount of federal funds required to be expended for parentally placed private school children with disabilities.
  2. The costs of private school consultations and of carrying out Child Find activities may not be paid from the proportionate share of funds.
  3. The cost of any special education or related service, such as direct service, consultation, equipment, materials, or transportation may be used to determine that the district has satisfied its expenditure requirement for private school students with disabilities.
  4. If all proportionate funds set aside for private school students in a given fiscal year are not expended in that year they shall be carried forward into the next year for the purpose of providing equitable services.

#### **H. Expenditure Guidelines**

1. The district may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the district shall:
  - a. retain title and exercise continuing administrative control over all equipment and supplies;
  - b. ensure that all equipment and supplies are used only for Part B purposes;
  - c. ensure that all equipment and supplies can be removed without remodeling the private school; and
  - d. remove equipment and supplies if necessary to prevent unauthorized use.
2. The district may use Part B funds to pay an employee of a private school to provide services to students with disabilities when the employee performs the services:
  - a. outside of his or her regular hours of duty; and

- b. under public supervision and control.
3. Part B funds shall not be used to:
  - a. finance the existing level of instruction in the private school or otherwise benefit the private school;
  - b. meet the needs of the private school; or
  - c. meet the general needs of students enrolled in the private school.
4. Part B funds shall not be used for repairs, remodeling, or construction of private school facilities.
5. If it is possible for classes to include students enrolled in both public and private schools, then the classes must not be organized separately on the basis of school enrollment or religion.
6. The district shall not appropriate any funds to private schools controlled by any church, sectarian, or religious denomination.

### Section 3. Students Placed by the District

When the district places a student with a disability in a private school or facility, as a means of providing special education services through the IEP team process, the district shall ensure the following:

1. All special education procedures and timelines are followed.
2. Special education and related services are provided in accordance with an IEP.
3. A representative of the private school or facility attends or participates in the meeting to develop the IEP. If the representative cannot attend other measures such as conference telephone calls will be used to ensure participation.
4. The responsibility for reviewing and revising IEPs remain with the district.
5. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP team meeting conducted in a geographical area outside the jurisdiction of the district.
6. The placement in the private school or facility is the least restrictive environment for that student.
7. The student is provided an education that meets state and district standards.

8. The student is afforded the same rights as students with disabilities who attend public schools.
9. The parent is afforded the same rights as parents of students attending public schools.

In accordance with federal and state law, the [SDE Idaho Department of Education](#) shall approve special education programs in private schools and facilities. The district shall ensure a program is approved prior to placing a student in that school or facility.

At the discretion of the district, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting, the district shall ensure that the parent and a district representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

#### Section 4. Dual Enrollment of Private School Students by Parents

According to Section 33-203, Idaho Code, parents of private school students “shall be allowed to enroll the student in a public school for dual enrollment purposes.” Private school students who are dually enrolled are considered to be nonpublic school students. The district shall allow private school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a Section 504 Plan, if needed.

Private school students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

The reporting of attendance for private school students in the district is allowed under dual enrollment. [The Idaho Department of Education’s Public School Finance Department’s procedures will be followed to calculate the funding for dually enrolled students.](#) ~~If a student attends at least 2.5 hours per week without rounding hours, he or she shall be included in the weekly aggregate attendance. The average daily attendance (A.D.A.) is computed as .5 if the aggregate weekly hours are 2.5 or greater but less than 4.0 hours. When there are 4.0 hours or greater, divide by 4 to get the A.D.A.~~

Dually enrolled private school students could also be eligible to receive services that have been agreed upon through the district and private school consultation process. These services would

be delivered through a SP.

## Section 5. Unilateral Placement of Student by Parents when FAPE is an Issue

### A. General Provisions for Reimbursement to the Parent

1. The district is required to make FAPE available to all eligible students with disabilities. If parents do not access FAPE, then the district is required to make provisions for private school students to receive Part B services consistent with Section 2E of this chapter.
2. The district is not required to pay for costs of tuition, special education, or related services and associated costs at a private school or facility for a student who was unilaterally placed there by a parent if the district made FAPE available to the student in a timely manner. If a parent disagrees with the availability of FAPE and there is a question about financial responsibility, the parent may request a due process hearing.
3. If the parent of a student with a disability enrolls the student in a private elementary or secondary school, without the consent of the district, a court or hearing officer may order the district to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:
  - a. the district had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and
  - b. the parent's placement is appropriate.
4. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards. A private school will be deemed appropriate if the parent demonstrates that the private placement provides educational instruction specially designed to meet the unique needs of the child with a disability, supported by such services as are necessary to permit the child to benefit from that instruction.

### B. Denial or Reduction of Reimbursement to the Parent

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. The parent did not inform the district that he or she rejected the placement proposed by the district to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This notification by the parent shall be provided to:
  - a. the IEP team at the most recent IEP team meeting prior to removing the student

from the public school; or

- b. the district, in writing, at least ten (10) business days (including any holidays that occur on a business day) prior to removing the student from public school.
2. Prior to removal of the student from the public school, the district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.
3. A judicial decision finds unreasonableness with respect to the actions taken by the parent.

Reimbursement shall not be reduced or denied under any of the following circumstances:

1. The district did not notify the parent of his or her obligation to provide the notice set forth in number 3 above or the district prevented the parent from providing that notice.
2. The parent had not received written notice.
3. The district's proposed placement would likely result in physical harm to the student.

Reimbursement may not be reduced or denied at the discretion of a court or hearing officer for failure to provide this notice if:

1. The parents are not literate or cannot write in English, or
2. The district's proposed placement would likely result in serious emotional harm to the student.

### Section 6. Out-of-State Students Residing in Residential Facilities

For school-age special education students from outside the state of Idaho who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities within the state of Idaho, the school district in which the residential facility is located will provide education services to such students if requested by the licensed public or private residential facility and an agreement is entered into with the residential facility. The district will be given the opportunity to provide input on any federally required education programs or plans for such students.

#### A. Contract for Education Services

The contract with a residential facility will include the following provisions:

1. The education services to be provided by the district.

2. The amount to be paid by the licensed public or private residential facility.

The amount paid will be equal to the district's full cost of providing the education services delineated by the contract as determined by the district. Such students will be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the district.

In the event a residential facility fails to sign a contract with the district agreeing to pay the full cost for providing education services, the school district in which the residential facility is located will not be responsible for providing education services to the out-of-state students residing in the residential facility.

### **B. Determining Residency**

In determining whether a student is from outside the state of Idaho, the school district in which the residential facility is located will determine the primary residency of the student's parent or guardian. Proof of Idaho residency will be established by showing an Idaho motor vehicle driver's license, payment of Idaho state income taxes, or other documentation evidencing residency within the state of Idaho.



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## CHAPTER 10: IMPROVING RESULTS

This chapter reflects the changes in the IDEA that focus on improving educational outcomes, analyzing and reporting data to the public, and ensuring that personnel who work with students with disabilities are prepared to meet their unique needs.

### Section 1. Monitoring Priorities and Indicators

The Idaho ~~State~~ Department of Education (~~SDE~~) is responsible for the design and implementation of a system of general supervision that monitors the fulfillment of the Individuals with Disabilities Education Act (IDEA) of 2007. The activities under the Idaho Special Education Results Driven Accountability (RDA) Monitoring System monitor local education agencies (LEAs) for results and compliance. Based on stakeholder input, the monitoring system includes a focus on providing supports to LEAs to meet the requirements of IDEA.

The Guiding Principles of the Results Driven Accountability Monitoring System are:

- A. Improving educational results and functional outcomes for all students with disabilities, and ensuring that Idaho meets the program required by IDEA, with a particular emphasis on those requirements that are most closely related to improving education results for students with disabilities.
- B. The RDA Monitoring System provides the framework for the ~~SDE~~ Idaho Department of Education to partner with ~~LEAs~~ to be mutually responsible for student outcomes and is designed to guide and support districts in their pursuit of preparing students with disabilities to persevere in life and be ready for college and careers. To meet the general supervision requirements, the ~~SDE~~ Idaho Department of Education will conduct an annual review of each LEA's performance on a pre-identified set of results and compliance indicators and special conditions areas. Data from the annual review will be compiled into the RDA Determination Report.

The district is required to submit timely and accurate data from which the district's performance will be calculated based on the indicators in ~~the Idaho's State~~ Idaho Department of Education's Performance Plan, posted online annually on the ~~SDE~~ Idaho Department of Education website.

#### A. ~~SDE~~ Idaho Department of Education Responsibility

As part of the ~~SDE~~ Idaho Department of Education general supervision responsibilities, the ~~SDE~~ Idaho Department of Education is required to collect, review, and analyze data on an annual basis to determine if the state and districts are making progress toward the required

performance goals. This accountability process includes:

1. measuring performance on goals both for the state and the districts;
2. monitoring based on district result and compliance data with the IDEA, and progress made toward meeting state goals;
3. identifying districts in one of the following RDA Determination categories: Meets Requirements, Needs Assistance, Needs Intervention, Needs Substantial Intervention;
4. identifying districts in of the following Differentiated Levels of Support categories: Support and Guiding, Assisting and Mentoring, Directing;
5. providing professional development and technical assistance statewide and targeted technical assistance to districts demonstrating the highest needs;
6. reporting to the public on the state and districts' performance on state goals; and
7. developing and submitting an Annual Performance Report/State Performance Plan, as needed, to address state performance on required goals.

## **B. District Responsibility**

Progress on the state's performance goals is directly linked to the districts' efforts and progress in these same areas. On an annual basis and as part of the ~~SDE's~~ Idaho Department of Education's general supervision and accountability, the district shall:

1. ensure the data it collects and reports to the ~~SDE~~ Idaho Department of Education regarding special education students and personnel is accurate;
2. use data-based decision-making procedures to review and analyze data to determine if the district is making adequate progress toward performance goals; and
3. adjust strategies, as needed, to meet goals and improve student outcomes.

## Section 2. Comprehensive Early Intervening Services (CEIS)

Under the IDEA, the district may use up to 15% of its IDEA Part B allocation in any fiscal year to provide comprehensive early intervening services (CEIS) for students in kindergarten through grade twelve (12), (with a particular emphasis on students in kindergarten through grade three (3)) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

These funds may be used for activities that include:

1. Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software
2. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

Should a district be found in having significant disproportionality as provided under Part B, the district shall use 15% of its IDEA Part B allocations to provide comprehensive coordinated early intervening services.

### **A Budget Requirements**

If the district chooses to use IDEA Part B funds in any fiscal year to provide CEIS, the district will budget the amount used to provide these services, up to a maximum of 15% of the total allocation, in the Part B budget that is submitted annually to the [SDE Idaho Department of Education](#) as part of the Part B and Preschool Application.

### **B Reporting Requirements**

When the district uses IDEA Part B funds to provide CEIS, an annual report shall be submitted to the [SDE Idaho Department of Education](#) on:

1. The number of children who received CEIS; and
2. The number of children who received CEIS and subsequently receive special education and related services during the preceding two (2) year period.

### **C Relationship between FAPE and CEIS**

CEIS provided by the district shall not be construed to either limit or create a right to FAPE under the IDEA or to delay appropriate evaluation of a student suspected of having a disability.

## **Section 3. Personnel**

The district shall ensure that personnel working with students with disabilities meet the qualifications established by the [SDE Idaho Department of Education](#) and have the content knowledge and skills to meet the needs of these students.

### **A. Appropriate Certification or Licensure**

Public school personnel shall meet the appropriate certification or licensure requirements for position assignments. Complete certification standards for personnel providing special

education or related services may be found ~~in the handbook titled Idaho Standards for the Initial Certification of Professional School Personnel. This handbook is available from the SDE Certification and Professional Standards Department.~~ by visiting the [Certification and Professional Standards webpage of the Idaho Department of Education's website.](#)

The lists that follow are examples only. They do not include every possible position or licensing situation. For more information, call the [SDE Idaho Department of Education Certification and Professional Standards Department](#) at (208) 332-6800.

1. The following special education and related services positions require individuals who are employed by the district to be certificated and to meet any additional licensure requirements:
  - a. audiologist;
  - b. consulting teacher;
  - c. counselor;
  - d. director of special education;
  - e. early childhood special education teacher;
  - f. school psychologist;
  - g. special education teacher;
  - h. speech-language pathologist; and
  - i. supervisor/coordinator of special education.
2. Some special education service providers need both licensure in their area of expertise and certification from the [Idaho Department of Education SDE](#).
  - a. School nurses are certificated by the [Idaho Department of Education SDE](#) and licensed by the Idaho Board of Nursing.
  - b. School social workers are certificated by the [Idaho Department of Education SDE](#) and licensed by the Idaho Board of Social Work Examiners.
3. Some special education service providers must meet the licensure or certification requirements in their respective professions, but certification from the [Idaho Department of Education SDE](#) is not required.
  - a. Occupational therapists and physical therapists are licensed by the Occupational Therapy Licensure Board of Idaho.

- b. Physical therapists are licensed by the Idaho Physical Therapy Licensure Board.
  - c. Vocational education teachers are certificated by the Idaho Division of Career and Technical Education.
  - d. Vocational rehabilitation counselors must meet national standards for Certified Rehabilitation Counseling (CRC) to be employed by the Idaho Division of Vocational Rehabilitation.
4. An emergency provisional certificate [and the public charter school-specific teacher certificate](#) cannot be used as an alternative for individuals to become certificated [special education](#) teachers in Idaho. The district shall use the alternative authorization options to request alternative endorsement/certification when a professional position cannot be filled with someone who holds the appropriate endorsement/certification.

### B. Shortage of Personnel

If there is a shortage of qualified personnel, the district shall take measurable steps to recruit and hire qualified personnel to provide special education and related services to students with disabilities. However, when a professional position cannot be filled with an individual who has the appropriate certification, vacant positions may be filled with personnel ~~on the following approved alternate pathways to teaching:~~ [on an approved alternate pathway to teaching](#). Information regarding pathways to certification/endorsement is available on the Certification and Professional Standards webpage of the Idaho Department of Education’s website.

- ~~1. Teacher to New Certification: An individual holds a Bachelor’s degree and a valid teaching certificate without full endorsement in area of need. The candidate works towards completing a preparation program for special education certification and is employed by the district.~~
- ~~2. Content Specialist: An individual who is uniquely qualified in an area and holds a Bachelor’s degree. The candidate works towards completing a preparation program while employed by the district. The preparation program must include mentoring, one classroom observation per month until certified, and prior to entering the classroom; the candidate completes an accelerated study in education pedagogy.~~
- ~~3. Non Traditional Route to Certification: An individual may acquire interim certification through a non traditional alternative route to teacher certification that is approved by the State Board of Education. During the interim certification, teaching shall be done in conjunction with a two year mentoring program approved by the State Board of Education.~~

Further information and all requirements for each alternative route to certification are available in Idaho Administrative Code (IDAPA 08.02.02).



Nothing in the IDEA creates a right of action on behalf of a student or class of students for failure to employ qualified staff.

### C. Paraprofessionals, Assistants, and Aides

The district may employ paraprofessionals, assistants, and aides who are appropriately trained and supervised to assist in the provision of special education and related services to students with disabilities if they meet standards established by the [SDE-Idaho Department of Education](#). ~~(find the “Standards for Paraprofessionals Supporting Students with Special Needs” on the SDE website).~~

Appropriate duties to be performed by paraprofessionals are:

1. provide one-on-one services for students as specified in the students’ IEP;
2. assist with classroom management and organizing materials;
3. provide assistance in a computer lab or media center;
4. conduct parental involvement activities;
5. act as a translator;
6. assist in provision of services only under the direct supervision of a certified teacher or related service provider, specifically:
  - a. a teacher/related service provider plans instruction and evaluates student achievement; and
  - b. the paraprofessional works in conjunction with the teacher or related service provider as determined by the student’s IEP.

A special education paraprofessional shall be qualified as follows.

1. All paraprofessionals must have a secondary school diploma or its recognized equivalent.
2. Additionally, except as noted below, paraprofessionals must have:
  - a. Completed two years of study at an institution of higher education; **or**
  - b. Obtained an associate’s (or higher) degree; **or**
  - ☞ Met a rigorous standard of quality and be able to demonstrate, through a formal State-approved ~~or local~~ academic assessment, knowledge of and the ability to assist in instructing, reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness). ~~(in Idaho this~~

~~is the ETS Parapro Praxis with a minimum score of 460).~~

The district may encourage qualified paraprofessionals employed in their classrooms to become certified teachers.

#### **D. Educational Interpreters**

The district may only employ an individual as an educational interpreter if they have met the state qualifications identified in Section 33-1304, Idaho Code. Educational interpreters employed by the district shall complete a minimum of eighty (80) hours of training in the areas of interpreting or translating every five (5) years.

#### **E. Supervision of Staff**

A teacher and/or a related service provider with appropriate certification or licensure who has been informed of his or her specific responsibilities related to a student's IEP has the primary responsibility to ensure the appropriate implementation of the IEP. The district has policies and procedures for the supervision and evaluation of all certificated/licensed or contracted employees.

The certificated/licensed teacher and/or related service provider will generally be responsible for the supervision of all paraprofessionals, assistants, and aides who provide direct services to students with disabilities. All paraprofessionals, assistants, and aides must have a supervision plan developed by a certificated or licensed professional.

#### **F. Professional Development Plan**

The district will take measures to ensure that all personnel necessary to provide special education and related services according to the IDEA are appropriately and adequately prepared. Personnel may use a variety of opportunities for technical assistance and training activities to further develop professional knowledge and skills in order to meet the needs of students with disabilities.

To the extent the district determines it is appropriate, paraprofessional personnel may use the technical assistance and training activities offered by the district or [Idaho Department of Education SDE](#) to improve practice for paraprofessional supports for special needs.

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## CHAPTER 11: PROCEDURAL SAFEGUARDS

~~This chapter reflects changes in procedural safeguards as a result of the IDEA.~~

### Section 1. Procedural Safeguards Notice

A parent/adult student has specific procedural safeguards given to him or her by the IDEA and state law. Each district has a document titled *Procedural Safeguards Notice* that is provided to parents/adult students which contains a full explanation of the special education rights. The *Procedural Safeguards Notice* shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner.

#### A Procedural Safeguards Notice Contents

The following table lists various topics contained in the *Procedural Safeguards Notice* and identifies what chapter in this Manual provides more information about each topic.

Topic	Chapter
1. parental consent	11
2. written notice	11
3. access to educational records	11
4. independent educational evaluation (IEE)	11
5. the opportunity to present and resolve complaints, including: <ul style="list-style-type: none"> <li>a. the time period in which to make a complaint</li> <li><del>b. the opportunity for the district to resolve the complaint</del></li> <li>c. the availability of <del>SDE</del> Idaho Department of Education mediation</li> <li>d. the differences between a due process hearing complaint and state complaint</li> </ul>	13
6. the student's placement during pendency of due process proceedings	13
7. procedures for students who are subject to placement in an interim alternative educational setting (IAES)	12

8. requirements for unilateral placement by parents of students in private schools at public expense	9
9. due process hearings, including requirements for disclosure of evaluation results and recommendations	13
10. civil actions, including the time period in which to file such actions	13
11. attorney fees	13

**B When the Procedural Safeguards Notice Is Provided**

The district will provide a *Procedural Safeguards Notice* that includes a full explanation of the special education rights afforded the parent/adult student only ~~once per~~ [one time a school year](#), except that a copy will be given to the parent/adult student:

1. upon an initial referral or parent/adult student request for evaluation;
2. upon the first occurrence of a filing of a due process hearing or a state complaint;
3. when a decision is made to take a disciplinary action that constitutes a change of placement; and
4. upon request by the parent.

A *Procedural Safeguards Notice* suitable for copying can be found in the document section of this chapter, [and on the Idaho Department of Education’s Dispute Resolution webpage under Chapter 11 of the Idaho Special Education Manual.](#)

**Section 2. Domestic Considerations**

**A. Parent**

1. Definition

The term “parent” means:

- a. a biological, adoptive, or foster parent of a child;
- b. a guardian (but not the state if the child is a ward of the state);
- c. an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives;
- d. an individual who is legally responsible for the child’s welfare;

- e. ~~an adult student~~; or
- f. a surrogate parent who has been appointed by the district.

## 2. Determining Who Has Parental Rights

In determining who has parental rights, individuals should be considered in the following order of priority:

- a. a biological or adoptive parent; unless a Court orders a specific person to act as the parent or to make educational decisions on behalf of the child;
- b. a person who has legal documentation (guardianship, power of attorney, custody agreement) of being responsible for the student's welfare;
- c. a grandparent, stepparent, other relative, or foster parent with whom the student lives and who is acting as a parent; or
- d. a surrogate parent appointed by the district to represent the student's interests in educational decisions.

## B. Surrogate Parent

### 1. Definition

A "surrogate parent" is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA in any of the following circumstances:

- a. No parent can be identified or located for a particular student.
- b. The student is a ward of the state.
- c. The student is an unaccompanied homeless youth.

The surrogate parent has the same rights as a biological parent throughout the special educational decision-making process.

### 2. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district's special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

- a. A parent cannot be identified.
- b. A parent cannot be found after reasonable efforts to locate the parent.



- c. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student’s education, including special education, provided he or she meets the criteria for a district-appointed surrogate
- d. The student is a homeless youth who is unaccompanied.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the biological parent is available but chooses not to participate. When a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth in item 3, below. The district will make reasonable efforts to assign a surrogate within thirty (30) calendar days after it determines that the student needs a surrogate.

3. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement, and the provision of FAPE. The surrogate parent shall:

- a. Have knowledge and skills that ensure ~~effective~~ adequate representation.
- b. Have no personal or professional interest that conflicts with the interest of the student.
- c. Meet the following conditions:
  - 1) is not an employee of the ~~SDE~~ Idaho Department of Education, the district, or any other agency that is involved in the education or care of the student; and
  - 2) is not an employee of a nonpublic agency that provides educational care for the student.

Note: A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate can be appointed that meets all the requirements.

**C. Adult Students and the Transfer of Rights**

An “adult student” is a student who is at least eighteen (18) years of age to whom special education rights have transferred under the IDEA and Idaho Code.

1. Discussion of the Transfer of Rights: Not later than the student's seventeenth (17<sup>th</sup>) birthday, the IEP team shall discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns eighteen (18) years of age unless:
  - a. the IEP team determines that the student does not have the ability to make informed decisions with respect to his or her educational program; or
  - b. a parent has obtained legal guardianship from a Court including the scope of educational matters.
2. Basis for Denial of Transfer: During the IEP team meeting to discuss the transfer of rights, the IEP team will use the following as the basis for any denial of the transfer:
  - a. Evaluation data, test results, written reports, teacher observation, education records, and parent input, including whether the parent intends to seek guardianship.
  - b. Answers to the following questions:
    - 1) Is the student capable of understanding his or her rights?
    - 2) Is the student capable of exercising his or her rights?
    - 3) Is the student capable of understanding the consequences and impact of his or her decisions?
3. Following a Determination Concerning the Transfer of Rights: When the student's special education rights transfer at age eighteen (18), the parent and student will be informed that rights have transferred. The IEP shall contain a statement referring to the transfer (or not) of rights:
  - a. If the team determines that there is no relevant information about the student to prohibit the transfer of rights at age eighteen (18), the student's IEP shall contain a statement that the student has been informed that special education rights will transfer to him or her. The parent retains the right to receive notices required by the IDEA.
  - b. If the IEP team determines that the student lacks the ability to provide informed consent with respect to his or her educational program, a statement will be included in the IEP indicating that the parent, or other individual if the parent is not available, will retain all special education rights after the student reaches age eighteen (18).
  - c. If rights have transferred, the district shall continue to provide notices to the parent, but nothing under the IDEA requires parent participation in the process.

4. Revoking a Transfer of Rights: There is nothing in federal or state law that prohibits the IEP team from changing its decision later, based on new information and input. Under state law, a parent can provide legal documentation of a student's incompetence *after* the student reaches age eighteen (18).

#### D. Emancipated or Married Minors

Idaho law does not provide for the emancipation of minors. However, minors who have been emancipated by a court of law in another state are considered an adult in Idaho. Emancipated minors should be able to provide the legal court document awarding them the power and capacity of an adult. A student under age eighteen (18) who claims to be an emancipated minor, but is unable to provide documentation should be assigned a surrogate parent by the district if a parent cannot be located.

Students under the age of eighteen (18) who are married ~~to an adult, eighteen (18) years or older,~~ are ~~not~~ emancipated minors in Idaho and ~~do not~~ have the power and capacity of an adult student. ~~Instead, the spouse acts as the guardian of the student regarding legal rights and responsibilities.~~

#### E. Ward of the State

The term "ward of the state" means a child who, as determined by the state where the child resides, is a foster child, or a ward of the state *or* is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 2A.

#### F. Child Custody

##### 1. Definitions of Custody

The following definitions of custody are used by Idaho courts in divorce proceedings:

- a. **Joint custody** means a ~~an~~ court order awarding custody of a minor child to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child frequent or continuing contact with both parents. A court may award either joint physical custody or joint legal custody, or both. If the court has declined an order awarding joint custody, the court order shall state in the decision the reason for denial of joint custody.
- b. **Joint physical custody** means a ~~an~~ court order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents. The actual amount of time with each parent is determined by the court. ~~Generally, one of the parents is awarded primary physical custody.~~

- ✶ **Joint legal custody** means is a judicial determination that the parents or parties are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of a child. ~~In Idaho, parents have joint legal custody unless the rights of one or both parents have been terminated.~~

## 2. Conflicts Between Parents Who Have Joint Custody

- a. **Custody questions:** When it is known that a custody question exists that involves the relevant legal status of one or both parents of a student, the district will ask the parent(s) to furnish a copy of the pertinent court order or decree, if one exists, to clarify the question at issue. School personnel will abide by the most recent court order or decree.
- b. **Conflicting Information:** When district personnel receive conflicting information about custody, they will (a) initially follow the instructions of the parent with whom the child currently resides and (b) request a certified court document to clarify the custody issue.
- c. **Conflicting instructions:** When parents who have joint legal custody give conflicting instructions, the district's obligation is to inform the parents that any action proposed or refused will be based on the needs of the student and in accordance with the IDEA requirements. Both the district and either parent have options under the IDEA to resolve disagreements, including ~~SDE~~ [Idaho Department of Education](#) Dispute Resolution processes such as mediation and due process hearings.
- d. **Access to records:** A parent who does not have primary physical custody has the same right to access records and to participate in special education decision making as does the parent with primary physical custody, unless otherwise specifically stipulated by a court. ~~Idaho Code states, "Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child's custodial parent." Another provision of the law allows t~~The parent with primary physical custody ~~to~~ may request in writing that a minor child's address be deleted from any record to prohibit the other parent from learning the child's address by having access to school records.
- e. **Parental disagreement of consent:** When parents, both with legal authority to make educational decisions for their child, disagree on the revocation of consent for special education and related services, one parent may revoke consent for his or her child's receipt of special education and related services at any time. The district must accept either parent's revocation of consent, and provide written notice to the parents. After revoking consent, a parent maintains the right to

subsequently request an **initial** evaluation which ~~must~~ **shall** be treated as an initial evaluation and not a re-evaluation for special education. A parent who disagrees with another parent regarding revocation of special education services is not entitled to resolve the dispute through an IDEA due process hearing.

### Section 3. Informed Consent

#### A. Definition

Consent is written approval given by a parent/adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information shall be provided in the native language or mode of communication of the parent/adult student, unless not feasible. The parent/adult student shall be informed that the approval is voluntary and may be revoked at any time prior to the action. Consent is indicated by the parent's/adult student's signature.

#### B. Actions Requiring Consent

The following actions require the district to obtain written consent. Some of the actions that require written consent from the parent/adult student also require prior written notice from the district.

1. Informed written consent *and* written notice are required when:
  - a. Conducting assessments as part of an initial evaluation to determine whether a student is eligible for special education.
  - b. Conducting any assessment for reevaluation that involves more than a review of existing information. This includes any assessments that are conducted after a student has been determined eligible for special education. If a specific assessment was not listed on the *Consent for Assessment* form, then the district shall secure written consent again in order to conduct that particular assessment.
  - c. Initially providing special education and related services to a student with a disability.
2. Informed written consent is required when:
  - a. Using an individual family service plan (IFSP) instead of an IEP for students ages three (3) through five (5).
  - b. Disclosing personally identifiable information to unauthorized persons, unless

provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations. The written consent shall specify the records that may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.

- c. Accessing private insurance to pay for services listed in the IEP.
- d. The district requests to bill Medicaid (with some exceptions). The parent/adult student shall be informed of the frequency, amount, and type of services that the district will be submitting to Medicaid for reimbursement as identified on the student's IEP.
- e. Inviting outside agency representatives providing transition services to an IEP team meeting.
- f. Sharing of information between the district of location and the district of residence with a parentally placed elementary or secondary student.
- ~~g. The excusal of an IEP team member from an IEP team meeting. **when the meeting involves a modification or discussion of the member's area of the curriculum or related services.**~~

### C. When Consent Is Not Required

The district is not required to obtain informed consent when:

1. a review of existing data is part of an evaluation or a reevaluation;
2. tests are administered to both general and special education students in a grade or class and consent is not required for all students;
3. teacher or related-service-provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals, objectives and benchmarks on the IEP;
4. screening to determine appropriate instruction strategies for curriculum implementation;
5. a disclosure of personally identifiable information to persons authorized to have access under FERPA or the Idaho Student Data Privacy Act, Section 33-133, Idaho Code; **or**
6. an IEP team reviews and revises a student's IEP. ~~However, the parent/adult student may file a written objection if he or she disagrees with all or part of the changes to the IEP.~~

#### D. Refusal to Give Consent

A parent/adult student may refuse to give written consent for an assessment, initial special education services or the release of information that the district believes is necessary to ensure FAPE during the reevaluation process.

If the parent ~~does not~~ refuses to provide consent for the reevaluation assessment, the district may choose not to pursue the reevaluation. ~~requesting SDE mediation and/or a due process hearing if~~ the district determines, through a review of existing data, that the information does not continue to support the determination of eligibility for special education services, ~~in this case~~ the district shall provide the parent with written notice of the proposed action to discontinue the provision of FAPE to the student. ~~based on a review of existing data.~~

The district may also choose to pursue the reevaluation through SDE Idaho Department of Education mediation and/or by requesting a due process hearing. If the hearing officer determines that the action is necessary, and the parent/adult student does not appeal the decision, the district may proceed with the proposed action. The district shall provide the parent with written notice of the proposed actions.

The district shall secure written consent for the initial provision of special education and related services. There is no mechanism available to overturn a parent's/adult student's decision *not* to provide written consent for ~~initial evaluation or the~~ initial provision of services. In the case of an initial evaluation or initial provision of services, if a parent/adult student fails to respond to reasonable measures to gain consent or does not consent, the district cannot be charged with failing to provide FAPE to the student and is not required to convene an IEP team meeting or develop an IEP for special education or related services.

#### E. Failure to Respond to a Request for Consent Regarding Reevaluation Assessment

When a parent/adult student fails to respond to reasonable measures taken by the district to obtain written consent to determine continued eligibility, the district may proceed with the evaluation. The district shall have a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment. Failure to respond is not the same as refusing consent for reevaluation.

#### F. Revoking Consent for Evaluation

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked only before the action occurs. If consent is revoked for evaluation, the district may continue to pursue the action by requesting a due process hearing. If the hearing officer determines that the action for which consent is sought is necessary, and the decision is not appealed, the district may proceed with the action without the written consent of the parent/adult student. Consent must be revoked in writing.

## Section 4. Written Notice

### A. Definition

Written notice is the act of informing a parent/adult student in writing within a reasonable amount of time, before the district proposes to initiate or change, or refuses to initiate or change, the student's special education identification, the evaluation, educational placement, or provision of FAPE.

### B. Criteria for Written Notice

1. Written notice must be provided in a reasonable amount of time before implementing the proposed action.
2. Written notice shall be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent/adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:
  - a. The notice is translated orally or by other means in the native language or other mode of communication.
  - b. The parent/adult student understands the content of the notice.
  - c. There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

When a parent/adult student disagrees with the district's written notice of a proposed or refused action, he or she can attempt to remedy the dispute using [SDE Idaho Department of Education](#) processes, such as IEP facilitation, mediation, formal complaint procedures, or due process hearing procedures afforded by the IDEA. ~~In addition, the parent/adult student may have the right to prevent the district from taking action by filing a written objection with the district.~~

### C. Written Notice Is Required

1. The district shall provide written notice before proposing to initiate or change the following:
  - a. identification of the student;
  - b. any assessments for initial evaluation or reevaluation;



- c. educational placement; or
  - d. the provision of FAPE.
2. After the district's decision to refuse a parent's/adult student's request to initiate or change the identification, assessment, placement, or provision of FAPE.
  3. If the district refuses to convene an IEP team meeting at the request of a parent/adult student.
  4. If the district makes a change in the IEP after an IEP team meeting to correct a typographical error which results in a change in the services provided a student.
  5. When the evaluation team determines that additional assessments are not required during a reevaluation to determine whether the student continues to meet eligibility criteria, the district shall provide written notice to the parent/adult student of the decision and the reasons for that decision. The parent/adult student must also be informed of his or her right to request assessments when necessary to determine continued eligibility.
  6. If a parent files a due process hearing request, the district is required to give written notice specific to the issues raised in the due process hearing request within ten (10) days.
  7. If the district has determined that the student is being removed for disciplinary purposes which constitutes a change of placement.
  8. If the parent/adult student revokes consent for the continued provision of special education.

#### **D. Written Notice is Not Required**

The district is not required to provide written notice in the following situations:

1. when reviewing existing data as part of an evaluation or a reevaluation (however, the parent/adult student shall be afforded the opportunity to participate in the review of existing data);
2. when tests are administered to both general and special education students in a grade or class;
3. when teacher or related service provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals, objectives and benchmarks on the IEP; or
4. ~~if outside observation is in relation to teacher's general practices.~~ the screening of a

student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.

### E. Content of Written Notice

The content of written notice is intended to provide the parent/adult student with enough information so that he or she is able to fully understand the district's proposed action or refused action and to make informed decisions, if necessary.

The written notice shall include the following:

1. a description of the action proposed or refused by the district;
2. an explanation of why the district proposes or refuses to take the action;
3. a description of any other options the IEP team considered and the reasons why those options were rejected;
4. a description of each procedure, assessment, record, or report that the district used as a basis for the proposed or refused action;
5. a description of any other factors relevant to the proposed or refused action;
6. a statement that the parent/adult student has special education rights and a description of how to obtain a copy of the *Procedural Safeguards Notice*; and
7. sources to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

### F. Objection to District Proposal

If a parent/adult student disagrees with an IEP program change or placement change that is proposed by the IEP team, he or she may file a written objection to all or part of the proposed change. The district will respond as follows:

1. If the objection is postmarked or hand delivered within ten (10) calendar days of the date the parent/adult student received the written notice, the changes to which the parent/adult student objects cannot be implemented for fifteen (15) calendar days or as extended through mutual agreement by the district and parent/adult student while the parties work to resolve the dispute.
2. If a proposed change is being implemented during the ten (10) day period and an objection is received, the implementation of that change shall cease **and not be implemented for fifteen (15) calendar days, as discussed above.**
3. If an objection is made after ten (10) calendar days, the district may continue to

implement the change, but the parent/adult student retains the right to exercise other procedures under the IDEA.

The parties may resolve a disagreement using methods such as holding additional IEP team meetings or utilizing ~~SDE~~ Idaho Department of Education Dispute Resolution processes, such as facilitation or mediation. If these attempts fail or are refused, **and the parent/adult student objected within ten (10) calendar days**, the proposed IEP shall be implemented after fifteen (15) calendar days unless a due process hearing request is filed to obtain a hearing officer's decision regarding the proposed IEP. ~~, unless it is an initial IEP~~ A parent's/adult student's written objection to an IEP or placement change cannot be used to prevent the district from unilaterally placing the student in an IAES in accordance with the IDEA procedures for discipline of a student or to challenge an eligibility/identification determination.

### Section 5. Confidentiality and Access to Records

The district shall collect, use, and maintain information about a student to make appropriate decisions concerning special education and the provision of FAPE. A student's special education case manager, usually the special education teacher, should organize all relevant records specific to district guidelines and the IDEA requirements.

The IDEA and FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes also provide for the right to review and inspect records.

#### A. Definition

A "record" is defined as personally identifiable information directly related to the student and maintained by the district or a party acting for the district. A student record can be written or electronic.

1. The term "record" may include, but is not limited to, the following:
  - a. identifying data (name, address, parents, siblings, Social Security number, list of personal characteristics making identification reasonably certain by a person in the school community);
  - b. academic work completed (courses taken, transcript);
  - c. level of achievement (grades, portfolios, performance assessments, scores on standardized achievement tests, etc.);
  - d. attendance data;
  - e. scores and protocols of standardized intelligence, aptitude, and psychological

tests;

- f. records of teachers, counselors, medical personnel, and psychologists working directly with a student if disclosed to others;
- g. interest inventory results;
- h. observations and verified reports of serious or recurring behavior patterns;
- i. videotapes or audiotapes;
- j. health data including medical assessments;
- k. family background information;
- l. transportation records;
- m. student records maintained by agencies and individuals contracting with the district; and
- n. email, text messages, or other written notes sent regarding the student or the student's family [to the extent these communications are maintained by the district.](#)

2. The term "record" does not include:

- a. records of instructional, supervisory, ancillary, and administrative personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- b. records created by law enforcement units of schools and maintained separately for non-educational purposes; and
- c. employment records about a student who is employed by a school or district. (Note: Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted);
- d. records on a student who is eighteen (18) years of age or older, or is attending an institution of postsecondary education, that are:
  - 1) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

- 2) made, maintained, or used only in connection with treatment of the student;
  - 3) disclosed only to individuals providing the treatment (Note: “~~t~~treatment” does not include remediation educational activities or activities that a part of the program of instruction); and
- e. grades on peer-graded papers before they are collected and recorded by a teacher.

## B. Protection of Records

The district shall prevent unauthorized disclosure of personally identifiable information pertaining to students with disabilities. “Disclosure” is the release, transfer, or other communication of education records or of personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic. Districts must have a policy to protect personally identifiable information from security risk resulting from unsecured data transmittal or storage.

To ensure protection of records, the district shall do the following:

1. Obtain written and dated consent from the parent/adult student before disclosing personally identifiable information:
  - a. to unauthorized individuals; or
  - b. for any purpose except as authorized by law.
2. Designate and train a records manager to ~~assure~~ ensure security of confidential records for students with disabilities.
3. Maintain a log of requests for access to education records if the request is not from a:
  - a. a parent/adult student;
  - b. a school employee with a legitimate educational interest;
  - c. a party seeking designated directory information; or
  - d. a party receiving the records as directed by a federal jury or other subpoena ordering no one to disclose the existence of the request to access records.

This log includes the name, agency affiliation, date, and purpose for accessing the records. A log documenting denials for records and partially fulfilled requests should also be maintained.

4. Maintain, for public inspection, a current listing of names and positions of employees

who have access to personally identifiable information.

5. Establish procedures to ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
6. Ensure that, if any education record includes information on more than one student, a parent/adult student will only be allowed to inspect, review, or be informed about the record of the student at issue.
7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality. All staff members, even those who do not have access to special education records, should be informed about what is considered appropriate and inappropriate access to and use of information within the records. The district may maintain a record of the training provided—including the name of the person or persons providing the training, dates of the training, those attending, and the subjects covered—for the purpose of documenting that new staff members have been trained as soon as possible after they have been hired.

### C. Access to Records

The district shall:

1. Annually notify the parents of all students, including students with disabilities currently in attendance, of their rights under FERPA. The notice shall include all of the following:
  - a. procedures for exercising the right to inspect and review education records;
  - b. procedures for requesting amendment of records; and
  - c. a specification of criteria for determining who constitutes a school official or employee in the district and what constitutes a legitimate educational interest.
2. Permit a parent/adult student, or his or her representative, to inspect and review any record relating to educational matters that is collected, maintained, or used by the district. The district will presume that a custodial or non-custodial parent has the authority to inspect and review a record relating to his or her child unless there are legal documents limiting access to those records under state law [that have been provided to the district](#). A minor student's address will be deleted from any record if requested in writing by a custodial parent to prohibit a non-custodial parent from learning the address simply by having access to the school records.

The district will make records available to a parent/adult student for review:

- a. without delay but no later than forty-five (45) days after the request;

- b. before any meeting regarding an IEP;
- c. before a resolution session; and
- d. before any due process hearing.
- ~~e. not less than five (5) business days before any due process hearing.~~

~~The district should note that~~ Test protocols that include personally identifiable information may be part of a student’s educational record. Test publishers require districts to maintain the integrity and validity of tests. Parents or others authorized by the parent/adult student interested in a student’s test results are allowed to view the student’s responses to test items, but only if the information is shared in the presence of a person qualified to explain the results and meaning of the various items and data contained in the protocol.

- 3. Upon request, provide a parent/adult student with a list of the types of education records the school collects, maintains, or uses and where they are kept.
- 4. Respond to any reasonable request made by a parent/adult student for an explanation and interpretation of a record.
- 5. Provide a copy of education records if a parent/adult student would otherwise be unable to effectively exercise his or her right to inspect and review those records. An education record may include copyrighted test protocols which include personally identifiable information. A fee may be charged for the copies, unless the imposition of a fee effectively prevents a parent/adult student from exercising the right to inspect and review the student’s records. ~~but~~ A fee may not be charged ~~not~~ to search for or retrieve information. The district shall publish a schedule of fees it intends to charge.
- 6. Always provide a parent/adult student a copy of the IEP and any documentation of identification and eligibility.

**D. Disclosures Not Requiring Consent**

Consent is generally required to disclose personally identifiable information to others. However, consent is not required when:

- 1. A school official or employee has a legitimate educational interest to access the records.
- 2. A representative of the Federal Comptroller General, the United States Department of Education, or the State Idaho Department of Education (~~SDE~~) accesses records necessary for an audit or evaluation of a federal program or for enforcement or compliance with federal regulations.
- ~~3.~~ The disclosure is to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the

student is already enrolled so long as the disclosure is for purposes related to the enrollment or transfer. ~~A student transfers to another school or school system in which the student intends to enroll unless a district has adopted a procedure requiring consent. However,~~ A reasonable attempt to notify the parent/adult student of the record disclosure at the last known address shall be made unless the disclosure was initiated by the parent/adult student, or the district, in its annual notification, includes a notice that records will be forwarded. ~~the parent/adult student should be notified of the request for records at the last known address of the parent/adult student unless he or she initiated the request.~~

4. The health and safety of the student or other individuals is in jeopardy because of an emergency.
5. The disclosure concerns the juvenile justice system's ability to effectively serve the student or the ability to respond to court orders or subpoenas, as specified in state law. The district will make a reasonable effort to notify the parent of the court order in advance of compliance, unless the subpoena specifically states that it is not to be disclosed.
6. An organization conducts studies on behalf of education agencies or institutions under specified FERPA criteria.
7. The disclosure is in connection with an application for financial aid and is necessary to determine eligibility for the aid, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid ("financial aid" means a payment of funds to an individual that is conditioned on the individual's attendance at an education agency or institution).
8. The disclosure is to accrediting organizations to carry out their accrediting functions.
9. The disclosure is to comply with a judicial order or lawfully issued subpoena.
8. **10.** The district has designated information as "directory information" under the conditions in FERPA.

#### **E. Destruction of Records**

The district will maintain education records, including eligibility documentation and IEPs, for at least five (5) years after disenrollment from the district to demonstrate fiscal accountability and program compliance with the IDEA requirements. The district shall inform a parent/adult student when personally identifiable information collected, maintained, or used is to be destroyed because the information is no longer needed to provide educational services to the student.

Electronic copies will be treated as the original so long as those copies adequately capture any



handwritten notes and signatures. Test Protocols and other assessment information **containing personally identifiable information** shall be maintained during the period in which the report, which utilizes such information, is in effect.

**Note:** Medicaid-related records, specifically expenditure documentation, cost allocation process, all student records related to the Medicaid billing and service delivery (e.g., data sheets, IEPs, health care plans, physician recommendations for assessments and IEP services, evaluation recommendations, documented supervision of paraprofessionals), and revenue documentation, must be kept for a period of six (6) years.

The parent/adult student must be informed of the personally identifiable information that the district intends to destroy and that the information will be destroyed no earlier than forty-five (45) calendar days from the date of the notice. The parent/adult student must also be informed of the procedure to follow if he or she wishes to formally object to the destruction of the information and wants the records sent to him or her.

Written and electronic records of individual students are confidential. The district will ensure the complete destruction of the records, which may include but is not limited to shredding, permanently deleting, or burning, under supervision of the staff member responsible for the records if not released to the parent/adult student. The records manager should maintain a log that documents the date of destruction or release of records.

A permanent record of the student's name, address, phone number, grades, classes attended, immunization records, test scores, attendance record, grade level, and year completed may be maintained by the district without a time limitation. Any other personally identifiable information shall be destroyed at the request of the parent/adult former student. When informing the parent/adult student of his or her rights, the district should remind the parent/adult student that the records might be needed for Social Security benefits or other purposes in the future.

#### **F. Request for Amendment of Records**

A parent/adult student may request that the district amend the student's records if he or she believes that information collected, maintained, or used in the education record is inaccurate, misleading, or in violation of the privacy or other rights of the student. The district will use the following procedure:

1. The district, within a reasonable period of time—not to exceed forty-five (45) days of receipt of the request—must decide whether to amend the record. If the district refuses to amend the record, the parent/adult student must be informed of the refusal and be advised of the right to and procedure for requesting a district hearing under the district's FERPA policy. A district hearing is an informal hearing that does not have all the requirements of a due process hearing.
2. If a district hearing is requested and the district decides that the information is

inaccurate, misleading, or in violation of the student’s rights, the district shall amend the record and inform the parent/adult student in writing.

3. If a district hearing is requested and the district decides the information is accurate and does not violate the student’s rights, the district shall inform the parent/adult student that he or she may place a statement in the record. This statement may comment on the information in the record or set forth the parent’s/adult student’s reasons for disagreeing with the district. Any statement placed with a record must accompany the record for as long as the district maintains the record. If the district discloses the record to any person, the district shall also disclose the statement.

**G. District Hearings on Procedures for Records**

Each district is required to have a FERPA policy which includes the rights to request a hearing challenging the accuracy of records.

**H. Students’ Rights**

When special education rights transfer to a student under the IDEA and Idaho Code, the FERPA rights regarding education records also transfer to the student. The district shall inform the parent/adult student that both the IDEA and FERPA rights regarding education records transfer although FERPA gives the parent of a student who is claimed to be a dependent for IRS purposes the right to request access without the consent of the student.

Section 6. Independent Educational Evaluations

**A. Definition**

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the district responsible for the education of the student in question.

**B. Right to an IEE**

1. A parent/adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the district. The parent/adult student is entitled to only one IEE at public expense for each district evaluation.
2. The parent/adult student has the right to an IEE at his or her own expense at any time, and the IEP team shall consider the results.
3. The parent/adult student may request an IEE at public expense if he or she disagree with the evaluation because a specific area of the student’s needs wasn’t assessed. ~~is not automatically entitled to have additional assessments beyond those determined~~

~~necessary by the district for an evaluation. However, if parent/adult student is interested in additional or different assessments and the district refuses to provide them and provides written notice of refusal. The parent/adult student may request a due process hearing.~~

4. A district may initiate a due process hearing, without undue delay, to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the evaluation conducted by the district was appropriate, the parent and/or adult student still has the right to an IEE but at his or her own expense.
5. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the district was not appropriate.

### C. Procedures for Requesting an IEE

If a parent/adult student requests an IEE at public expense, the district may ask why he or she disagrees with the evaluation obtained by the district, but the district cannot require an explanation. The district shall give the parent/adult student the criteria under which an IEE can be obtained. The district's IEE criteria shall **be the same criteria used by the district when conducting an evaluation and shall** include the following information:

1. the location for the evaluation;
2. the required qualifications of the examiner;
3. the eligibility requirements for the specific disability categories; and
4. reasonable cost containment criteria applicable to personnel for specified assessments to eliminate unreasonably excessive fees.

Except for the criteria listed above, the district may not impose other conditions or timelines if doing so would be inconsistent with the parent's/adult student's right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

A parent/adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's cost criteria. If an IEE that falls outside the district's cost criteria is justified, that IEE will be publicly funded.

### D. District Responsibilities Following IEE Requests

1. If a parent/adult student requests an IEE at public expense, the district shall do one of the following without unnecessary delay:
  - a. Provide the district's IEE criteria and information about where an IEE may be obtained.

- b. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the parent/adult student may pursue an IEE, but at his or her own expense.
2. If a parent/adult student asks the district to pay for an IEE that has already been obtained, the district shall pay for the IEE if it meets the criteria for publicly funded IEEs. If the district believes that its evaluation was appropriate, but agrees to pay for the IEE, the district should state this in writing within the same document in which it agrees to pay. The district can also request ~~SDE~~ [Idaho Department of Education](#) mediation.

#### **E. Consideration of the IEE Results**

If a parent/adult student obtains an IEE and makes that evaluation available to the district, the results must be considered by the district in any decision made with respect to the provision of FAPE. The results may also be presented as evidence at a hearing regarding the student. This is true regardless of whether the IEE is at the expense of the parent/adult student or district.

The results of an IEE cannot be the sole determining factor for eligibility. The evaluation team has the responsibility to use existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA.

## Part B Procedural Safeguards Notice

Revised: ~~June 2016~~-TBD

Dear Parent,

This document provides you with the required notice of the procedural safeguards available under the Individuals with Disabilities Education Act (IDEA) and U.S. Department of Education regulations. The IDEA, the Federal law concerning the education of students with disabilities, requires schools to provide the parent(s) of a child with a disability a notice containing a full explanation of the procedural safeguards available. A copy of this notice must be given only one time per school year, except that a copy must also be given:

- (1) Upon initial referral or your request for evaluation;
- (2) Upon receipt of your first State complaint and upon receipt of your first due process complaint in a school year;
- (3) When a decision is made to take a disciplinary action against your child that constitutes a change of placement; and
- (4) Upon your request.

**Please contact the school district for more information on these rights.**

**For further explanation you may also contact:**

***Idaho Special Education Dispute Resolution, State Dept. of Education***

P.O. Box 83720

Boise, ID 83720-0027

Phone: (208) 332-6914 Toll-free: (800) 432-4601 V/TT: (800) 377-3529

Fax: (208) 334-2228

Web: [www.sde.idaho.gov](http://www.sde.idaho.gov)

**For further assistance in matters relating to dispute resolution, you may contact:**

***DisAbility Rights Idaho***

***Boise Office***

***9542 Bethel Ct***

***4477 Emerald Street,***

Suite B-100

Boise, ID ~~83706-2066~~ 83209

Phone: (208) 336-5353

Toll-free: ~~(800) 632-5125~~

***(866) 262-3462***

Fax: (208) 336-5396

Web: [disabilityrightsidaho.org](http://disabilityrightsidaho.org)

***DisAbility Rights Idaho***

***Pocatello Office***

1246 Yellowstone Ave

Suite A-3

Pocatello, ID 83201-4374

Phone: ~~(208) 232-0922~~

***(208) 336-5353***

Toll-free: (866) 309-1589

Fax: ~~(208) 232-0938~~

***(208) 336-5396***

Web: [disabilityrightsidaho.org](http://disabilityrightsidaho.org)

***Idaho Parents Unlimited, Inc.***

***(IPUL)***

4619 Emerald, Ste. E

Boise, ID ~~83702-83706~~

Phone: (208) 342-5884

Toll-free: (800) 242-IPUL (4785)

V/TT: (208) 342-5884

Fax: (208) 342-1408

Web: [ipulidaho.org](http://ipulidaho.org)

[Parents@ipulidaho.org](mailto:Parents@ipulidaho.org)

***Idaho Legal Aid Services***

1447 Tyrell Lane

Boise, ID 83706

Phone: (208) 336-8980

Fax: (208) 342-2561

Web [idaholegalaid.org](http://idaholegalaid.org)

***Idaho State Bar Association***

P.O. Box 895

Boise, ID 83701

Phone (208) 334-4500

Fax: (208) 334-4515

Web: [isb.idaho.gov](http://isb.idaho.gov)

***Wrightslaw Idaho Yellow Pages for Kids***

Web:

[yellowpagesforkids.com/help/id.htm](http://yellowpagesforkids.com/help/id.htm)



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## GENERAL INFORMATION

### PRIOR WRITTEN NOTICE

#### 34 CFR §300.503

##### Notice

Your school district must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to initiate or to change the identification, evaluation, educational placement of your child, or the provision of FAPE to your child.

##### Content of notice

The written notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of IDEA;
7. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; and
8. Provide a description of other reasons why your school district proposed or refused the action.

##### Notice in understandable language

The notice must be:

**Part B** Procedural Safeguards Notice

1. Written in language understandable to the general public; **and**
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your school district must ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that the requirements in paragraphs 1 and 2 have been met.

## **NATIVE LANGUAGE**

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### **34 CFR §300.29**

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

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

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

## **ELECTRONIC MAIL**

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### **34 CFR §300.505**

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

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

## **PARENTAL CONSENT - DEFINITION**

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### **34 CFR §300.9**

## Consent

*Consent* means:

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

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

## PARENTAL CONSENT

---

### 34 CFR §300.300

#### Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings ***Prior Written Notice*** and ***Parental Consent***.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

Your school district may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

### Special rules for initial evaluation of wards of the State

If a child is a ward of the State and is not living with his or her parent —

The school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school district cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; or
3. A judge has assigned the right to make educational decisions to an individual other than the parent and that individual has provided consent for an initial evaluation.

*Ward of the State*, as used in IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; or
3. In the custody of a public child welfare agency.

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a *parent* as used in IDEA.

### Parental consent for services

Your school district must obtain your informed consent before providing special education and related services to your child for the first time.

The school district must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, your school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; and
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

**Part B** Procedural Safeguards Notice

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district may not continue to provide such services, but must provide you with prior written notice, as described under the heading ***Prior Written Notice***, before discontinuing those services.

**Parent's Right to Object**

~~Once you consent to the initial start of services, the school district is not required to obtain your consent to make changes to the IEP. However, if you do not want the school district to implement the changes to the IEP, you must submit your objections in writing. Your written objections must either be postmarked or hand-delivered to the school district within 10 days of receiving the written notice of the changes.~~

If you disagree with an IEP program change or placement change that is proposed by the IEP team, you may file a written objection to all or part of the proposed change. The district will respond as follows:

1. If the objection is postmarked or hand delivered within 10 calendar days of the date you received the written notice, the changes to which you object cannot be implemented for fifteen 15 calendar days or as extended through mutual agreement by the district and you while the parties work to resolve the dispute.
2. If a proposed change is being implemented during the 10-day period and an objection is received from you, the implementation of that change shall cease and will not be implemented for fifteen (15) calendar days, as discussed above.
3. If an objection is made after 10 calendar days, the district may continue to implement the change, but you retain the right to exercise other procedures under the IDEA.

The parties may resolve a disagreement using methods such as holding additional IEP team meetings or utilizing SDE Dispute Resolution processes, such as facilitation or mediation. If these attempts fail or are refused, and you objected within 10 calendar days, the proposed IEP shall be implemented after 15 calendar days unless you file a due process hearing request to obtain a hearing officer's decision regarding the proposed IEP. Your written objection to an IEP or placement change cannot be used to prevent the district from unilaterally placing your child in an IAES in accordance with the IDEA procedures for discipline of a student or to challenge an eligibility/identification determination regarding your child.

IDAPA 8.02.03.109.05a

**Parental consent for reevaluations**

Your school district must obtain your informed consent before it reevaluates your child, unless your school district can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**

2. You did not respond.

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

#### **Documentation of reasonable efforts to obtain parental consent**

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

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

#### **Other consent requirements**

Your consent is not required before your school district may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children.

The school district must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE). Also, your school district may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

## INDEPENDENT EDUCATIONAL EVALUATIONS

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### 34 CFR §300.502

#### General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district's criteria that apply to independent educational evaluations.

#### Definitions

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

*Public expense* means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of the Act.

#### Right to evaluation at public expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your school district, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense



**Part B** Procedural Safeguards Notice

each time your school district conducts an evaluation of your child with which you disagree.

**Parent-initiated evaluations**

If you obtain an independent educational evaluation of your child at public expense or you share with the school district an evaluation of your child that you obtained at private expense:

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

**Requests for evaluations by hearing officers**

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

**School district criteria**

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

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**CONFIDENTIALITY OF INFORMATION**

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**34 CFR §300.611**

As used under the heading Confidentiality of Information:

*Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

*Participating agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

## PERSONALLY IDENTIFIABLE

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### 34 CFR §300.32

*Personally identifiable* means information that includes:

- (a) Your child's name, your name as the parent, or the name of another family member;
- (b) Your child's address;
- (c) A personal identifier, such as your child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## NOTICE TO PARENTS

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### 34 CFR §300.612

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

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

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

## ACCESS RIGHTS

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### 34 CFR §300.613

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of IDEA. The participating agency must comply with your request to inspect and review any

education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

## **RECORD OF ACCESS**

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### **34 CFR §300.614**

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

## **RECORDS ON MORE THAN ONE CHILD**

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### **34 CFR §300.615**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## **LIST OF TYPES AND LOCATIONS OF INFORMATION**

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### **34 CFR §300.616**

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

## **FEES**

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### **34 CFR §300.617**

Each participating agency may charge a fee for copies of records that are made for you under Part B of IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

## **AMENDMENT OF RECORDS AT PARENT'S REQUEST**

---

### **34 CFR §300.618**

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

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

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading *Opportunity For a Hearing*.

## **OPPORTUNITY FOR A HEARING**

---

### **34 CFR §300.619**

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## **HEARING PROCEDURES**

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### **34 CFR §300.621**

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

## **RESULT OF HEARING**

---

### **34 CFR §300.620**

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

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

Such an explanation placed in the records of your child must:

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

## **CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION**

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### **34 CFR §300.622**

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## **SAFEGUARDS**

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### **34 CFR §300.623**

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding your State's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

## **DESTRUCTION OF INFORMATION**

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### **34 CFR §300.624**

Your school district must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## STATE COMPLAINT PROCEDURES

### DIFFERENCES BETWEEN THE PROCEDURES FOR DUE PROCESS COMPLAINTS AND HEARINGS AND FOR STATE COMPLAINTS

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the State Educational Agency, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The State Educational Agency must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading *Model Forms*.

### ADOPTION OF STATE COMPLAINT PROCEDURES

#### 34 CFR §300.151

##### General

Each State Educational Agency must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the State Educational Agency;
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

##### Remedies for denial of appropriate services

In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

The failure to provide appropriate services, including corrective action appropriate to address

the needs of the child (such as compensatory services or monetary reimbursement); **and**  
Appropriate future provision of services for all children with disabilities.

## MINIMUM STATE COMPLAINT PROCEDURES

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### 34 CFR §300.152

#### Time limit; minimum procedures

Each State Educational Agency must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;

4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for the State Educational Agency's final decision.

#### Time extension; final decision; implementation

The State Educational Agency's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) you and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
2. Include procedures for effective implementation of the State Educational Agency's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

#### State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described under the heading *Filing a Due Process Complaint*, or the State complaint contains



multiple issues of which one or more are part of such a hearing, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the school district), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

## FILING A STATE COMPLAINT

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### 34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

A statement that a school district or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;

The facts on which the statement is based;

The signature and contact information for the party filing the complaint; and

If alleging violations regarding a specific child:

- (a) The name of the child and address of the residence of the child;
- (b) The name of the school the child is attending;
- (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
- (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
- (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

## DUE PROCESS COMPLAINT PROCEDURES

### FILING A DUE PROCESS COMPLAINT

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#### 34 CFR §300.507

##### General

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The school district withheld information from you that it was required to provide you under Part B of IDEA.

##### Information for parents

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district file a due process complaint.

### DUE PROCESS COMPLAINT

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#### 34 CFR §300.508

##### General

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the State Educational Agency with a copy of the complaint.

##### Content of the complaint

The due process complaint must include:

1. The name of the child;

**Part B** Procedural Safeguards Notice

2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the school district) at the time.

**Notice required before a hearing on a due process complaint**

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney) files a due process complaint that includes the information listed above.

**Sufficiency of complaint**

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

**Complaint amendment**

You or the school district may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading ***Resolution Process; or***
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

**Local educational agency (LEA) or school district response to a due process complaint**

If the school district has not sent a prior written notice to you, as described under the heading

**Prior Written Notice**, regarding the subject matter contained in your due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the school district proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

#### **Other party response to a due process complaint**

Except as stated under the sub-heading immediately above, **Local educational agency (LEA) or school district response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## **MODEL FORMS**

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### **34 CFR §300.509**

The State Educational Agency must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, your State or the school district may not require the use of these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint.

## **MEDIATION**

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### **34 CFR §300.506**

#### **General**

The school district must develop procedures that make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading **Filing a Due Process Complaint**.

## Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

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

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

The State must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the costs of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); **and**
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

## Impartiality of mediator

The mediator:

1. May not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

## RESOLUTION PROCESS

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### 34 CFR §300.510

#### Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the school district who has decision-making authority on behalf of the school district; **and**
2. May not include an attorney of the school district unless you are accompanied by an attorney.

You and the school district determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the school district agree in writing to waive the meeting; or
2. You and the school district agree to use the mediation process, as described under the heading *Mediation*.

#### Resolution period

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, **Hearing Decisions**, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

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

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

#### **Adjustments to the 30-calendar-day resolution period**

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

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the school district agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

#### **Written settlement agreement**

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

1. Signed by you and a representative of the school district who has the authority to bind the school district; and
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the State Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

#### **Agreement review period**

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

## HEARINGS ON DUE PROCESS COMPLAINTS

### IMPARTIAL DUE PROCESS HEARING

#### 34 CFR §300.511

##### General

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the *Due Process Complaint* and *Resolution Process* sections.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the State Educational Agency or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

~~Each school district must~~ The State Educational Agency keeps a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

##### Subject matter of due process hearing

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

##### Timeline for requesting a hearing

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.



**Exceptions to the timeline**

The above timeline does not apply to you if you could not file a due process complaint because:

1. The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. The school district withheld information from you that it was required to provide to you under Part B of IDEA.

**HEARING RIGHTS****34 CFR §300.512****General**

You have the right to represent yourself at a due process hearing (including a hearing relating to disciplinary procedures) or an appeal with a hearing to receive additional evidence, as described under the subheading, ***Appeal of decisions; impartial review***. In addition, any party to a hearing has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the hearing by an attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
6. Obtain written, or, at your option, electronic findings of fact and decisions.

**Additional disclosure of information**

At least five business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

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

**Parental rights at hearings**

You must be given the right to:

1. Have your child present at the hearing;
2. Open the hearing to the public; **and**

3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

## HEARING DECISIONS

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### 34 CFR §300.513

#### Decision of the hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; or
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536).

#### Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

#### Findings and decision provided to the advisory panel and general public

The State Educational Agency or the school district, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; and
2. Make those findings and decisions available to the public.

## APPEALS

## FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

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### 34 CFR §300.514

### Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions.***

## TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

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### 34 CFR §300.515

The State Educational Agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the school district).

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

## CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

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### 34 CFR §300.516

#### General

Any party (you or the school district) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

#### Time limitation

The party (you or the school district) bringing the action shall have 42 calendar days from the date of the decision of the hearing officer to file a civil action.

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#### Additional procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school district's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

### Jurisdiction of district courts

The district courts of the United States have authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

### Rule of construction

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of IDEA, **unless the relief you are seeking is not something the IDEA can provide. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.**

## THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING

### 34 CFR §300.518

Except as provided below under the heading **PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES**, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or school district agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of IDEA for

a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

If a hearing officer in a due process hearing conducted by the State Educational Agency agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

## ATTORNEYS' FEES

### 34 CFR §300.517

#### General

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you, if you prevail (win).

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

#### Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at

- any time more than 10 calendar days before the proceeding begins;
- b. The offer is not accepted within 10 calendar days; **and**
  - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

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

1. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

Fees also may not be awarded for a mediation as described under the heading **Mediation**.

A resolution meeting, as described under the heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

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

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. The attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.

## PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

### AUTHORITY OF SCHOOL PERSONNEL

#### 34 CFR §300.530

Case-by-case determination

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

### General

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

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

### Additional authority

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

### Services

The school district does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, ***Manifestation determination***) or who is removed under special circumstances (see the subheading, ***Special circumstances***) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral

intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

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

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

### **Manifestation determination**

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Team (as determined by you and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. If the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If the school district, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school district, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

### **Determination that behavior was a manifestation of the child's disability**

If the school district, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.



Except as described below under the sub-heading *Special circumstances*, the school district must return your child to the placement from which your child was removed, unless you and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

**Special circumstances**

Whether or not the behavior was a manifestation of your child’s disability, school personnel may remove a student to an interim alternative educational setting (determined by the child’s IEP Team) for not more than 45 school days, if your child:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district; or
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district.

**Definitions**

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Serious bodily injury* has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

*Weapon* has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

**Notification**

On the date it makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with a procedural safeguards notice.

**CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS**

**34 CFR §300.536**

A removal of your child with a disability from your child’s current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. Your child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
  - c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

## DETERMINATION OF SETTING

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### 34 CFR §300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional authority*** and ***Special circumstances***.

## APPEAL

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### 34 CFR §300.532

#### General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

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

#### Authority of hearing officer

A hearing officer that meets the requirements described under the subheading ***Impartial hearing officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed

if the hearing officer determines that the removal was a violation of the requirements described under the heading **Authority of School Personnel**, or that your child's behavior was a manifestation of your child's disability; or

2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

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

Whenever you or a school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings **Due Process Complaint Procedures, Hearings on Due Process Complaints**, except as follows:

1. The State Educational Agency or school district must arrange for an expedited due process hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing.
2. Unless you and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within 7 ~~seven~~ calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.
3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the school district may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading **Appeal**).

## PLACEMENT DURING APPEALS

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### 34 CFR §300.533

When, as described above, you or the school district file a due process complaint related to disciplinary matters, your child must (unless you and the State Educational Agency or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading **Authority of School Personnel**, whichever occurs first.

## PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

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### 34 CFR §300.534

#### General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

#### Basis of knowledge for disciplinary matters

A school district will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
3. Your child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district's director of special education or to other supervisory personnel of the school district.

#### Exception

A school district would not be deemed to have such knowledge if:

1. You have not allowed an evaluation of your child or have refused special education services; or
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

#### Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

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

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by you, the school district must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

## REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

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### 34 CFR §300.535

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

### Transmittal of records

If a school district reports a crime committed by a child with a disability, the school district:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

## REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

### GENERAL

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### 34 CFR §300.148

Part B of IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by

their parents in a private school under 34 CFR §§300.131 through 300.144.

### Reimbursement for private school placement

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the State Educational Agency and school districts.

### Limitation on reimbursement

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

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

However, the cost of reimbursement:

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

## CHAPTER 12: DISCIPLINE - TABLE OF CONTENTS

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## CHAPTER 12: DISCIPLINE

Schools are encouraged to address student misconduct through appropriate schoolwide discipline policies, instructional services, and/or related services. If a student with a disability has behavior problems that interfere with his or her learning or the learning of others, an individualized education program (IEP) team shall consider the use of strategies, including positive behavioral supports (PBS) and interventions, to address the behavior. If the IEP team determines that such services **or supports** are needed, they must be included in the IEP and must be implemented.

Students with disabilities who are subject to disciplinary actions by a district are entitled to all of the due process rights afforded students without disabilities under Section 33-205, Idaho Code and state and local policies. In addition to these rights, the IDEA provides special education rights and additional discipline procedures to a student with a disability whom the district is removing from his or her current educational placement. These procedures come into play when the district is unable to work out an appropriate placement for the student with the parent/adult student. Further, these procedures do not prevent district personnel from maintaining a safe environment conducive to learning that is critical for all students.

Even though Idaho Code allows district personnel to “temporarily suspend” students for up to twenty (20) school days, all students with disabilities who have been suspended or expelled for more than ten (10) consecutive or cumulative school days in a school year retain the right to a free appropriate public education. (FAPE).

### Section 1. General Discipline Provisions

The general requirements pertaining to the discipline procedures of special education students are as follows:

1. District personnel may remove a student from his or her current placement to an appropriate Interim Alternative Education Setting (IAES) or another setting for not more than ten (10) consecutive days to the extent those alternatives are applied to students without disabilities.
2. District personnel may suspend any student, including a special education student, for up to ten (10) cumulative school days in a school year if he or she violates the code of student conduct, and services may cease during this period. In accordance with Idaho Code (unless services are provided to students who are nondisabled who are also suspended):
  - a. A school principal has the authority to order a temporary disciplinary suspension for up to five (5) school days.

- b. The superintendent can extend the disciplinary suspension for an additional ten (10) school days.
  - c. Provided, that on a finding by the Board of Trustees that the student's immediate return to school would be detrimental to other students' health, welfare or safety, the Board of Trustees may extend the temporary suspension for an additional five (5) school days.
  - d. Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any student who has been suspended may be readmitted to the school by the superintendent or principal who suspended him or her upon such reasonable conditions as said superintendent or principal may prescribe.
3. A series of suspensions exceeding ten (10) days in a school year shall not constitute a pattern of removals resulting in a change of placement, without following the procedures discussed in this chapter.
4. Students who have not been determined eligible for special education may be entitled to an evaluation and other IDEA rights—including the right to FAPE during periods of disciplinary suspension that extend beyond ten (10) cumulative school days in a school year if:
  - a. The district had basis of knowledge that the student met the IDEA eligibility prior to the behavior that precipitated the disciplinary suspension; and
  - b. The parent/adult student asserts the right to FAPE.

## Section 2. Actions Involving a Change of Placement for Disciplinary Reasons

A change of placement is a removal from the student's current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) cumulative school days in a school year. Factors such as the student's behavior is substantially similar to behavior in previous incidents that resulted in series of removals, the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern. Whether a pattern of removals constitutes a change of placement will be determined on a case-by-case basis by the district; the district's determination is subject to review through an expedited due process hearing and judicial proceedings. The district may consider any unique circumstances in determining whether to pursue a disciplinary change of placement.

The parent shall be provided with written notice on the date on which the decision is made to

remove the student if it constitutes a change of placement. A copy of the IDEA's procedural safeguards shall be provided with the notice.

Even if the disciplinary action is to suspend or expel a student, FAPE [educational services] cannot cease for more than ten (10) cumulative school days in a school year.

A manifestation determination is required if the district is considering removing a student with a disability from his or her educational placement for disciplinary reasons which constitute a change of placement or placing a student in an IAES. A manifestation determination is defined as a review of the relationship between the student's disability and the behavior subject to disciplinary action. See Section 4 of this chapter for more information.

### **A. District Actions Resulting in a Change of Placement**

District administrators change a student's placement by

1. Unilaterally removing a special education student from his or her current placement for:
  - a. more than ten (10) consecutive school days in a school year; or
  - b. subjecting a special education student to a series of removals that constitute a pattern:
    - 1) because the series of removals total more than ten (10) school days in a school year;
    - 2) because the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
    - 3) because of such additional factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
2. District personnel may remove a student to an IAES for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:
  - a. carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State Education Agency (SEA) or a Local Education Agency (LEA); or
  - b. knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

- c. has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

### **B. Hearing Officer Actions Resulting in a Change of Placement**

Through an expedited due process hearing, district administrators may ask a hearing officer to place a student with a disability in an appropriate IAES.

1. In requesting a hearing officer to place a student in an IAES, the district must:
  - a. demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
  - b. indicate whether the request is for an *initial* period of not more than forty-five (45) school days or an *additional* period of not more than forty-five (45) school days.
2. In determining whether to grant a district's request to place a student in an IAES, the hearing officer must determine that the IAES proposed by the IEP team is appropriate.

### **C. Court Actions Resulting in a Change of Placement**

District administrators may seek a court order (called a "Honig Injunction") to remove a special education student from school or the current placement at any time. Educational services [FAPE] shall not cease during an injunction.

## **Section 3. FAPE Considerations**

Services shall not cease and the district shall always provide FAPE to the student with a disability:

1. after a student with a disability is removed for ten (10) school days in the same school year and subsequent days of removal; and
2. there is a disciplinary change of placement.

### **A. District Actions When There is Not a Change in Placement**

1. Notify the parent/adult student of the disciplinary action to be taken on the date of the decision.
2. School personnel, in consultation with at least one of the child's teachers, determine

the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals.

3. Conduct as appropriate a functional behavioral assessment (FBA) and provide behavioral intervention services and accommodations or adaptations designed to address the behavior violation so that it does not recur.

#### **B. District Actions When There is a Change of Placement**

Whenever disciplinary action results in a change in placement, the district must:

1. notify the parent/adult student of the disciplinary action to be taken on the date of the decision and provide a copy of the *Procedural Safeguards Notice*;
2. hold an IEP team meeting to determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals; and
3. conduct a manifestation determination immediately, if possible, but not later than ten (10) school days after the date on which the decision to take the disciplinary action is made.

#### **C. FAPE Requirements in an IAES**

If the student's placement will change to an IAES, the IEP team shall select an IAES that enables the student to:

1. continue to participate in the general education curriculum;
2. progress toward meeting the goals set out in his or her IEP; and
3. receive, as appropriate, an FBA and behavioral intervention services to address the behavior violation so that it does not recur.

#### **D. Transportation**

If the IEP team determines that special transportation is required as a related service it must be included in the IEP, all procedural safeguards under the IDEA shall be afforded to the student in matters concerning transportation. Whether a suspension from the bus counts as a suspension from school depends on whether bus transportation is identified on the IEP:

1. If bus transportation is on the IEP, a suspension from the bus would be treated as a suspension from school (unless the district provides transportation services in some other way, such as "transportation in lieu of") because transportation is necessary for

the student to obtain access to the location where all other services will be delivered.

2. If bus transportation is not on the IEP, a suspension from the bus would not be counted as suspension from school. In these cases, the student and the parent would have the same obligation to get to and from school as a student without a disability who had been suspended from the bus.

If the student's behavior on the bus results in a suspension from the bus, the IEP team shall consider whether the behavior should be addressed in a Behavioral Intervention Plan (BIP).

#### Section 4. Procedures for a Manifestation Determination

A manifestation determination by the parent/adult student and relevant IEP team members (as determined by the district and parents/adult students) involves a review of the relationship between the student's disability and the behavior subject to disciplinary action.

##### A. Actions Involving a Manifestation Determination

When a disciplinary action results in a change of placement or placement in an IAES, the district will take the following actions:

1. The parent/adult student will be notified of the disciplinary action and provided with a copy of the *Procedural Safeguards Notice* not later than the date on which the decision to take disciplinary action is made.
2. A meeting will be held no later than ten (10) school days after the date on which the decision to take disciplinary action is made. This meeting will include the district, the parent/adult student, and other relevant members of the IEP team (as determined by the parent and the district). The purpose of the meeting is to review all relevant information in the student's file including:
  - a. the student's IEP;
  - b. any teacher observations; and
  - c. any relevant information provided by the parent/adult student.
3. Based on a review of the information, the district, parent, and relevant members IEP team as determined by the parent and the district, will determine if the conduct in question was:
  - a. caused by or had a direct and substantial relationship to the student's disability;  
or

- b. the direct result of the district's failure to implement the IEP (if so, the deficiencies must be immediately remedied).

If the district, parent, and relevant members IEP team find that either a or b above is true, the student's behavior ~~will~~ shall be determined to be a manifestation of his or her disability.

### **B. When Behavior Is a Manifestation of the Disability**

If a student's behavior is determined to be a manifestation of his or her disability, relevant members of the IEP team, as determined by the parent and district, ~~will~~ shall:

1. conduct an FBA and implement a BIP for the student if the district had not conducted such an assessment prior to the behavior that resulted in a change in placement;
2. review the BIP if one had previously been developed and modify it as necessary to address the behavior;
3. return the student to the placement from which he or she was removed, unless the parent and district agree in writing to a change of placement as part of the modification of the BIP.

If there were grounds to place a student in an IAES, the student may remain in the IAES even if the behavior is found to be a manifestation of the disability. ~~there was a manifestation.~~

### **C. When Behavior Is Not a Manifestation of the Disability**

If the IEP team, (relevant members determined by the parent and the district), determines that the student's behavior was not a manifestation of his or her disability, the same disciplinary procedures applicable to students without disabilities, including long-term suspension or expulsion, may be applied to the student with a disability. The district will forward special education and disciplinary records for consideration to the board of trustees, which makes the final decision regarding the disciplinary action.

Even if the disciplinary action is to suspend or expel, the following provisions shall be met:

1. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability to continue to participate in the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. An IEP team shall convene to develop an IEP that specifies what special education and related services will be provided during the period of suspension or expulsion.

## Section 5. Other Considerations

### A. Request for an Expedited Hearing

An expedited hearing is a hearing that occurs within twenty (20) school days of the request with a decision rendered within ten (10) school days of the hearing.

1. The parent/adult student may request an expedited due process hearing if he or she:
  - a. disagrees with the determination that the behavior was not a manifestation of the student's disability;
  - b. disagrees with any decision of the IEP team regarding a change of placement during a disciplinary proceeding; or
  - c. disagrees with the decision regarding the student's placement in an IAES.
2. The district may request an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.
3. When an appeal of a disciplinary action is requested (by the parent/adult student to challenge the action or by the district to seek removal to an interim setting), the student remains in the IAES pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first unless the parent/adult student and district agree otherwise.
4. Resolution meeting requirements apply but are shortened to fifteen (15) and seven (7) days. No challenge for sufficiency of request is available.
5. A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

See Chapter 13, Sections 5 and 6 ~~4 and 5~~, for an explanation of regular and expedited due process hearing rights and procedures.

### B. Protections for Students Not Yet Eligible for Special Education

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the district may assert the protections of the IDEA *if* the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.

1. Basis of knowledge



With limited exceptions, which are described in item 2 below, the district will be deemed to have knowledge that an individual is a student with a disability if before the behavior that precipitated the disciplinary action occurred one or more of the following is true:

- a. The parent/adult student has expressed concern to supervisory or administrative district personnel or a teacher of the child that the student is in need of special education and related services.
  - b. The parent/adult student has requested that the student be evaluated for special education.
  - c. The student's teacher or other district personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other district supervisory personnel in accordance with the district's established Child Find system or special education referral system.
2. No basis of knowledge

The district will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

- a. An evaluation was conducted and a determination was made that the student did not have a disability.
- b. The parent/adult student did not give written consent for an evaluation.
- c. The parent/adult student refused special education services.

If the district did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

### **C. Parent/Adult Student Request for Evaluation of a Disciplined Student**

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation will be conducted in an expedited manner. Pending the results of the evaluation, the student will remain in the educational placement determined by district officials, which can include suspension or expulsion without educational services.

1. If the student is subsequently determined eligible for special education, the district will:
  - a. Convene an IEP team meeting to develop an IEP.

b. Conduct a manifestation determination.

- 1) If the behavior is caused by or had a substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the least restrictive environment (LRE).
- 2) If the behavior is not caused by nor had a substantial relationship to the student's disability, the student is subject to the disciplinary placement that had been determined, but he or she is still entitled to receive FAPE, which is determined by the IEP team. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.

2. If the evaluation team determines that the student is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students.

**D. Referrals to and Action by Law Enforcement and Judicial Authorities**

1. The district may report a crime committed by a student with a disability to appropriate authorities. The IDEA does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.
2. If a student brings a firearm to school, law enforcement shall be contacted pursuant to the Gun-Free Schools Act.
3. If the district reports a crime, it will ensure that copies of the special education and disciplinary records of the student are given to the appropriate law enforcement authorities for their consideration, to the extent the release of records is permitted by the Family Educational Rights and Privacy Act (FERPA). Generally, the release of records requires consent, but exceptions are listed in Chapter 11, Section 5.

**E. Transfer of Discipline Records**

Section 33-209, Idaho Code, requires that whenever a student transfers to a new school and a school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information will be included in the transfer of records to the new school. The transmission of the student's record shall include both the student's current IEP, including the FBA, BIP, and any current or previous disciplinary action taken. This information will be contained in a sealed envelope marked to indicate the confidential nature

of the contents and addressed to the principal or other administrative officer of the school.

When the district initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities shall be given to authorized district personnel for their consideration in making the final determination regarding the disciplinary action.

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## CHAPTER 13 DISPUTE RESOLUTION

On occasion, conflicts arise between school districts and families. Several mechanisms are available through the ~~State Idaho~~ Department of Education (~~SDE~~) to assist in resolving a dispute. The processes are facilitation, ~~informal conflict resolution~~, mediation, state complaints, due process hearings, and expedited due process hearings. This chapter contains information on each of these processes. The information contained within this chapter is not intended to limit in any manner the procedural due process/dispute resolution rights provided by federal or state law.

### Contact Information

In addition to providing general information and support concerning IDEA related issues, the Idaho Department of Education ~~SDE~~ accepts requests for facilitation, ~~informal conflict resolution~~, and mediation by telephone and e-mail. State complaints and due process hearings are accepted via fax, mail, personal delivery, or may be scanned and attached to an email. All state complaints and due process hearing requests must include a signature of the filing party.

Requests for dispute resolution should be directed to the Dispute Resolution (~~DR~~) Coordinator (~~DRC~~) at:

Special Education Dispute Resolution  
Idaho ~~Department~~ ~~State Dept.~~ of Education  
P.O. Box 83720  
Boise, ID 83720-0027

(208) 332-6914  
(800) 432-4601  
TT: (800) 377-3529  
Fax: (208) 334-2228

For further assistance in matters relating to dispute resolution, you may contact:

### DisAbility Rights Idaho

Boise Office:

9542 Bethel Ct  
~~4477 Emerald St., Ste B-100~~  
Boise, ID ~~83706-2066~~ 83209  
(208) 336-5353  
(208) 336-5396 (fax)  
~~(800) 632-5125~~ (866) 262-3462 (toll-free)





DisAbility Rights Idaho

Pocatello Office:

1246 Yellowstone Avenue, Suite A-3

Pocatello, ID 83201-4374

~~(208) 232-0922~~ (208) 336-5353

~~(208) 232-0938 (fax)~~ (208) 336-5396 (fax)

~~(866) 309-1589~~ (866) 262-3462 (toll-free)

Idaho Parents Unlimited (IPUL)

4619 Emerald, Ste. E

Boise, ID ~~83702~~83706

(208) 342-5884

(208) 342-1408 (fax)

(800) 242-IPUL (4785) (toll-free)

[Parents@ipulidaho.org](mailto:Parents@ipulidaho.org)

V/TT: 208-342-5884

## Section 1. Facilitation

### A. Definition of Facilitation

Facilitation is a **typically a** voluntary process during which a dispute resolution contracted individual or individuals facilitate an IEP team meeting or other IDEA-related meeting. The role of the facilitator is to help the ~~IEP~~ team members, including the parents/adult student and the student (when appropriate), communicate more effectively and efficiently. Facilitation supports early dispute resolution by providing assistance to the IEP team before a conflict develops into a formal dispute. A facilitator is trained to help ~~IEP~~ teams collaboratively plan for the ~~IEP~~ team meeting, focus on key issues and move toward productive outcomes. Because the facilitator is not a member of the ~~IEP~~ team, ~~he or she~~ they can act as a neutral and impartial third-party providing balance, offer an outsider's perspective on the process, and help parties to be heard and understood by the rest of the IEP team. Note: A facilitator will not be responsible for creating or documenting decisions made by the IEP team or in any other IDEA related meeting.

Facilitation is offered at no charge to the district or the parent/adult student.

### B. Facilitation Requests

A request for facilitation may be made by either a parent/adult student or a designated district representative, such as the director of special education. Facilitation may be requested for any IDEA-related meeting including: eligibility meetings; annual or amended IEP team meetings; due process hearing meetings such as resolution sessions or settlement meetings; as well as manifestation determination meetings.

Requests for facilitation should be made at least two weeks in advance to the meeting. Upon the request for facilitation, the Dispute Resolution (DR) Coordinator (~~DRC~~) will immediately contact the other party for approval. As facilitation is voluntary, both parties must agree to facilitation for the process to go forward. The ~~DRC~~ Coordinator will contact both the parent/adult student and the district representative, notifying each who the facilitator will be. The facilitator will contact the parties to conduct pre-facilitation interviews to help build an agenda for the facilitation. Generally meetings are scheduled by the district who is responsible for sending out the *Invitation to Meeting*.

### C. Facilitator Role

The role of the facilitator is to lead the IEP team meeting and guide parties through the process. The facilitator may work with parties to establish the agenda and identify issues important for parties to cover in the meeting. Facilitators may ask pertinent questions of parties providing occasional clarification or perspective, and work to ensure that participants are able to participate in a productive and balanced meeting. Facilitators ~~are not to~~ will not make decisions for teams, but serve as **individuals knowledgeable about the** ~~definitive experts on~~ IDEA processes or matters of law, record minutes for meetings, or finalize documents, although they

may facilitate the crafting of language parties will include in a student's IEP.

Facilitators shall not be called to testify in due process hearings or civil proceedings regarding facilitated meetings they have conducted, **nor shall they be compelled to disclose the substance of any discussion that occurred during the facilitation process.** ~~as dispute resolution contractors.~~

#### D. Dispute Resolution Facilitators

Facilitators are trained in effective conflict resolution processes, communication, negotiation, problem-solving, and in laws and regulations relating to the provision of special education and related services. While a facilitator in this context will not offer advice on a particular course of action, he or she ~~is required to~~ will help the parties explore the soundness of any assumptions or agreements. The DR ~~C~~ Coordinator may appoint one or two individuals to serve as facilitator(s) of a meeting.

1. In all cases a facilitator shall not:
  - a. be an employee of the district involved in the dispute;
  - b. have children enrolled in the district involved in the dispute;
  - c. have a personal or professional interest that may affect the ability to remain impartial or neutral; or
  - d. be used if either party rejects the facilitator(s) based on a perceived inability to be neutral or impartial.

#### E. Facilitation Timelines

The DR ~~C~~ Coordinator will appoint a facilitator within five (5) business days of an acceptance of a request. Every effort will be made to complete the process within twenty-one (21) calendar days.

### ~~Section 2. Informal Conflict Resolution~~

#### ~~A. Definition of Informal Conflict Resolution~~

~~Informal conflict resolution is offered in an effort to improve relationships between parties and foster healthy communication. This informal conflict resolution may include topics outside of those set forth as appropriate for IDEA mediation, extending beyond the identification, evaluation, educational placement or the provision of FAPE. As with mediation, the process of informal conflict resolution is confidential and voluntary, and the third party is a trained neutral and impartial third party. Informal conflict resolution may be appropriate when parties face~~

~~difficulties communicating productively or need to reach understanding on differing perspectives. Any agreements reached between parties are self-enforced.~~

### ~~B. Informal Conflict Resolution Requests~~

~~A request for informal conflict resolution may be made in person, writing or via telephone by either a parent/adult student or a district representative. The DRC Coordinator will screen requests to determine the appropriateness of the process for each individual case. Informal conflict resolution can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state complaint involving an individual student, however, cannot be used to delay the state complaint process or a due process hearing timelines.~~

~~Upon request for informal conflict resolution, the DRC Coordinator or the assigned facilitator will contact all parties to schedule the meeting. Because informal conflict resolution is voluntary, both parties must verbally state their agreement to participate for the process to go forward. Informal conflict resolution can be conducted by dispute resolution contractors or dispute resolution staff as assigned by the DRC Coordinator. Informal conflict resolution is offered at no charge to the district or to the parent/adult student.~~

### ~~C. Informal Conflict Resolution Procedures~~

- ~~1. No video or audio recording of the meeting proceedings will be made.~~
- ~~2. Because informal conflict resolution is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during the meeting is discouraged, and a school district may not have legal representation present if a parent/adult student does not.~~
- ~~3. The DR office will not retain any documentation or informal agreements created by the parties. No other records of the content of the meeting will be kept by the SDE.~~
- ~~4. Either party has the option to end the informal conflict resolution meeting at any time.~~

### ~~D. Informal Conflict Resolution Timelines~~

~~The DRC will appoint a facilitator within five (5) business days of an acceptance of a request. The meeting will be held in a location convenient to the parties involved, and every effort will be made to complete the process within twenty one (21) calendar days.~~

### ~~E. Confidentiality~~

~~Discussions that occur during the informal conflict resolution process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding in any state or federal court. Facilitators shall not be called to testify in due process hearings or civil proceedings regarding facilitated meetings they have conducted as dispute resolution~~

~~contractors.~~

~~The facilitator may require a confidentiality agreement be signed by participants.~~

#### ~~F. Nature of Agreements~~

~~An agreement reached by the parties through informal conflict resolution, whether memorialized in writing or agreed to verbally, are self-enforced and not enforceable by the SDE.~~

### Section 3-2. Mediation

#### A. Definition of Mediation

Mediation is a confidential and voluntary process where a trained neutral and impartial third-party provides a structure for parents/adult students and district personnel to identify areas of agreement and work to resolve points of disagreement concerning the identification, evaluation, educational placement, or provision of FAPE. Mediation aims to build positive working relationships, encourage mutual understanding, and help the parties focus on their common interest—the student.

Discussions in mediation are not discoverable in pending or subsequent due process hearing or civil proceeding. Parties are provided a ~~n Acknowledgment and~~ *Notification of Mediation Confidentiality form*. Written agreements produced in mediation are legally-binding and enforceable in state or federal court. With the agreement of all parties in the mediation, an IEP may be amended as part of a written agreement.

Mediation may be appropriate when parties are in disagreement and seem unable to move forward without outside assistance, or they, after making a good-faith effort, face an impasse in an attempt to resolve the disagreement. Mediation can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state complaint.

#### B. Mediation Requests

1. A request for mediation may be made in person, writing or via telephone by either a parent/adult student or a district representative at any point when a disagreement occurs about the circumstances of the education of a student by the district. The DR ~~C~~ *Coordinator* will screen all mediation requests to determine the appropriateness of the mediation process for each individual case.
- ~~2.~~ Mediation is automatically offered when a state complaint involving an individual student or a request for a due process hearing has been filed. Mediation cannot be used to delay the state complaint process or a due process hearing timelines unless the parent/adult child and the district agree in writing to extend the 60 day timeline. ~~The complaint timeline cannot be extended beyond 90 days.~~

3. Upon request for mediation, the Dispute Resolution office will contact all parties to schedule the mediation. Because mediation is voluntary, both parties must verbally agree to mediate for the process to go forward. Mediators are selected by the [DRC Coordinator](#) from a list of trained professionals.
4. Mediation is provided at no charge to the district or to the parent/adult student.

### C. Mediation Procedures

1. The mediation will be conducted in compliance with the IDEA.
2. No video or audio recording of the mediation proceedings will be made.
3. Each party is limited to no more than three participants who have the authority to make final resolution decisions. The mediator may increase this number at his or her discretion and with agreement of all parties.
4. The district shall have at least one representative present who has the authority to commit resources.
5. Because mediation is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during a mediation session is discouraged. A district may not have legal representation present if a parent/adult student does not.
6. The Dispute Resolution office will retain copies of the signed agreement, if an agreement is reached. No other records of the mediation will be kept by the [Idaho Department of Education SDE](#).
7. The mediator will provide signed copies of the agreement, if an agreement is reached, to each party and the Dispute Resolution office.
8. ~~The mediator, afforded mediator privilege under Idaho law, will be excluded from participation in subsequent actions specific to the case mediated including complaint investigations, due process hearings, and legal proceedings.~~ The mediator may mediate again for the parties if assigned and parties approve or if the mediated agreement calls for the mediator's potential future participation with the parties.
9. [Mediators shall not be called to testify in due process hearings or civil proceedings regarding the mediations they have conducted, nor shall they be compelled to disclose the substance of any discussions that occurred during the mediation process.](#)
10. A due process hearing requested prior to mediation may be canceled by the requesting party as a result of the mediation agreement. The requesting party will immediately provide the hearing officer with documentation of the voluntary withdrawal of the due

process hearing request. The mediator will immediately inform the Dispute Resolution office of the decision to withdraw the due process hearing request.

11. If for any reason the mediation does not end in a written agreement, the mediator will provide each party and the ~~Dispute Resolution~~ DR Coordinator with a statement certifying that mediation occurred but no agreement was reached.
12. Either party has the option to end the mediation at any time.

#### D. Dispute Resolution Mediators

Dispute resolution mediators are trained in effective conflict resolution processes, communication, negotiation, problem-solving skills, and in laws and regulations relating to the provision of special education and related services. While a mediator will not offer advice on a particular course of action, a mediator ~~is required to~~ will help the parties explore the soundness of any agreement. Mediators are assigned on a rotational basis with consideration for geographical location.

~~1. In all cases a mediator shall not:~~

- ~~a. be an employee of the SDE or district involved in the dispute;~~
- ~~b. have children enrolled in the district involved in the dispute;~~
- ~~c. have a personal or professional interest that may affect the ability to remain impartial or neutral; or~~
- ~~d. be used if either party rejects the mediator based on a perceived inability to be neutral or impartial.~~

~~2. Additionally, if the parties have agreed to mediation following a due process hearing request, co-mediators may not be used.~~

#### E. Mediator Role

The mediator has the responsibility to contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation. The mediator also: establishes the ground rules for all parties to follow; collaboratively establishes an agenda with the parties; guides the process; encourages open and honest communication; ensures that each party is heard; phrases information and summarizes issues; and facilitates the writing of the agreement.

#### F. Mediation Timelines

The DR Coordinator will appoint a mediator within three (3) business days of all parties agreeing to mediate. The mediation will be held in a location convenient to the parties

involved, and every effort will be made to complete the process within twenty-one (21) calendar days.

### G. Confidentiality

Discussions that occur during the mediation process cannot be used as evidence in any subsequent due process hearing or civil proceeding. Parties in the mediation process will be provided a copy of the *Notification and Acknowledgment of Mediation Confidentiality* form.

### H. Mediation Agreement

An agreement reached by the parties through mediation shall be set forth in writing and is enforceable in state and federal courts.

An effective mediation agreement should identify:

- What action(s) will be taken and when the action(s) will begin.
- When the action(s) will be completed.
- Who is responsible for taking the action(s)
- Who is responsible for making sure the action(s) is taken.
- The time period of the agreement.
- A process for review when the actions are completed.
- A plan for making changes to the agreement, if needed.
- What to do if a participant thinks the terms of the agreement are not being completed.
- Statement of confidentiality.
- The date of the agreement and the signatures of the participants.

## Section 4-3. State Complaints

### A. Definition of State Complaint

~~A state complaint is a non-adversarial process which provides that can be filed by any individual or organization can file a complaint alleging any violation of the IDEA, including an alleged failure to comply with a previous due process hearing decision. State complaint procedures are outlined in IDEA regulations requiring, in part, a complaint must allege a violation that occurred no more than one year (365 days) prior to the date the complaint has been received. (See IDEA regulations 34 CFR §300.150 through 300.153).~~

~~The filing party must provide a written complaint that includes the name and contact information of the complainant, the name, address, and attending school of child (if applicable), description and facts of the alleged problem to the extent known and available to the complainant at the time, and a proposed resolution.~~



~~The party filing the complaint must forward a copy of the complaint to the district at the same time the party files the complaint with the Dispute Resolution office.~~

~~IDEA allows sixty (60) days to resolve the complaint with mediation, investigation and final report, unless an exception applies or a pre-investigation corrective action plan (CAP).~~

## **B. Filing a State Complaint**

~~The state complaint will be accepted if received by mail, fax, hand delivery, or scanned and attached to an email with the complainant's signature included. Reasonable accommodations will be provided to individuals who need assistance in filing complaints.~~ A state complaint can be filed by any individual or organization and ~~filed by a parent/adult student or public agency~~ must be signed. And electronic signature will be accepted. A state complaint must allege an IDEA violation that occurred no more than one year (365 days) prior to the date the complaint has been received and must include the following information: ~~and must include all of the information indicated on the Form for Filing a State Complaint. The DRC Coordinator will develop allegations of violation of IDEA for investigation from the submitted complaint.~~

- A statement that the education agency has violated a requirement of the IDEA;
- The facts on which the statement is based;
- The signature and contact information for the complainant; and
- If alleging violations with respect to a specific student;
  - The name and address of the residence of the school;
  - The name of the school the student is attending;
  - In the case of a homeless student, available contact information for the student and the name of the school the student is attending;
- A description of the nature of the problem of the student, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

The party filing the complaint must forward a copy of the complaint to the district at the same time the party files the complaint with the Dispute Resolution Office.

IDEA allows sixty (60) days to resolve the complaint with mediation, or an investigation and a final report, unless an exception applies.

A state complaint form is available on the Idaho Department of Education's website or can be

requested by contacting the Dispute Resolution Office. The form is not required to be used to file a complaint, but all of the information set forth above is required to be provided for the complaint to be accepted.

The state complaint will be accepted if it meets the requirements set forth above and is received by mail, fax, hand delivery, or scanned and attached to an email with the complainant’s signature included. Reasonable accommodations will be provided to individuals who need assistance in filing complaints.

**C. Methods of Resolving State Complaints**

1. Mediation will be offered by the ~~DRC~~Coordinator to the complainant and the district when the complaint involves an individual student.
2. The complainant and the district may resolve all, part or none of the allegations in mediation.

If an agreement is reached, the complainant must notify the ~~DRC~~ Dispute Resolution Office **in writing** of the parties’ agreement. When the ~~DRC~~Coordinator receives this notification, any resolved allegations will be dismissed from the state complaint. If all of the state complaint allegations are not resolved, the Idaho Department of Education ~~SDE~~ will investigate the remaining allegations.

3. If mediation is not accepted by the parties or fails to resolve **some or all of the** allegation(s) that gave rise to the complaint, **then the following shall occur:** ~~resolution of a state complaint may be achieved through one or more of the following processes:~~

~~a. **Verification of resolution:** Upon receipt of the allegations determined by the complaint investigator and the DRC, the district may submit information to document that one or more of the allegations of the complaint have been resolved. The Dispute Resolution office may also receive similar information from other sources.~~

**b. a. Additional information:** The complainant will have the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

**b. b. District Response:** The district will have an opportunity to respond to the complaint.

~~d. **b. Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The DRC may accept, reject, or negotiate the proposed CAP, or require other corrective actions or timelines to ensure the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, an investigation will be conducted on unresolved allegations.~~

- e. **c. Complaint Investigator**~~ion~~: The Idaho Department of Education ~~SDE~~ will appoint a complaint investigator. ~~to the case who will conduct a fact-finding investigation which may include interviews and reviews of files, correspondence, and other information.~~ Complaint investigators shall not be called to testify in due process hearings or civil proceedings regarding the investigations they have conducted, nor shall they be compelled to disclose the substance of any discussions that occurred during the investigative process.
- f. **d. Investigation**: The complaint investigator will conduct a fact-finding investigation of all relevant information, which may include interviews and reviews of files, correspondence, and other information. An onsite investigation may occur as part of the investigation. The complaint investigator will submit his or her findings of fact, conclusions, and, in coordination with the ~~SDE~~ Idaho Department of Education, identify appropriate corrective actions, if required.
- g. **e. Independent Determination**: The Idaho Department of Education shall make an independent determination, based on the review of all relevant information, as to whether the district violated a requirement of the IDEA and issue a written decision that addresses the allegations in the complaint.
- h. **f. Corrective action plan (CAP)**: The district may propose a CAP to address the allegations in the complaint. In resolving a complaint in which the DR Coordinator found a failure to provide appropriate services, the DR Coordinator, pursuant to its general supervisory authority, may accept, reject, or negotiate the proposed CAP, or require other corrective actions or timelines to ensure the district will achieve compliance for each allegation stated in the complaint.

#### D. State Complaint Procedures

Upon receipt of a written state administration complaint, the ~~DRC~~ Dispute Resolution Office will ensure the following procedures are followed:

- ~~1. Verify proper filing procedures were followed and determine if the complaint meets established criteria, including sufficient allegations of violation of IDEA (as developed by the DRC from the submitted complaint) and facts within five (5) business days.~~
2. **1.** The complainant will be notified if the information provided ~~a submission~~ is insufficient to process as a complaint. ~~The complainant will be given the opportunity to submit additional information about the allegations, whereas u~~ Upon receipt of the additional information that meets the compliant filing criteria, the sixty (60) day timeline for completion will start. Once proper filing procedures are verified by the Dispute Resolution Office, the district (specifically the superintendent, the special education director, and the school board chair) will be notified by the DR Coordinator that the complaint has been received and what, if any, allegations have been accepted

for investigation within ten (10) business days of receiving a sufficient complaint, unless exceptional circumstances exist. The school district is given an opportunity to respond to the complaint and may initiate a proposal ~~within fourteen (14) days of receipt of the complaint a corrective action proposal (CAP)~~ to resolve all or some of the allegations in the complaint., ~~subject to DRC approval. At the complaint investigator's discretion, the timeline for a CAP may be extended, or the complaint investigation may progress until a CAP has been accepted by the Dispute Resolution office.~~

3. ~~2.~~ The district (specifically the superintendent, the special education director, and the school board chair) will be notified by the DRC that the complaint has been received and what, if any, allegations have been accepted for investigation within ten (10) business days of receiving the complaint. The school district is given an opportunity to respond to the complaint and may initiate within fourteen (14) days of receipt of the complaint a corrective action proposal (CAP) to resolve all or some of the allegations in the complaint., subject to DRC approval. At the complaint investigator's discretion, the timeline for a CAP may be extended, or the complaint investigation may progress until a CAP has been accepted by the Dispute Resolution office. The complaint investigator is responsible for managing the timelines of the investigation and may submit a final report at any point within the 60-day timeline. The 60-day timeline may be extended in the event exceptional circumstances exist or the parties agree to extend the timeline in order to engage in mediation.
4. ~~3.~~ Mediation can be requested by either party at any time and must be offered for complaints regarding an individual student. While parties are generally encouraged to resolve complaints collaboratively, choosing not to participate in mediation will not be considered relevant in an investigation. If parties ~~opt engage in for~~ mediation, it will not delay the timelines required for resolving a complaint unless all parties agree.
5. ~~4.~~ Provide the parent/adult student a copy of the *Procedural Safeguards Notice*.
6. ~~5.~~ Complainants will be given an opportunity to provide additional information about the allegations, either orally or in writing.
7. ~~6.~~ All or any part of the written complaint will be set aside ~~by the hearing officer~~, if the allegation is being addressed in a pending due process hearing or a hearing decision which has already been rendered. Any issue not a part of a due process action will be resolved following the state complaint procedures and timelines.
- ~~8.~~ ~~The Dispute Resolution office will investigate a complaint alleging that a final hearing officer decision is not being implemented by a public agency.~~
9. ~~7.~~ A final report of the investigation will be issued to the complainant and district superintendent, board chairperson, special education director., ~~and complainant, that~~ The report shall include but is not limited to the findings of fact, conclusions, reasons

for the decision, and any necessary corrective action(s) for each allegation within sixty (60) calendar days of receipt of a sufficient complaint. ~~(see D.1).~~ This time period may be extended, but only under exceptional circumstances, which shall be documented by the DR Coordinator, or if the complainant and district public agency agree to extend the time to engage in mediation. ~~or other alternative dispute resolution procedures.~~

10. **8.** In resolving a complaint in which the DR Coordinator has found a failure to provide appropriate services, ~~if a violation of the IDEA is verified by the complaint investigator,~~ the investigative report shall include corrective actions addressing, as appropriate to address the needs of the student(s), which may include:
  - a. ~~how to~~ A remedy to address any denial of FAPE, which may include ~~the award of~~ compensatory services, monetary reimbursement or other corrective action as appropriate to meet the needs of the student;
  - b. Appropriate future provision of services for all students with disabilities; ~~the future provision of services to be considered by an IEP team for the student with a disability, when appropriate;~~ and
  - c. ~~The~~ provisions of technical assistance, including training, documentation of compliance, or written assurances, if needed.
11. **9.** The SDE Idaho Department of Education will ensure the district takes the corrective action set forth in the final report ~~if it is determined that the district was out of compliance through technical assistance activities, negotiations, and/or corrective actions~~ no later than one year after the identification of non-compliance. A complaint investigation final report cannot amend a student's IEP.
12. **10.** The Dispute Resolution office ensures noncompliance ~~has been~~ is corrected and verifies through review of documentation or interviews, or both, the corrective actions were implemented no later than one year (365 days) after the determination of noncompliance. If necessary, the SDE Idaho Department of Education ~~must~~ will use appropriate enforcement mechanisms such as the provision of technical assistance, conditions on funding, a corrective action, an improvement plan, and/or withholding funds, in whole or in part.

## Section ~~5~~-4. Due Process Hearings

### A. Definition

A due process hearing request involves an allegation or a series of allegations by either a parent/adult student or the district on issues relating to the identification, evaluation,

educational placement, ~~and~~ or the provision of FAPE to a student.

The due process hearing is presided over by a hearing officer appointed by the DR ~~C~~ Coordinator. At the due process hearing, the parent/adult student and the district may present evidence, cross examine witnesses, and present the case to the hearing officer. The hearing officer renders a written decision on the merits of the issues relating to the due process hearing.

The due process hearing request must allege a violation that occurred not more than two (2) years before the date the parent/adult student or public agency knew or should have known about the alleged action that forms the basis of the due process hearing request, subject to the exceptions described later in this section.

Mediation is ~~available~~ offered in an effort to resolve issues and parties may request mediation at any time. ~~If mediation is rejected by either party, the due process hearing timelines will remain in effect.~~

## B. Due Process Hearings and Expedited Due Process Hearings

Idaho's due process system has two settings for due process hearings: a regular due process hearing and an expedited due process hearing.

1. A regular due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of FAPE.
2. An expedited due process hearing is only available to resolve disputes concerning discipline and/or placement related to discipline.

## C. Filing a Due Process Hearing

Due process hearing requests must include a complete and signed copy of the *Due Process Hearing Request Form* or a signed document providing all of the general information, issue(s), and resolution(s) information required in the *Due Process Hearing Request Form*. Reasonable accommodations will be provided to individuals who need assistance in filing a written request.

A parent/adult student or public agency (or their attorney authorized to practice law in the state of Idaho) filing a due process hearing request must provide the due process hearing ~~complaint~~ request to the other party and to the Dispute Resolution office. The request shall be mailed, faxed, hand delivered, or scanned and attached to an email with a signature of the filing party. All applicable timelines will start when the request has been received by the non-requesting party and the Idaho Department of Education ~~SDE~~.

1. Due Process Hearing Request from Parent/Adult Student: A due process hearing may be requested on behalf of a student by a parent, adult student, or by an attorney, properly

licensed in Idaho, representing the student.

- a. A due process hearing shall be initiated within two (2) years of the date the parent/adult student knew or should have known about the alleged action that forms the basis of the due process complaint. ~~of the issues giving rise to the allegation(s).~~ The two-year timeline will not apply if the parent/adult student was prevented from requesting a hearing due to specific misrepresentations or the withholding of information by the ~~public agency~~ district required to be provided by the IDEA.
- b. A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of FAPE if the district proposes to initiate or change any of these matters, or if the district refuses the parent's/adult student's request to initiate or change any of these matters.
- c. If a parent/adult student disagrees with an IEP or placement change by the district and have filed a written objection to all or parts of the proposed IEP or change in placement in writing within ten (10) calendar days of receiving written notice of the proposed change, the district may not implement the amended IEP for 15 days, unless a request for a due process hearing is filed by the parent/student during which time the student shall remain in the current placement unless otherwise agreed by the district and parent/student. The written objection cannot be used to delay the district from placing a student in an Interim Alternative Educational Setting (IAES) or challenge an eligibility/identification determination. ~~or the implementation of an initial IEP.~~

Due Process Hearing Request by a District: If the district initiates a hearing request, the district must inform the parent/adult student and the Idaho Department of Education SDE. A district may initiate a due process hearing within two years of the ~~dispute~~ alleged action. ~~in an attempt to accomplish one or more of the following:~~ All applicable timelines will start when the request has been received by parent/adult student and the Idaho Department of Education.

- ~~d. override a parent's/adult student's refusal of consent for an initial evaluation or re-evaluation, or release of information;~~
- ~~e. override a parent's/adult student's written objection to an IEP program change, an educational placement change, or disciplinary actions when there is an imminent threat to safety;~~
- ~~f. the placement of a student in an Interim Alternate Education Setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others;~~
- ~~g. a determination whether an evaluation conducted by the district was~~

~~appropriate or whether an evaluation obtained by a parent/adult student meets the criteria for a publicly funded Independent Educational Evaluation (IEE);~~

~~h. a determination if a proposed IEP is appropriate even if the parent/adult student has not filed a formal objection, for example following a state complaint investigation.~~

#### D. Hearing Officer Appointment

1. The hearing officer shall be appointed within ten (10) calendar days of the Idaho Department of Education SDE receiving the due process hearing request or within five (5) business days of an expedited hearing request. Hearing officers are selected from a list of specially trained and impartial professionals. A list of qualifications for each hearing officer is kept by the DRC Coordinator.
- ~~2. The hearing officer must not be a member of the district school board, an employee of the school district, or an employee of the Idaho Department of Education SDE.~~
- ~~3. The hearing officer must not have a personal or professional interest that conflicts with the objectivity required of a hearing officer.~~
- ~~4. The hearing officer must be specially trained in conducting due process hearings, possess knowledge and understanding of the provisions of Idaho law, the IDEA, and judicial interpretations, and ability to conduct hearing and render and write decisions with appropriate, standard legal practice.~~
5. **2.** The district will pay for all actual expenses incurred by the hearing officer and for the cost of a verbatim transcript of the hearing, if requested by the parent. The hearing officer will be compensated at rates set by the Idaho Department of Education SDE.
6. **3.** Hearing officers shall not be called to testify in due process hearings or civil proceedings regarding the due process hearings they have conducted, nor shall they be compelled to disclose the substance of any discussions that occurred during the due process hearing process.

#### E. Due Process Hearing Policies Procedures

After a due process request is filed by the parent/adult student or the district, the following procedures will be followed.

1. The Dispute Resolution office offers mediation as a voluntary option to both parties. Parties may request mediation at any time. ~~Choosing~~ Participation in mediation shall not alter or delay the timeline of the due process hearing unless the parties mutually agree to extend the hearing timeline in writing.



2. The receiving party may challenge the sufficiency of the due process hearing request within fifteen (15) days of the receipt of the hearing request by filing a written sufficiency objection with the hearing officer. Challenges to the sufficiency of the due process hearing complaint must be in writing and provided to all parties. The hearing officer shall render a decision regarding the sufficiency of the allegation(s) within five (5) calendar days and immediately notify the parties of the decision in writing.
  - a. If the complaint is found not to be sufficient, the party may amend its due process complaint if the other party consents in writing to the amendment and has the opportunity to resolve the complaint through a resolution meeting, or the hearing officer grants permission to amend no later than five (5) days before the due process hearing begins.
  - b. Timelines for amended due process hearings begin again on the filing date of the amended request.
3. If the district has not previously sent written notice (as outlined in IDEA) regarding the subject matter in the parent's/adult student's complaint, the district must, within ten (10) calendar days of receiving the request, send ~~the response~~ a written notice to the parent/adult student ~~a letter~~ explaining the reasons ~~why the district proposed or refused to take the action raised in the complaint, behind their actions,~~ a description of other options the IEP team considered, and reasons why those options were rejected, a description of each evaluation's procedure, assessment, record, or report the district used as the basis for the proposed or refused action ~~conducted,~~ and a description of the other factors relevant to the district's proposed or refused action. ~~response, in accordance with IDEA prior written notice requirements.~~ The district shall provide a copy of the written notice to the hearing officer within ten (10) calendar days of receiving the request.
4. The district shall inform a parent/adult student of any free or low-cost legal or other relevant services available ~~to him or her~~ and provide a copy of the Procedural Safeguards if a due process hearing is requested or if the parent/adult student requests such information.
5. Within fifteen (15) days of receiving the parent's/adult student's due process hearing request, the district shall convene ~~a~~ pre-hearing resolution session, unless both parties agree in writing to waive the resolution meeting, both parties agree to go to mediation, or the district initiates the hearing.
  - a. A resolution meeting includes parent/adult student, a representative of the district who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties.
  - b. The district's attorney shall not attend the resolution session unless the

parent/adult student will be accompanied by an attorney.

- c. The DR ~~C~~Coordinator will provide a ~~contractor specially trained in facilitating a resolution session or a contracted~~ meeting facilitator or mediator, if requested. Either process requires approval by both parties.
  - d. The purpose of the meeting is for the parent/adult student to discuss the due process hearing request, and the facts that form the basis of the request, so that the district has the opportunity to resolve the dispute **that is the basis of the complaint**.
    - 1) If a resolution is reached regarding **some or all of** the issues raised in the request for a due process hearing, the district representative and the parent/adult student will sign a settlement agreement, a legally binding document enforceable in state and federal court. The parties will immediately forward to the hearing officer signed documentation of the voluntary withdrawal of **some or all of the issues set forth in** the due process hearing complaint by the requesting party.
    - 2) Either party may void this agreement within three (3) business days of signing the agreement.
  - e. A due process hearing will be scheduled if no resolution is reached **on all of the hearing issues** within thirty (30) calendar days of receiving the request for a due process hearing.
  - f. If the district is unable to obtain the participation of the parent/adult student after reasonable efforts have been made and documented, at the conclusion of the thirty (30) calendar day resolution period the district may request that the hearing officer dismiss the parent's/adult student's due process hearing request.
  - g. A parent/adult student may request an immediate due process hearing from the hearing officer if the district has not scheduled or participated in a resolution session within fifteen (15) days of the request.
  - h. The district must report to the DR ~~C~~Coordinator and to the hearing officer when the resolution meeting is to be held, or provide documentation indicating it was waived by both parties, or provided documentation of attempts to reach the other party, within fifteen (15) days of **Idaho Department of Education SDE** receiving the due process hearing request.
6. The forty-five (45) day timeline for the due process hearing request starts the day after one of the following events:
- a. both parties agree in writing to waive the resolution meeting;

- b. after either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible;
- c. both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later, the parent/adult student or public agency withdraws from the mediation process; or
- d. the district files a hearing request.

All of the above events must be documented, with dates of determination, and provided to the DR ~~C~~ Coordinator and the assigned hearing officer immediately.

## F. The Due Process Hearing

### 1. Hearing Preparation

- a. A parent/adult student will be allowed to inspect and review reports, files, and records pertaining to the student prior to a resolution session or due process hearing. A district may charge a fee for copies of records if the fee does not effectively prevent a parent/adult student from exercising his or her right to inspect and review those records. The district may not charge a fee to search for or retrieve records.
- b. Not less than five (5) business days prior to a due process hearing, each party will disclose to all other parties: evaluations completed by that date; recommendations based on those evaluations intended to be used at the hearings; copies of exhibits to be introduced; and a list of witnesses each party intends to call at the hearing.
- c. The hearing officer will provide notification as to the time and place of the due process hearing to the parent/adult student, district officials, and the Idaho Department of Education ~~SDE~~. The hearing shall be conducted at a time and place reasonably convenient to the parent/adult student.
- d. Parties shall cooperate with the hearing officer in any business or communication and the planning for a location, date and time for the hearing.
- e. The hearing officer may grant specific extensions of time for the hearing at the request of either party.

### 2. The Due Process Hearing

- a. The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions. Due process hearings shall be conducted pursuant to

the *Idaho Rules of Administrative Procedure of the Attorney General* (IDAPA), IDEA requirements, and this Manual. In case of any conflict between IDAPA and the IDEA, the IDEA shall supersede. IDAPA rules shall supersede this Manual.

- b. A parent/adult student and district personnel may be accompanied and advised by legal counsel properly licensed in Idaho.
  - c. A parent/adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
  - d. Each party has the right to present evidence, and confront, cross-examine and, ~~to compel the attendance of witnesses. and the production of documents, and to confront and cross-examine witnesses.~~
  - e. New issues (issues not in the original due process request) may not be raised at the hearing unless agreed to by the other party.
  - f. Any party may prohibit the introduction of any evidence at the hearing that was disclosed less than five (5) business days before the hearing.
  - ~~g.~~ During the hearing the district will provide reasonable accommodations as required by federal regulations. ~~Disputes will be referred to the DRC for resolution.~~
  - h. ~~An audio recording of the hearing will be made.~~ The parent/adult student has the right to obtain a written, or at their option, electronic, verbatim record of the hearing. ~~may formally request a written verbatim transcript. The parent/adult student may choose an electronic verbatim record instead.~~ If transcribed, ~~the~~ district shall be responsible for the cost of the verbatim transcript ~~will pay the transcription costs,~~ and a copy of the transcript will remain with the SDE Idaho Department of Education.
3. Decision of the Hearing Officer
- ~~a. The decision of the hearing officer will be based solely on presentations made at the due process hearing.~~
  - ~~b.~~ **a.** The decision made by the hearing officer will be made on substantive grounds based on the record established at hearing. ~~a determination of whether a student received FAPE.~~
    - 1) In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if there is evidence that the procedural inadequacies:

- i. impeded the student’s right to FAPE;
  - ii. significantly impeded a parent’s/adult student’s opportunity to participate in the decision-making process; or
  - iii. caused a deprivation of educational benefit.
- 2) If a hearing officer finds that there is a procedural deficiency that did not deny FAPE, ~~he or she~~ the hearing officer may order the district to comply with the procedural requirements.
- c. **b.** The hearing officer’s decision will include findings of fact and conclusions of law. In addition, the decision shall include an order of relief, if appropriate.
- d. **c.** The hearing officer’s written decision shall be mailed within forty-five (45) calendar days ~~after the expiration of the 30-day resolution process; or~~ from the date both parties agreed in writing to waive the resolution meeting, or ~~from the date~~ both parties agreed to go to mediation, or ~~from~~ the date the district initiated the hearing. The hearing officer may grant an extension of the forty-five (45) day period upon the request of a party. The hearing officer shall issue a written decision in response to each request.
- ~~e.~~ **d.** The findings of fact and decision shall be ~~in writing and mailed sent~~ to both parties and the DR Coordinator, ~~the parent/adult student in writing, or at the option of the parent/adult student provided electronically~~ at no cost. ~~Copies will also be mailed to the district superintendent, the DRC and representatives of the district.~~
- f. **e.** A hearing officer’s decision will be enforceable in state and federal court. It will be implemented not later than fourteen (14) calendar days from the date of issuance unless:
  - 1) the decision specifies a different implementation date; or
  - 2) ~~either party~~ the parent/adult student appeals the decision by initiating civil action in state or federal district court within applicable appeal periods.
- g. **f.** Nothing in this section ~~can be interpreted to~~ prevents a parent/adult student from filing a separate due process hearing request on an issue separate from the request already filed, ~~which SDE~~ may consolidate multiple hearing requests involving the same ~~IEP~~ student.
- h. **g.** Stay Put

- 1) During the pendency of any due process hearing, the student shall remain, or “stay put,” in his or her current educational placement unless the district and parent/adult student agree otherwise.
- 2) The stay put placement continues during any subsequent appeals unless a hearing officer agrees with a parent/adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer’s decision becomes the stay-put placement.
- 3) If the dispute involves an application for initial admission to public school in Idaho, the student, with the written consent of his or her parent, shall be placed in the public school program until the proceedings are completed.
- 4) “Stay put” does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B services **because the child has turned three (3).** ~~in Idaho. Following the development of an IEP or an individual family service plan (IFSP), if an educational placement dispute arises involving a student transitioning from Part C to Part B, the student cannot “stay put” in Part C.~~
  - i. With written consent of the parent, the student shall be placed in the public school until completion of all the hearing proceedings.
  - ii. If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.
  - iii. If the student is eligible for special education and related services, and the parent consents, ~~then~~ the district shall provide those special education and related services which are not in dispute.

## Section 6.5. Expedited Due Process Hearings

### A. Definition

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline occurring within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing.

### B. Filing an Expedited Hearing Request

Parties filing expedited due process hearing requests must include a complete and signed copy of the *Expedited Due Process Hearing Request Form* or a signed document providing, in the

same order, all of the general information, issue(s), and resolution(s) information required in the *Expedited Due Process Hearing Request Form*. Reasonable accommodations will be provided to individuals who need assistance in filing a written request.

1. A district may request an expedited hearing if the district believes maintaining the current placement or returning the student to the prior placement is substantially likely to result in injury to the student or others. *These hearing procedures may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or others.*
2. A parent/adult student may request an expedited hearing if:
  - a. he or she disagrees with a determination that the student’s behavior was not a manifestation of the disability; or
  - b. he or she disagrees with the district’s discipline decision, which resulted in a change of placement.
3. *The procedures set forth above in Section 6 shall be followed when filing an expedited due process hearing request. All applicable timelines for expedited due process hearings will start when the request has been received by the non-requesting party.*

~~A parent/adult student or district filing an expedited due process hearing request must provide, in a confidential manner, the due process complaint and request for hearing to the other party. The request shall be mailed, faxed, or hand delivered (electronic copies are not accepted). The party filing an expedited due process hearing must be able to show proof of receipt of the expedited due process hearing request by the other party. Additionally, when the request is provided to the non-requesting party, the party filing the request shall simultaneously send a written copy to the DRC by mail, fax, hand delivery, or scanned and attached to an email with a signature of the filing party. All applicable timelines for expedited due process hearing will start when the request has been received by the non-requesting party.~~

### C. The Expedited Hearing Process and Decision

An expedited hearing will be conducted in a fair and impartial manner. ~~Guidelines and~~ The proceedings will be the same as those in a regular due process hearing, except for the following changes:

1. The ~~DRC~~ *Coordinator* will appoint a hearing officer within five (5) business days of a request.
2. A resolution session shall occur within seven (7) days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or ~~go to~~ *participate in* mediation.

3. A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the expedited due process hearing request.
4. There is no process for challenging the sufficiency of the due process hearing request in an expedited case.
5. Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least five (5) business days before the hearing.
6. The hearing shall occur within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing and no extensions may be granted by the hearing officer.
7. A written decision will be mailed to both parties by the Dispute Resolution office.
8. A party may appeal the decision in an expedited due process hearing **following the same procedures** ~~in the same way as allowed~~ for decisions in ~~other~~ original due process hearings.

#### **D. Placement During an Expedited Hearing**

When a hearing has been requested by either the parent/adult student or the district regarding placement decisions, the student shall “stay put” during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

1. the student will remain in the IAES until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first; and/or
2. upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if district personnel maintain that it is dangerous for the student to return to that placement, the district may request an expedited hearing to continue the IAES for up to an additional forty-five (45) school days. This procedure may be repeated as necessary.

If the hearing officer findings are in favor of the parent/adult student, the change of placement cannot occur. The IEP team ~~must~~ **will need to** determine the extent of services appropriate to meet the student’s individual needs, as well as address the student’s behavior. If the hearing officer finds for the district, the district may use the same disciplinary procedures, including expulsion, available for any other student, except that FAPE must be provided according to the requirements in Chapter 12, Section 3.

If an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot remain in Part C services when he or she is over the age of three (3). If the child is found eligible for special education and related services under Part B and the parent



consents to the initial provision of special education and related services, then the school district shall provide those special education and related services that are not in dispute between the parent and district until completion of all the hearing proceedings. If the parent does not give written consent for the special education or related services, the student will not receive services until completion of the hearing proceedings.

### Section 7 6. Appeals and Civil Action

~~An action for state court review shall be filed within twenty-eight (28) days from the date of issuance of the hearing officer's decision; any action in federal district court shall~~ Any appeal of the hearing officer's decision must be filed within forty-two (42) calendar days from the date of issuance. ~~of the hearing officer's decision.~~

A party must exhaust administrative remedies before initiating a civil action under IDEA unless otherwise determined by the court. However, nothing in the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other federal laws protecting the rights of children with disabilities.

### Section 8-7. Attorney Fees

An IDEA hearing officer appointed by the DRC Coordinator does not have the authority to consider or award attorney fees. Only a state or federal district court will have jurisdiction in to consider an award the awarding, determination, or prohibition of attorney fees in and IDEA matter.

DEPARTMENT OF SPECIAL EDUCATION

# Special Education Manual 2018

*Approved by the State Board of Education*

*October 18, 2018*

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Nondiscrimination Clause

Federal law prohibits discrimination on the basis of race, color, religion, sex, national origin, age, or disability in any educational programs or activities receiving federal financial assistance. (Title VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1990.)

It is the policy of the Idaho State Department of Education not to discriminate in any educational programs or activities, or in employment practices.

Inquiries regarding compliance with this nondiscriminatory policy may be directed to the State Superintendent of Public Instruction, P.O. Box 83720, Boise, ID 83720-0027, (208) 332-6800, or to the Director, Office of Civil Rights, Department of Education, Washington, D.C.

Idaho Special Education Manual

The policies and procedures contained in this Idaho Special Education Manual have been developed by the State Department of Education (SDE) and offered to local education agencies (LEA) for adoption. This Manual has been approved by the State Board of Education, meets the IDEA eligibility requirement of 20 U.S.C. Section 1412, and is consistent with state and federal laws, rules, regulations, and legal requirements.

In the case of any conflict between Idaho Administrative Code (IDAPA) and the Individuals with Disabilities Education Act (IDEA), the IDEA shall supersede the IDAPA, and IDAPA shall supersede this Manual.

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## ACRONYMS AND ABBREVIATIONS

Section 504	Section 504 of the Rehabilitation Act of 1973
AA	Alternate Assessment
ADA	Americans with Disabilities Act
A.D.A.	Average Daily Attendance
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
AT	Assistive Technology
BIP	Behavioral Intervention Plan
CALP	Cognitive Academic Language Proficiency
CAP	Corrective Action Plan
CEIS	Comprehensive Early Intervening Services
C.F.R.	Code of Federal Regulations
CIP	Continuous Improvement Plan
DD	Developmental Delay
DHW	Department of Health and Welfare
DJC	Department of Juvenile Corrections
DR	Dispute Resolution
EBD	Emotional Behavioral Disorder
ECSE	Early Childhood Special Education
ESEA	Elementary and Secondary Education Act
ESSA	Every Student Succeeds Act
ESY	Extended School Year
FAPE	Free and Appropriate Public Education

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FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
GED	General Education Development
IAES	Interim Alternative Educational Setting
IBI	Intensive Behavioral Interventions
IDAPA	Idaho Administrative Procedures Act
IDEA	Individuals with Disabilities Education Act
IDELR	Individuals with Disabilities Education Law Report
IEE	Independent Educational Evaluation
IEP	Individual Education Program
IFSP	Individual Family Services Plan
IPUL	Idaho Parents Unlimited, Inc.
IQ	Intelligence Quotient
ISAT	Idaho Standards Achievement Test
ITP	Infant/Toddler Program
JDC	Juvenile Detention Center
LEA	Local Education Agency
LEP	Limited English Proficiency
	Language Impairment
LD	Learning Disability
LRE	Least Restrictive Environment
MTSS	Multi-Tiered System of Support
OCR	Office of Civil Rights
OHI	Other Health Impaired

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OI	Orthopedic Impairment
OT	Occupational Therapy
PBIS	Positive Behavioral Interventions and Supports
PBS	Positive Behavioral Supports
PII	Personally Identifiable Information
PLAAFP	Present Levels of Academic Achievement and Functional Performance (Also known as PLOP for Present Levels of Performance)
PLOP	Present Levels of Performance (Also known as PLAAFP for Present Levels of Academic Achievement and Functional Performance)
PT	Physical Therapy
PTI	Parent Training and Information Center
RTI	Response to Intervention
SCI	Significant Cognitive Impairment
SD	Standard Deviation
SDE	State Department of Education
SEA	State Education Agency
SEAP	Special Education Advisory Panel
SI	Speech Impairment
SLD	Specific Learning Disability
SP	Services Plan
SS	Standard Score
TBI	Traumatic Brain Injury
	Visual Impairment
WIOA	Workforce Innovation and Opportunity Act

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## GLOSSARY

**Academic achievement.** A student’s level of performance in basic school subjects, measured either formally or informally.

**Accommodation.** Changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results and do not fundamentally alter the requirements (or course expectations).

**Adaptation.** Changes to curriculum, instruction, or assessments that fundamentally alter the requirements, but that enable a student with a disability that significantly impacts performance an opportunity to participate. Adaptations include strategies such as reading the reading portion of a test, using spelling/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and invalidate assessment results and provide non-comparable results.

**Adaptive behavior.** Behavior that displays an age-appropriate level of self-sufficiency and social responsibility which includes the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, direction, functional academic skills, work, leisure, health, or safety.

**Adverse Impact** (adverse effect). A determination made by the evaluation team that the student’s progress is impeded by the disability to the extent that their educational performance is significantly and consistently below the level of similar age peers, preventing the student from benefitting from general education. The phrases “adverse impact” and “adverse effect” are used interchangeably in this Manual and have the same meaning. See also “educational performance.”

**Adult student.** A student with a disability, age eighteen (18) or older, to whom rights have transferred under the IDEA and Idaho Code, and who has not been deemed legally incompetent by a court or deemed ineligible to give informed consent by the IEP team.

**Age-appropriate activities.** Activities that typically-developing children of the same age would be performing or would have achieved.

**Age of majority.** The age at which, by law, a child assumes the responsibilities of an adult. In Idaho, the age of majority is eighteen (18).

**Aggregated data.** Information that is considered as a whole. In this Manual, the term refers to collective data on all students, including students with disabilities.

**Alternate assessment.** An academic assessment based on alternate academic achievement standards that have been reduced in depth and complexity from the Idaho Content Standards. The alternate assessment (AA) is intended only for those students with the most significant cognitive impairments, representing about 1% of the total student population.

**Alternative school.** A public school placement option that may be utilized for students who are not succeeding in the traditional school environment but may benefit through the use of modified curriculum or flexible programming.

**Articulation.** The ability to speak distinctly and connectedly.

**Articulation disorder.** Incorrect productions of speech sounds, including omissions, distortions, substitutions and/or additions that may interfere with intelligibility.

**American with Disabilities Act (ADA) of 1990.** A federal law prohibiting discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

**Assessment.** The formal or informal process of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. It is an integral component of the evaluation process. A test is one method of obtaining valid and reliable information within the assessment process. Assessment data may also include observations; interviews; medical reports; data regarding the effects of general education accommodations, adaptations, and interventions; and other formal or informal data.

**Assistive technology device.** Any item, piece of equipment, or product system whether acquired commercially, off a shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. Excludes surgically implanted medical devices.

**Assistive technology service.** Any service that directly assists a student with a disability with the assessment, selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the need of the student; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing devices; coordinating and using other therapies, interventions, or services with existing education and rehabilitation plans and programs; training or technical assistance for a student and/or family; and training or technical assistance for professionals, employers,

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or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student.

**Attention deficit disorder (ADD).** A biologically based mental disorder that has these typical characteristics: short attention span; distractive behavior; difficulty following directions and staying on task; and an inability to focus behavior. The disorder compromises many skills needed for academic success, including starting, following through with, and completing tasks; moving from task to task; and following directions.

**Attention deficit hyperactivity disorder (ADHD).** A biologically based mental disorder in which a person has inappropriate degrees of inattention, impulsiveness and hyperactivity.

**Audiologist.** A licensed health care professional who diagnoses and supports management of hearing loss, counseling to auditory needs across environments, and fitting of hearing technology.

**Autism.** A disability category in which a developmental disability, generally evident before age three (3), significantly affects verbal or nonverbal communication skills and social interactions and adversely affects educational performance. Other characteristics often associated with autism include engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

**Basic reading skills.** For the purpose of specific learning disability eligibility, includes sight word recognition, phonics, and word analysis. Essential skills include identification of individual sounds and the ability to manipulate them, identification of printed letters and sounds associated with letters, and decoding of written language.

**Behavioral intervention plan (BIP).** A plan comprising practical and specific strategies designed to increase or reduce a definable behavior. These strategies address preventative techniques, teaching replacement behaviors, how to respond or resolve behaviors, and crisis management, if necessary.

**Benchmark.** A major milestone which describes the progress the student is expected to make toward annual goals within a specified period of time. Similar to an objective.

**Braille.** A tactile system of reading and writing, used by students who are blind or visually impaired, with an official code composed of Braille characters or cells that consist of various patterns of raised dots corresponding to alphabetic letters, punctuation marks and other symbols.

**Business day.** A workday (Monday through Friday) except for federal and state holidays, unless specifically included.



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**Calendar day.** Used interchangeably with day unless otherwise indicated as a business day or a school day.

**Case manager.** A member of the evaluation and/or IEP team (usually the special education teacher) who is designated to perform administrative functions for the team, including: (1) setting up meetings; (2) ensuring appropriate forms are completed; (3) ensuring timelines are met; and (4) includes the responsibility of coordinating and overseeing the implementation of the IEP.

**Change of placement.** A change in educational placement relates to whether the student is moved from one type of educational program -- i.e., regular class -- to another type -- i.e., home instruction. Or it may also occur when there is a significant change in the student's educational program even if the student remains in the same setting.

**Change of placement for disciplinary reasons.** A removal from the current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, the total amount of time the student is removed are indicators of a pattern, and whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals.

**Charter school within a district.** A publicly funded, nonprofit, nonsectarian public school that is created by a formal agreement (charter) between the charter board of directors and the board of trustees of the local school district and operates independently within the district. It is governed by the conditions of its approved charter, performance certificate, and federal and state laws. It is the responsibility of the local district to ensure that students attending such charter schools receive appropriate services as required by IDEA and Section 504 of the ADA.

**Charter school LEA.** A publicly funded, nonprofit, nonsectarian public school that operates as its own local education agency (LEA) or district. Charter LEAs may be authorized by the local school district or the Idaho Public Charter School Commission. Charter LEAs are required to provide services in accordance with IDEA and, Section 504 of the ADA.

**Child.** An individual who has not attained age eighteen (18).

**Child count.** For purposes of the annual report required under IDEA, the State must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

**Child find.** A process to locate, identify, and evaluate individuals ages three (3) to twenty-one (21) who are suspected of having a disability and in need of special education.

**Civil action.** A judicial action that any party who is aggrieved by the final decision of a due process hearing officer may bring in either a federal district court or a state court of competent jurisdiction (as designated by Idaho law).

**Cognitive academic language proficiency (CALP).** CALP refers to language used during formal academic instruction and learning. CALP skills include listening, speaking, reading, and writing about subject area content material, and are essential to school success. It may take five to seven years for an English language learner to develop CALP.

**Compensatory education.** Educational services or remedies which are above and beyond those normally due a student under the State's education law. The principle is acknowledged by most courts that have considered the issue to be an appropriate equitable remedy when a student has been denied free appropriate public education. Services that would put the student in the same position had they not been denied a FAPE.

**Complaint.** (State complaint) A formal, written, and signed statement submitted to the Idaho State Department of Education by an individual or organization that contains one or more allegations and the facts on which the statement is based that a district or agency has violated a requirement of IDEA within the last year (365 days).

**Coordinated early intervening services (CEIS).** Services for students (K-12) who need additional academic and behavioral support to succeed in a general education environment. These students have not been identified as having a disability under the IDEA.

**Consensus.** Following the opportunity for each member to provide input and gain clarification, the resulting outcome where each member agrees to support the decision of the group. Consensus is both the general agreement to support the decision, and the process of reaching such agreement to support the decision.

**Consent.** Voluntary, written approval of a proposed activity, as indicated by a parent/adult student signature. The parent/adult student must be fully informed of all relevant information in his or her native language or other mode of communication and must understand all information relevant to the activity to make a rational decision.

**Conservator.** A person appointed by the court to handle financial decisions for a person who is incapacitated or debilitated. In Idaho the conservator has all of the powers conferred in Idaho Statute 15-5-424 and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 15-5-209 of this code until the minor attains the age of eighteen (18) or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2 of this chapter, Idaho Statute 15-5-424.

**Controlled substance.** Any drug so designated by law whose availability is restricted; i.e., so designated by federal Controlled Substances Acts. Included in such classifications are narcotics, stimulants, depressants, hallucinogens, and marijuana. (See Schedule I, II, III, IV or V in section (c) of the Controlled Substances Act (21 U.S.C. 812(c))

**Core academic subjects.** These include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the ESEA.

**Core Content Connectors.** Alternate academic achievement standards in English/Language Art and Mathematics aligned with the Idaho Content Standards, which have been reduced in depth and complexity. The Idaho alternate assessment in English/Language Arts and Mathematics are based on these standards.

**Corrective action plan (CAP).** A plan that orders a district as a result of an IDEA complaint to take corrective actions to resolve legal deficiency as found by the SDE.

**Critical life skill.** Skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance students' integration with individuals without disabilities. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

**Dangerous weapon.** A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

**Data-based decision making.** The collecting of information that can be charted or graphed to document performance over time followed by an analysis of the information to determine needed changes in instruction, policies, programs, or procedures.

**Day.** Refers to a calendar day unless otherwise indicated as a business or school day.

**Deaf-blindness.** An IDEA disability category in which a student demonstrates hearing and visual impairments, and where the combination of these two disabilities causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.

**Deaf or Hard of Hearing.** A child with a hearing loss, whether permanent or fluctuating, that impairs the access, comprehension, and/or use of linguistic information through hearing, with or without amplification, and that adversely affects a child's educational performance.

**Detained youth.** Anyone aged three (3) through twenty-one (21) who is being held for a crime regardless of whether or not that person has appeared before the court.

**Developmental achievement.** Gains a student makes which follow the pedagogic theory that all children learn in the same basic way and in the same sequence, although at different rates.

**Developmental delay.** An IDEA disability category used only for students ages three (3) through nine (9) for whom a significant delay exists in one or more of the following skill areas: receptive/expressive language; cognitive abilities; gross/fine motor functioning; social/emotional development; or self-help/adaptive functioning. The use of this category is optional for districts.

**Disaggregated data.** Information that is reported and/or considered separately on the basis of a particular characteristic. In this Manual, the term refers to data on special education students as a group that are reported and/or considered separately from the same data on all students in a school, district, or state.

**Discipline.** Actions taken in response to a student's violation of the student conduct code.

**Disclosure.** The access to or the release, transfer, or other communication of education records or personally identifiable information contained in these records by oral, written, electronic, or other means.

**Disproportionality.** A disparity or inequality. In this Manual, the term refers to a statistical range of data where students of a specific race or ethnicity are identified in either greater or fewer numbers than expected when compared to the representation of that race or ethnicity within the general school population. The areas addressed in the IDEA are: (1) identification as a student with a disability; (2) identification of a student with a specific category of disability; and (3) placement in a particular educational setting and (4) the incidence, duration of any type of disciplinary actions, including suspensions and expulsions.

**District.** A local educational agency (LEA) inclusive of the following terms: a local district, a state authorized charter school, a state operated program, and a traditional school. See also "LEA."

**Dropout.** A student who has voluntarily left an education system before completion of requirements and is not known to be enrolled in any other educational program.

**Dual enrollment.** A child of school-age who is enrolled in a nonpublic school (including a homeschool) or a public charter school and enrolled in a public school to participate in public school programs and activities, Idaho Statue 33-203. See also "nonpublic school" and "nonpublic student."

**Due process hearing.** An administrative hearing conducted by an SDE-appointed hearing officer to resolve disputes on any matter related to identification, evaluation, educational placement, or the provision of a free appropriate public education under the IDEA.

**Educational performance.** A student’s educational performance in achievement, developmental, and/or functional skills.

**Education record.** A student’s record containing personally identifiable information maintained by an educational agency or institution, or by a party acting for the agency or institution, which may include, but is not limited to print, handwriting, computer media, video or audio tape, film, microfilm, and microfiche, but is not within the exceptions set out in the Family Educational Rights and Privacy Act (FERPA). The documents in the education record used to determine current eligibility and monitor current progress are considered part of the education record and are maintained. Items in the educational record that are no longer used, or have been summarized, may be removed from the educational record after written parental notification.

**Educational services agency, other public institution or agencies.** (1) An educational service agency, as defined in 34 CFR §300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

**Elementary school.** The term “elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law, 34 CFR §300.13. An elementary school includes a grade configuration of grades one (1) through eight (8) inclusive, or any combination thereof, Section 33-116, Idaho Code.

**Eligibility/evaluation team.** A group of people, including the parent/adult student, charged with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the IEP team (although not necessarily the same individuals) and other qualified professionals, as appropriate.

**Emotional behavioral disorder.** An IDEA disability category in which a student has a condition exhibiting one or more of five behavioral or emotional characteristics over a long period of time, and to a marked degree, that adversely affects educational performance. The term *does not* include students who are socially maladjusted unless it is determined they have an emotional behavioral disorder. The term emotional behavioral disorder *does* include students who are diagnosed with schizophrenia.

**Essential Components of Reading Instruction.** The term means explicit and systematic instruction in (1) phonemic awareness, (2) phonics, (3) vocabulary development, (4) reading fluency, including oral reading skills, and (5) reading comprehension strategies.

**Evaluation.** A term that means using all required procedures to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

**Expedited due process hearing.** An administrative hearing conducted by an SDE-appointed hearing officer to resolve disputes concerning discipline for which shortened timelines are in effect in accordance with the IDEA.

**Expulsion.** Removal of a student from school for an extended period of time. For general education students, services usually cease during an expulsion.

**Extended school year (ESY).** A program to provide special education and related services to an eligible student with a disability beyond the conventional number of instructional days in a school year and at no cost to the parents. An ESY program must be based on an IEP team decision and meet Idaho standards.

**Extracurricular activities.** Programs sponsored by a district that are not part of the required curriculum but are offered to further the interests and abilities of students.

**FAPE.** (See “Free appropriate public education.”)

**FERPA.** (See “Family Educational Rights and Privacy Act.”)

**Facilitation.** A voluntary process during which a neutral and impartial individual, contracted by the SDE, is appointed to conduct an IEP team or other special education related meeting.

**Family Educational Rights and Privacy Act (FERPA).** A federal law protecting the privacy of students and parents by mandating that personally identifiable information about a student contained in education records must be kept confidential unless otherwise provided by law. FERPA also contains provisions for access to records by parents, students, staff, and others.

**Fluency disorder.** Stoppages in the flow of speech that are abnormally frequent and/or abnormally long. These interludes take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

**Free Appropriate Public Education (FAPE).** A basic IDEA requirement which states that special education and related services are provided at public expense (free); in conformity with an appropriately developed IEP (appropriate); under public supervision and direction (public); and include preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

**Functional achievement and performance.** Gains made by a student which include programming in community living, reading, communication, self-care, social skills, domestic maintenance, recreation, employment or vocational skills. Also called independent living skills.

**Functional behavioral assessment (FBA).** A systematic process for defining problem behavior and gathering medical, environmental, social, and instructional information that can be used to hypothesize about the function of student behavior.

**General education curriculum.** The curriculum that is designed for all students, usually consisting of a common core of subjects and curriculum areas adopted by a district that are aligned to the Idaho Achievement Standards or district standards. The general education curriculum is defined by either the Idaho Achievement Standards or the district content standards if they are as rigorous.

**General education interventions.** Educational interventions designed to address the students using the core and supplemental interventions. Such interventions may include whole-school approaches, scientifically based programs, and positive behavior supports, including accommodations and instructional interventions conducted in the general education environment. These interventions may also include professional development for teachers and other staff to enable such personnel to deliver scientifically based literacy instruction and/or instruction on the use of adaptive and instructional software.

**Goal.** A measurable statement of desired progress. In an IEP, annual goals must include academic and functional goals designed to meet a child's needs that result from his or her disability, enable the child to be involved in and make progress in the general curriculum, and meet the child's other educational needs that result from the child's disability.

**Graduation.** The point in time when a student meets the district and State requirements for receipt of an Idaho high school diploma.

**Guardianship.** A judicial determination under which a competent adult has the legal right and duty to deal with problems, make decisions, and give consent for an adult with a disability (at least eighteen (18) years of age) who cannot act on his or her own behalf. The court will specify the nature and scope of the guardian's authority.

**Health services.** See "School health services."

**High school.** Idaho Statute 33-119 defines secondary school as grades seven (7) through twelve (12) inclusive of any combination thereof. See "secondary school."

**Homebound student.** A student whose IEP team determines the child's home is the least restrictive environment.

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**Homeless children and youth.** Children and youth who lack a fixed, regular, and adequate nighttime residence as defined in the McKinney-Vento Homeless Assistance Act.

**Homeschool.** An education program delivered by parents who have decided to provide instruction in the home and not in a public or private school. A homeschool is a nonpublic school, but is not considered a private school. A virtual public school is not a homeschool.

**Homeschooled students.** A homeschooled student is one whose parents have decided to provide an educational program in the home with instruction provided by the parents. A homeschool student is considered a nonpublic school student, but is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

**Honig Injunction.** A court order to remove a special education student from school or current educational placement due to factors of dangerousness. Districts are required to continue with the provision of FAPE.

**Idaho content standards.** Educational standards in math and English language arts detailing what K-12 students should know at the end of each grade and establishing consistent standards across the states, as well as ensuring that students graduating from high school are prepared to enter credit-bearing courses at two- or four-year college programs or enter the workforce.

**Illegal use of drugs.** The unlawful use, possession or distribution of substances identified under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional.

**Independent educational evaluation (IEE).** One or more assessment(s) conducted by a qualified examiner(s) who is not employed by or contracted by the public agency or district responsible for the education of the student in question.

**Individualized education program (IEP).** A written document (developed collaboratively by an IEP team made up of parents and school personnel) which outlines the special education program for a student with a disability. This document is developed, reviewed and revised at an IEP team meeting at least annually.

**Individualized education program (IEP) team.** A team established by the IDEA and comprised but not limited to the student's general education teacher, a special education teacher, a district representative, parents, the student when appropriate, and other knowledgeable persons. The team is responsible for developing an IEP, determining placement, and reviewing and revising the student's IEP and placement at least annually.



**Individualized family service plan (IFSP).** A written individualized plan for an infant or toddler (birth to three (3) years of age) with a disability that is developed by a multidisciplinary team, including the parents, under Part C of the IDEA.

**Individuals with Disabilities Education Act (IDEA).** A federal law ensuring services to children with disabilities. The IDEA governs how states and public agencies provide early intervention, special education and related services to individuals with disabilities. Infants and toddlers with disabilities (birth to two) and their families receive services under IDEA Part C. Children and youth (ages three (3) to twenty-one (21) receive special education and related services under IDEA Part B.

**Initial provision of service.** The first time that a child with a disability is provided special education and related services. This is also referred to as the “initial placement” and means the first time a parent is offered special education and related services for their child after an initial evaluation and eligibility determination.

**In-lieu of transportation.** Alternate method of transporting students to and from school.

**Instructional intervention.** An action or strategy based on an individual student’s problem that is designed to remedy, improve, or eliminate the identified problem.

**Intellectual disability.** An IDEA disability category in which significant sub-average general intellectual functioning exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student’s developmental period and adversely affect the student’s educational performance. The terms “mental retardation” and “cognitive impairment” were previously used to refer to this condition.

**Interagency agreement.** A written document that defines the coordination between the state and/or public/private agencies and/or districts with respect to the responsibilities of each party for providing and funding special education programs and special education and related services.

**Interim alternative educational setting (IAES).** The educational setting in which a district may place a student with a disability, for not more than forty-five (45) school days, if the student while at school, on school premises or at a school function carries a weapon or possesses a weapon; knowingly possesses, uses, sells or solicits the sale of illegal drugs or controlled substances; or has inflicted serious bodily injury upon another person. An IAES may also be ordered by a due process hearing officer based upon evidence that maintaining the current placement is substantially likely to result in injury to the student or others.

**Interim IEP.** A short-term IEP with all the components of a standard IEP developed by the IEP team. It may be used for students transferring from other districts pending the development of the standard IEP or other purposes as needed.

**Interpreting services.** The process of providing accessible communication between and among persons who are deaf, hard of hearing, or deaf-blind, and those who are hearing. The process includes, but is not limited to, communication between American Sign Language or other form of manual communication and English. The process may also involve various other modalities that involve visual, gestural and tactile methods including oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell.

**Itinerant specialist.** A teacher who normally travels and provides services to students in different schools or in the home or consults with teachers and administrators.

**Joint custody.** A court order awarding custody of a minor child to both parents and providing that physical and/or legal custody shall be shared by the parents.

**Joint legal custody.** A court order providing that the parents of a child are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of the child.

**Joint physical custody.** A court order awarding each parent significant periods of time in which a child resides with or is under the care and supervision of each parent. The actual amount of time is determined by the court.

**Language impairment.** An IDEA disability category in which a delay or disorder exists in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems and which adversely affects the student's educational performance. A language impairment may involve any one or a combination of the following: the form of language (morphological and syntactic systems); the content of language (semantic systems); and/or the function of language in communication (pragmatic systems).

**Learning disability.** See "specific learning disability."

**Least restrictive environment (LRE).** The IDEA requirement that students with disabilities, including those in public or private institutions or other care facilities, be educated with students who are nondisabled to the maximum extent appropriate.

**Limited English proficient (LEP).** An individual aged three (3) to twenty-one (21), who is enrolled or preparing to enroll in elementary or secondary school, he or she was not born in the United States or his or her native language is a language other than English; he or she is a Native American or Alaska Native, or a native resident of the outlying areas; he or she comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or the individual is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant. The LEP

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individual's difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the him or her the ability to meet the State's proficient level of achievement on State assessments; the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.

**Listening comprehension.** For the purpose of specific learning disability eligibility, refers to the understanding of the implications and explicit meanings of words and sentences of spoken language. This includes following directions, comprehending questions, and listening and comprehending in order to learn (e.g., auditory attention, auditory memory, and auditory perception). Listening comprehension also includes the ability to make connections to previous learning.

**Local district.** See "district" and "local educational agency (LEA)."

**Local educational agency (LEA).** A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. See "district."

**Manifestation determination.** A determination by the parent and relevant members of the IEP team of whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the LEA's failure to implement the IEP.

**Mathematics calculation.** For the purpose of specific learning disability eligibility, this refers to the knowledge and retrieval of mathematical facts and the application of procedural knowledge in computation.

**Mathematics problem solving.** For the purpose of specific learning disability eligibility, refers to the ability to apply mathematical concepts and understandings to real-world situations, often through word problems. It is the functional combination of computation knowledge and application knowledge, and involves the use of mathematical computation skills and fluency, language, reasoning, reading, and visual-spatial skills in solving problems. Essentially, it is applying mathematical knowledge at the conceptual level.

**McKinney-Vento Homeless Assistance Act.** This law is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this law, state educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth.

**Mediation.** A voluntary, confidential, and structured process during which an SDE-contracted individual is appointed to serve as an impartial and neutral third party to help parents and district or agency personnel resolve an IDEA-related conflict. Mediation usually results in a written, legally-binding agreement that is mutually acceptable to both parties and enforceable in court.

**Medicaid services (school-based).** Those services, assessment, and plan development for students receiving Medicaid which school districts may bill for reimbursement with the consent of the parent.

**Medical services.** Medical services mean services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

**Middle school.** A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12).

**Migrant student.** A student who has not graduated from high school or completed a high school equivalency certificate and resides within a family that is composed of migrant fisher or agricultural workers. The student has moved within the preceding thirty-six (36) months in order for the family to obtain or seek this type of temporary or seasonal employment that is a principal means of livelihood.

**Monitoring.** An activity conducted by the State Department of Education to review a school district's compliance with federal laws, regulations, and state rules.

**Multiple disabilities.** An IDEA disability category in which two or more impairments co-exist (excluding deaf-blindness), whose combination causes such severe educational needs that the student cannot be accommodated in special education services designed solely for one of the impairments.

**Multi-tiered system of support (MTSS).** A systemic educational practice of matching educational instruction and interventions to the needs of students. MTSS is a data-driven model involving frequent monitoring of student progress to determine if interventions are needed to improve individual student outcomes using evidenced-based practices.

**Native language.** The language or mode of communication normally used by an individual or, in the case of a student, the language normally used by the student's parents. In all direct contact with a student, the native language would be the language or mode of communication normally used by the student in the home or learning environment.

**New teacher.** A teacher who has less than one (1) year of teaching experience.

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**Nonpublic school.** An educational institution or program providing instruction outside a public school, including but not limited to a private school or homeschool.

**Nonpublic student.** Any student who receives educational instruction outside of a public school, including but not limited to a private school or homeschool student.

**Nonprofit.** The term ‘nonprofit,’ as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one (1) or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

**Nursing services.** See “School health services.”

**Objectives.** Measurable, intermediate steps that describe the progress the student is expected to make toward an annual goal in a specified amount of time; similar to a benchmark.

**Occupational therapist.** A professional licensed by the Occupational Therapy Licensure Board of Idaho who, in a school setting, is responsible for assessing fine motor skills, including student’s use of hands and fingers and developing and implementing plans for improving related motor skills. The occupational therapist focuses on daily living skills such as eating, dressing, schoolwork, play, and leisure.

**Office of special education programs (OSEP).** The branch of the Office of Special Education and Rehabilitative Services (OSERS) within the U.S. Department of Education which is responsible for administering programs relating to the free appropriate public education to all eligible beneficiaries under the IDEA.

**Oral expression.** For the purpose of specific learning disability eligibility, the ability to convey wants, needs, thoughts, and ideas in a meaningful way using appropriate syntactic, pragmatic, semantic, and phonological language structures. It relates to a student’s ability to express ideas, explain thinking, retell stories, categorize, and compare and contrast concepts or ideas, make references, and problem solve verbally.

**Orientation and mobility (O&M) services.** Services provided by qualified personnel to blind and visually impaired students by qualified personnel to enable these students to attain systematic orientation to and safe movement within the home, school, and community, including teaching (1) spatial and environmental concepts and use of information received by the senses to establish, maintain, or regain orientation and line of travel; (2) use of the long white cane, or a service animal, as appropriate to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; (3) understanding and use of remaining vision and distance low vision aids; and (4) other concepts, techniques, and tools.

**Orthopedic impairment.** An IDEA disability category that includes severe orthopedic impairments that adversely affects a student’s educational performance and are caused

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by congenital anomaly (e.g., clubfoot, absence of an appendage, etc.); disease (e.g., poliomyelitis, bone tuberculosis, etc.); or from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contracture).

**Other health impairment (OHI).** An IDEA disability category in which a student exhibits limited strength, vitality or alertness, including heightened alertness to environmental stimuli that results in limited alertness with the respect to the educational environment that is due to chronic or acute health problems (such as asthma, ADD or ADHD, cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke) to such a degree that it adversely affects the student's educational performance.

**Paraprofessional.** A noncertified, non-licensed individual who is employed by a district and who is appropriately qualified, trained and supervised in accordance with state standards to assist in the provision of special education and related services.

**Parent.** As defined by IDEA, a parent is: (1) a biological or adoptive parent of a child; (2) a foster parent who has lived with the child for six (6) or more months; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed by the school district. If the child is a ward of the state, the judge overseeing the child's case may appoint the surrogate. The surrogate may not be an employee of the state or local education agency or any other agency that is involved in the education or care of the child, has no personal or professional interest which conflicts with the interest of the child, has knowledge and skills that ensure adequate representation of the child.

**Part B.** Part of the IDEA that relates to the assistance to states for the education of students with disabilities who are ages three (3) through the semester in which a student turns twenty-one (21). Part B is administered by the State Department of Education and carried out by school districts and other public agencies.

**Part C.** Part of the IDEA that relates to the assistance to states for the education of children with disabilities and the early intervention programs for infants and toddlers, ages birth through two (2), with disabilities. In Idaho, Part C is administered by the Department of Health and Welfare.

**Peer-reviewed research.** A higher level of non-biased research, which has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective and scientific review.

**Personally identifiable information (PII).** Includes but not limited to, student's name, name of parent or other family member, address of student or family, social security number, student number, list of personal characteristics, or other information that would make it possible to identify the student with reasonable certainty.

**Phonology.** The process used in our language that has common elements (sound patterns) which affect different sounds.

**Phonology disorders.** Phonology disorders are errors involving phonemes, sound patterns and the rules governing their combinations.

**Physical therapist.** A professional licensed by the Idaho Physical Therapy Licensure Board who, in the school setting, assesses students' needs and provides interventions related to gross motor skills. In working with students with disabilities, the physical therapist provides treatment to increase muscle strength, mobility, endurance, physical movement and range of motion; improve posture, gait and body awareness; and monitor function, fit and proper use of mobility aids and devices.

**Plan for improving results (PIR).** A plan developed collaboratively between the SDE and a district to address needs identified as a result of the district's self-evaluation and/or an SDE monitoring visit.

**Positive behavioral intervention and supports (PBIS).** Positive reinforcement, rewards or consequences provided to a child for specific instances of behavior that impedes learning or the learning of others (or refraining from behavior) as appropriate for the purpose of allowing the student to meet his or her behavioral goals/benchmarks.

**Power of attorney.** The designation, in writing, by a competent person of another to act in place of or on behalf of another person.

**Present level of performance (PLOP) or Present levels of academic achievement and functional performance (PLAAFP).** Used interchangeably, these area statement of the student's current level of achievement or development in an area of need and how the student's disability affects his or her involvement and progress in the general education curriculum offered to students without disabilities. For preschool students, as appropriate, how the disability affects the child's participation in appropriate activities.

**Private school.** A nonpublic school that is not funded by or under federal or state control or supervision. A homeschool is not a private school.

**Private school student.** Any student who receives educational instruction in a school not funded by or under federal or state control or supervision is considered a nonpublic private school student. A homeschool student is not a private school student.

**Problem-solving team.** A general education team established at the local level, whose name may vary, with the purpose to problem solve regarding the educational needs of any student. Procedures, meeting schedules, and team membership are established locally. The team is likely to include general educators and administrators and could include counselors, specialists, and special education personnel. Parent participation is valuable, but not required.

**Procedural safeguards.** The requirements of Part B of the IDEA that are designed to allow a parent/adult student to participate meaningfully in decisions concerning an appropriate educational program for a student with a disability and, if necessary, dispute such decisions. Also referred to as special education rights.

**Professional development.** High-quality comprehensive programs that are essential to ensure that persons responsible for the education or transition of students with disabilities possess the skills necessary to address the educational and related needs of these students. These should be scientifically-based and reflect successful practices including strategies for recruiting, hiring, preparing and retaining personnel.

**Public expense.** When a district or public agency either pays for the full cost of an evaluation or special education services or ensures that it is otherwise provided at no cost to the parent; for example, through joint agreements with other state agencies.

**Reading components.** The term “reading” means a complex system of deriving meaning from print that requires all of the following skills, which are the essential components of reading instruction: (1) Phonemic awareness: The skills and knowledge to understand how phonemes, or speech sounds, are connected to print; (2) Phonics: The ability to decode unfamiliar words; (3) Reading fluency: The ability to read fluently; (4) Vocabulary development: Sufficient background information and vocabulary to foster reading comprehension; and (5) Reading comprehension: The development of appropriate active strategies to construct meaning from print.

**Reading comprehension.** For the purpose of specific learning disability eligibility, refers to the ability to understand and make meaning of written text and includes a multifaceted set of skills. Reading comprehension is influenced by oral language development including new vocabulary acquisition, listening comprehension, working memory, application of comprehension-monitoring strategies, and understanding of text structure including titles, paragraphing, illustrations, and other details. Reading comprehension is significantly affected by basic reading skills.

**Reading fluency.** For the purpose of specific learning disability eligibility, refer to the ability to read words and text accurately, using age-appropriate chunking strategies and a repertoire of sight words, and with appropriate rate, phrasing, and expression (prosody). Reading fluency facilitates reading comprehension.

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**Reasonable measures.** A combination of recorded written and/or oral documentation to meet notification requirements of the district to parents/adult students.

**Reasonable time.** A period of ten (10) calendar days unless there are exceptional circumstances that warrant a shortened period of time such as an emergency or disciplinary meeting.

**Reevaluation.** A periodic evaluation conducted at least every three years, or more frequently if conditions warrant, or if the student's parent or teacher requests an evaluation of a student already identified as eligible for services under the IDEA. Reevaluations may occur not more than once a year, unless the parent and the district agree otherwise or may be waived by the parent and LEA.

**Related services.** Refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education and includes the following: speech therapy, language therapy, audiology services, psychological services, physical therapy, occupational therapy, recreation, therapeutic recreation, early identification and assessment of disabilities in children, counseling services, rehabilitation counseling, orientation and mobility services, interpreting services, medical services for diagnostic or evaluation purposes, school health/nursing services (excluding surgically implanted medical devices), social work services in schools, and parent counseling and training.

**Response to intervention (RTI).** A formal process for evaluating student response to scientifically research-based interventions, consisting of the core components of: (1) problem identification, (2) problem analysis, (3) applying research-based interventions, and (4) progress monitoring/decisions rules. As used in the IDEA, RTI is only mentioned as an alternative to the severe discrepancy criteria in determining whether a student has a Specific Learning Disability.

**Resolution session.** A meeting involving the parents, relevant members of the IEP team, and a representative of the district who has decision-making authority, required prior to a due process hearing if the parent has requested the due process hearing.

**School-age.** Includes all persons between the ages of five (5) (i.e., turns five (5) on or before September 1) and twenty-one (21) years who reside in Idaho. For students with disabilities who qualify for special education and related services under the IDEA, school-age begins at age three (3) and continues through the semester of school in which the student attains the age of twenty-one (21).

**School day.** Any day, including a partial day, when all students are in attendance at school for instructional purposes.

**School health services.** School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse.

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School health services are services that may be provided by either a qualified school nurse or other qualified person.

**School psychologist.** A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Psychology and is charged with the responsibility to conduct assessments and determine a student’s cognitive, academic, social, emotional, and/or behavioral functioning. This professional also provides direct services to students, consults with district staff, and may be a member of the evaluation and/or IEP team.

**Scientifically-based research (SBR).** Scientifically based research (as defined in the ESEA) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that (1) employs systematic, empirical methods that draw on observation or experiment; (2) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (5) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

**Screening.** An informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards.

**Secondary school.** The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade. The term secondary school is not defined in Idaho Code. See “high school.”

**Section 504 of the Rehabilitation Act of 1973.** A federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."

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**Secular.** An adjective used to describe a private, non-religious educational entity.

**Serious bodily injury (SBI).** Bodily injury which involves (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of bodily member, organ, or mental faculty.

**Services plan (SP).** Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary.

**Setting.** The location where special education services occur.

**Significant cognitive impairment.** A designation given to a small number of students with disabilities for the purposes of their participation in AAs. Having a significant cognitive impairment is not solely determined by an IQ test score, nor based on a specific disability category, but rather a complete understanding of the complex needs of a student. Students with significant cognitive impairments have a disability or multiple disabilities that significantly impact their adaptive skills and intellectual functioning. These students have adaptive skills well below average in two or more skill areas and intellectual functioning well below average (typically associated with an IQ below 55).

**Social worker.** A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Social Work and helps students and teachers address social and emotional issues. This professional may be a member of the evaluation and/or IEP team.

**Socially maladjusted.** A child who has a persistent pattern of violating societal norms with truancy, substance abuse, a perpetual struggle with authority, is easily frustrated, impulsive, and manipulative.

**Special education.** Specially designed instruction or speech/language therapy at no cost to the parent to meet the unique needs of a student with a disability including instruction in the classroom, the home, hospitals, institutions, and other settings; instruction in physical education; speech therapy and language therapy; transition services; travel training; assistive technology services; and vocational education.

**Special educational placement.** Refers to the provision of special education services along the continuum of placements under the least restrictive environment requirements, rather than a specific place or location, such as a specific classroom or school. The balance of setting and services to meet an individual student's needs.

**Specially designed instruction.** Adapting the content, methodology, or delivery of instruction to address the unique needs of an eligible student that result from the student's disability and to ensure access to the general education curriculum so that the student can meet the education standards of that district that apply to all students.

**Specific learning disability (SLD).** A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional behavioral disorder, or of environmental, cultural, or economic disadvantage.

**Speech impairment.** A speech-language disorder, such as speech fluency, impaired articulation/phonology, a language impairment, or a voice impairment that adversely affects a student's educational performance.

**Speech-language pathologist.** A professional holding an Idaho Pupil Personnel Services Certificate who can assess and treat persons with speech, language, voice, and fluency disorders. This professional coordinates with and may be a member of the evaluation and IEP teams.

**Student (school-age).** For resident children with disabilities who qualify for special education and related services under the IDEA and subsequent amendments thereto, and applicable state and federal regulations, "school-age" shall begin at the attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.

**Stay put.** A requirement that a district or agency maintain a student with a disability in his or her present educational placement while a due process hearing or subsequent judicial proceeding is pending unless the parties agree otherwise.

**Substantial evidence.** A legal term that means "beyond a preponderance of the evidence" or "beyond more likely than not."

**Summary of performance (SOP).** A document given to secondary students when a student exits special education as a result of earning a diploma or aging out. This document describes the academic achievement and functional performance along with recommendations to assist the student in meeting post-secondary goals.

**Supplementary aids and services.** Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

**Surrogate parent.** An individual assigned and trained by a district or an agency to assume the rights and responsibilities of a parent under the IDEA when no parent can be identified or located for a particular student or when the child is a ward of the state.

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**Suspension.** A temporary stop, delay, interruption, or cessation of educational service due to a violation of the student conduct code. This may include in-school suspension.

**Traditional public school.** "Traditional public school" means any school existing or to be built that is operated and controlled by a school district in this state as per Idaho Statute, Chapter 33-5202A(7).

**Transition age student.** A student whose upcoming IEP will be in effect when the student is sixteen (16) to twenty-one (21) years of age.

**Transition services.** A coordinated set of activities for a student with a disability designed within a results oriented process focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post-school activities. Services are based on individual student needs addressing instruction, related services, community experiences, employment, post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

**Traumatic brain injury (TBI).** An IDEA disability category that refers to an injury to the brain caused by an external physical force and resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perception and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

**Travel training.** Instruction to students with significant cognitive impairments and any other students with disabilities who require instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within the home, school, and community.

**Twice exceptional.** Twice exceptional students are identified as gifted/ talented in one or more areas of exceptionality (specific academics, general intellectual ability, creativity, leadership, visual or performing arts) and also identified with a disability defined by State eligibility criteria (SLD, ED, Autism, Orthopedic Impairments, etc.) that qualifies the student for an IEP.

**Unilateral placement.** A decision by a parent, at his or her own discretion, to remove his or her child with a disability from a public school and enroll the student in a private facility because the parent believes that the district did not provide FAPE in a timely manner.

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**Universal design.** A concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and service that are made usable with assistive technologies.

**Visual impairment including blindness.** An IDEA disability category characterized by an impairment in vision that, even with correction, adversely affects a student’s educational performance. The term includes partial sight, which refers to the ability to use vision as one channel of learning if educational materials are adapted, and blindness.

**Voice disorder.** (See “speech impairment”) Refers to the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

**Voluntary enrollment in a private placement.** Enrollment by a parent of a student with a disability in a private facility or homeschool for religious, philosophical, curricular, or other personal reasons.

**Ward of the state.** A child who, as determined by the State where the child resides, is a foster child (unless the foster parent meets the definition of a “parent” in Section 34 CFR §300.30), a ward of the State, or in the custody of a public child welfare agency.

**Weapon.** (See “dangerous weapon”)

**Written expression.** For the purpose of specific learning disability eligibility, the processes related to the transcription of ideas and thoughts into a written product, such as handwriting and spelling. It also involves generative processes such as the communication of ideas, thoughts, and feelings. Required skills include using oral language, thought, grammar, text fluency, sentence construction, and planning to produce a written product.

**Written notice.** A written statement provided by the district to a parent/adult student within a reasonable amount of time before proposing or refusing to initiate or change to the identification, evaluation, educational placement, or the provision of FAPE.

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## LEGAL CITATIONS

### Introduction

The legal citations and topical reference for this Manual follow the chapter outlines and present references to federal and state statutes, regulations and rules for the enforcement of IDEA. The citations listed are the primary references for each chapter and section, not an all-inclusive reference list.

The entire IDEA and regulations are posted on the [U.S. Department of Education website](#).

[Idaho statutes and rules](#).

Some of the policies/procedures stated in this Manual are based upon case law and letters of clarification from the U.S. Office of Special Education Programs (OSEP).



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**Chapter 1: Legal Citations**

**Legal Citations**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Child Find	300.111	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.d
2.	Procedural Safeguards	300.121 300.504	IDAPA 08.02.03.109.05
3.	Student Eligibility under the IDEA	300.8 300.122	Idaho Code § 33-2001(3) Idaho Code § 33-2001(5) IDAPA 08.02.03.109.03
4.	Free Appropriate Public Education (FAPE)	300.17 300.101-300.102 300.148	Idaho Code § 33-201 Idaho Code § 33-2002 Idaho Code § 33-2010 Idaho Code § 20-504(a)(3) IDAPA 08.02.03.109.02.a
5.	District Programs and Services	300.107-300.110 300.117	Idaho Code § 33-2002
6.	Individualized Education Program (IEP)	300.22 300.320-300.328	IDAPA 08.02.03.109.04
7.	Least Restrictive Environment (LRE)	300.114-300.120	IDAPA 08.02.03.109.04.c
8.	Summary of Activities that May Lead to Special Education Services	300.102(a) 300.112 300.116 300.300-300.307 300.309-300.311 300.320-300.324 300.503-300.504 300.622	IDAPA 08.02.03.109.02.h Idaho Code § 33-2002 IDAPA 08.02.03.109.03 IDAPA 08.02.03.109.04

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**Chapter 2 Free Appropriate Public Education (FAPE)**

**Legal Citations**

Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	Definition of Free Appropriate Public Education (FAPE)	300.17	
2.	Provision of FAPE	300.101-300.111 300.132 300.209	Idaho Code § 33-201 Idaho Code § 33-2002 Idaho Code § 33-2009 Idaho Code § 33-2010 Idaho Code § 20-504a IDAPA 08.02.03.109.02.c
3.	FAPE Considerations	300.101-300.111	IDAPA 08.02.03.109.02 a IDAPA 08.02.03.109.02 c

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**Chapter 3 Child Find**

**Legal Citations**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	District Responsibility	300.111 300.131	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c IDAPA 08.02.03.109.02.d IDAPA 08.02.03.109.02.h
2.	Locating Students	300.111 300.124 300.154	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c IDAPA 08.02.03.109.02.d IDAPA 08.02.03.109.02.h
3.	Identification	300.302 300.226	IDAPA 08.02.03.109.02.h
4.	Referral to Consider a Special Education Evaluation	300.174 300.301 300.302 300.305 300.306 300.308 300.309 300.504	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.h

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**Chapter 4 Eligibility**

**Legal Citations**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Evaluation Team	300.306(a)(1) 300.304(c)(1)(iv)	IDAPA 08.02.03.109.03
2.	Purpose of an Evaluation	300.15	IDAPA 08.02.03.109.03
3.	Written Notice and Consent for Assessment	300.9 300.300 300.503	IDAPA 08.02.03.109.02.a
4.	Information from Other Agencies or Districts	300.622	IDAPA 08.02.03.109.02.a
5.	Evaluation and Eligibility Determination Procedures	300.8 300.39 300.300-300.301 300.304-300.311	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.03
6.	Reevaluation and Continuing Eligibility	300.300 300.303 300.305-300.306 300.308	IDAPA 08.02.03.109.02.a
7.	State Eligibility Criteria	300.8 300.307	IDAPA 08.02.03.109.03



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Chapter 5 Individualized Education Programs

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Section	Topic	IDEA Regulations 34 CFR §	Idaho Code IDAPA Reference
1.	IEP Initiation	300.320-300.328 300.22 300.39 300.501 300.306(c)(2)	IDAPA 08.02.03.109.04
2.	IEP Development	300.320-300.325 300.34 300.154(d)(e) 300.42 300.5-300.6 300.105(b) 300.44 300.113 300.106 300.114-300.116 300.327 300.536 300.43 300.300(b) 300.300(e)(2) 300.305(e) 300.323(d)	IDAPA 08.02.03.109.04 Idaho Code § 33-1304 IDAPA 08.02.03.109.05 Idaho Code § 33-2002(4)
3.	IEP Reviews	300.324	
4.	IEPs for Transfer Students	300.323(e)-(g)	IDAPA 08.02.03.109.04 (e) IDAPA 08.02.03.109.04 (f)
5.	IEPs for Children from the Infant/Toddler Program	300.323(b)	
6.	Students with Disabilities in Adult Prisons	300.102(a)(2)(i)(A)(B) 300.324(d)	20 U.S. Code § 1412

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**Chapter 6 Least Restrictive Environment**

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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Least Restrictive Environment Considerations	300.114-300.120	IDAPA 08.02.03.109.04.a IDAPA 08.02.03.109.04.c
2.	District Responsibility for Continuum of Settings and Services	300.115-300.116	IDAPA 08.02.03.109.04.a IDAPA 08.02.03.109.04.c
3.	Federal Reporting of LRE	300.600-604	IDAPA 08.02.03.109.04.g

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**Chapter 7 Discontinuation of Services, Graduation, and Grading**

**Legal Citations**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Discontinuation of Services	300.305 300.306 300.102 (a)(3) 300.503	Idaho Code § 33-201 Idaho Code § 33-209 IDAPA08.02.03.109.07
2.	Graduation	300.102. (a)(3) (i- iii) 300.320 (b)(2)	IDAPA 08.02.03.109.07
3.	Transcripts and Diplomas		<i>Letter to Runkel</i> , 25 IDELR 387 (OCR 1996) 20 U.S. Code § 1412
4.	Grades, Class Ranking, and Honor Roll		<i>Letter to Runkel</i> , 25 IDELR 387 (OCR 1996)

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**Chapter 8 Charter Schools**

**Legal Citations**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Definition and Parent/Student Rights	300.7 300.209(a)	Idaho Code § 33-5205 Idaho Code § 33-5206
2.	Responsibility for Services	300.2 300.209(b-c)	Idaho Code § 33-5205 IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c
3.	Essential Components of a Special Education Program	300.209	Idaho Code § 33-5205 IDAPA 08.02.03.109.02.c
4.	Charter Schools and Dual Enrollment		Idaho Code § 33-203 Idaho Code § 33-2002
5.	Funding	300.704(b)(4)(ix) 300.705 300.209	Idaho Code § 33-5208 Idaho Code § 33-1002B Idaho Code § 33-2004 Idaho Code § 33-2005 Idaho Code § 33-5208 (9)



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**Chapter 9 Private School Students**

**Legal Citations**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Definitions Private School Placements	300.13 300.36 300.130 300.145-300.148	IDAPA 08.02.03.109.02.d
2.	Students Voluntarily Enrolled by Parents	300.133 300.134 300.135 (a-b) 300.137 (b)(2) 300.136 (a)(1-2) 300.136 (b)(1-3) 300.111 (1)(i-ii) 300.131 (a-f) 300.137 (a) 300.138 (a)(1-2) 300.138 (c)(2) 300.132 (a-b) 300.138 (2) (b) 300.132 (b) 300.138 (b) (2) 300.320 300.323 (b) 300.139 (b) (1-2) 300.140 (a-c) 300.133 300.144	IDAPA 08.02.03.109.02.d
3.	Students Placed by the District	300.145-300.146 300.320-300.325	IDAPA 08.02.03.109.02.d
4.	Dual Enrollment by Parents	300.137(a)	Idaho Code § 33.203 IDAPA 08.02.03.109.02.d
5.	Students Unilaterally Placed by their Parents when FAPE is Issued	300.148 300.101	IDAPA 08.02.03.109.02.d
6.	Out of State Students Residing in Residential Facilities	300.131	IDAPA 08.02.03.109.02.d

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**Chapter 10 Improving Results**

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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Monitoring Priorities and Indicators	300.600-604	IDAPA 08.02.03.109.02
2.	Early Intervening Services	300.226 300.205 (d) 300.208 (a) (2) 300.711	IDAPA 08.02.03.109.02
3.	Personnel	300.156 300.704 (b) (4) (vii)	IDAPA 08.02.03.109.02 IDAPA 16.03.09

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**Chapter 11 Procedural Safeguards**

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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
1.	Procedural Safeguards Notice	300.504	IDAPA 08.02.03.109.05
2.	Domestic Considerations	300.30 300.519 300.320 300.520 300.030	Idaho Code § 32-717A Idaho Code § 32-717B <i>Letter to Cox 54 IDLER 60</i> (110 LRP 10357)
3.	Informed Consent	300.9 300.300	
4.	Written Notice	300.508(e) 300.503 300.300	IDAPA 08.02.03.109.05a
5.	Confidentiality and Access to Records	300.611 300.622 300.614 300.613 300.616 300.623-300.625 300.618-300.621	IDAPA 08.02.03.109.05k Idaho Code § 32-717A
6.	Independent Educational Evaluations	300.502	IDAPA 08.02.03.109.05j

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**Chapter 12 Discipline**

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2.	Actions Involving a Change of Placement	300.530-300.532 300.536	
3.	FAPE Considerations	300.530-531	Idaho Code § 33-1501
4.	Procedures for a Manifestation Determination	300.503(c-f)	Idaho Code § 33-205
5.	Other Considerations	300.532(a) 300.532(c) 300.533 300.534	IDAPA 08.02.03.109.5.c IDAPA 08.02.03.109.5.f Idaho Code § 33-209



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**Chapter 13 Dispute Resolution**

**Legal Citations**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code IDAPA Reference</b>
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2.	Informal Conflict Resolution	300.506	IDAPA 08.02.03.109.05.b
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4.	State Complaints	300.151-300.153 300.507-300.508 300.510-515 300.518	IDAPA 08.02.03.109.05
5.	Due Process Hearings	300.507-300.518	IDAPA 08.02.03.109.01.d IDAPA 08.02.03.109.05.c,e,f
6.	Expedited Due Process Hearings	300.516 300.532	IDAPA 08.02.03.109.05.g
7.	Appeals and Civil Action	300.517	
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## CHAPTER 1: OVERVIEW

Three (3) federal laws have been passed to ensure educational opportunities for individuals with disabilities:

- the Individuals with Disabilities Education Act (IDEA)
- Section 504 of the Rehabilitation Act of 1973 (Section 504)
- the Americans with Disabilities Act of 1990 (ADA)

The last reauthorization of the IDEA was in 2004 and aligned the law with the Elementary and Secondary Education Act of 2001. In 2015, the Every Student Succeeds Act (ESSA) was passed. Revisions to the IDEA regulations were issued in 2007, 2008, 2013, and 2014 with additional regulatory changes to the IDEA currently pending. The IDEA preserves the basic structure and civil rights of previous reauthorizations and emphasizes both *access* to education and *improved results* for students with disabilities based on data and public accountability.

This Manual provides information regarding district responsibilities under the IDEA and relevant Idaho legal requirements.

### Section 1. Child Find

The district is responsible for establishing and implementing an ongoing Child Find system. Child Find activities are conducted to create public awareness of special education programs; to advise the public of the rights of students; and, to alert community residents of the need for identifying and serving students with disabilities from the age of three (3) through the semester in which they turn twenty-one (21).

The district is also responsible for coordinating with the Department of Health and Welfare regarding the Child Find system for children ages birth through two (2) years. The Child Find system includes children with disabilities who are homeless, as defined by the McKinney-Vento Homeless Act (see Glossary), wards of the state, or attending private schools, regardless of the severity of the disability.

See Chapter 3 for more information on Child Find.

### Section 2. Procedural Safeguards

A parent/adult student has specific procedural safeguards assured by the IDEA and state law. The district provides a document titled *Procedural Safeguards Notice* to parents/adult students that contain a full explanation of special education rights.

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See Chapter 11 for more information on procedural safeguards.

### Section 3. Student Eligibility under the IDEA

To be eligible for services under the IDEA, a student must have a disability that:

1. meets the Idaho state disability criteria as established in this manual;
2. adversely affects educational performance; and
3. results in the need for specially designed instruction and related services.

The process used to make this determination is called “eligibility evaluation.” During an eligibility evaluation, an evaluation team (which includes educators and the parent/adult student) reviews information from multiple sources including, but not limited to, general education interventions, formal and informal assessments, and progress in the general curriculum in making the eligibility determination.

See Chapter 4 for more information on eligibility and evaluation.

### Section 4. Free Appropriate Public Education (FAPE)

The district (LEA) is required to ensure that a free appropriate public education (FAPE) is available to students who reside in the district and are eligible for special education. FAPE is individually determined for each student that qualifies for special education. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

See Chapter 2 for more information on FAPE.

### Section 5. District Programs and Services

The district shall ensure that the same array of academic, nonacademic, and extracurricular activities and services is available to students with disabilities as is available to students without disabilities.

#### A. Educational Programs and Services

The district shall take steps to ensure that students with disabilities have the variety of educational programs and services that are available to all other students served by the district. These may include art, music, industrial arts, consumer and homemaking education, vocational

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education, and other programs in which students without disabilities participate.

**B. Physical Education**

Physical education services, specially designed if necessary, shall be made available to every student with a disability receiving FAPE, unless the district enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

**C. Nonacademic and Extracurricular Services and Activities**

The district shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's Individualized Education Program (IEP) team, to provide nonacademic and extracurricular services and activities in a manner that affords students with disabilities equal opportunity to participate in those services and activities. This includes counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to persons with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.

**Section 6. Individualized Education Program (IEP)**

The IEP is a document that outlines how a particular student with a disability will receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). It is a working document that can be amended as the student's needs change. The IEP is created collaboratively by IEP team members, including parents, the student, if appropriate, the student's teachers, and other district personnel.

See Chapter 5 for more information on IEP development.

**Section 7. Least Restrictive Environment (LRE)**

The IDEA states that, to the maximum extent appropriate, students with disabilities are to be educated with students who are not disabled. The IEP team determines what constitutes LRE for the individual student. This includes considering that a continuum of alternative placements is available to meet the needs of children with disabilities and for special education and related services.

See Chapter 6 for more information on LRE.



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## Section 8. Summary of Activities That May Lead to Special Education Services

This section describes the steps that may lead to special education services. The activities that are within each step are often sequential, but could occur simultaneously. The process might occur in a different sequence for emergency or interim placements. A flowchart of these steps is provided at the end of this chapter.

### **A. General Education Interventions** (carried out by the problem-solving team)

A general education problem-solving team addresses student learning needs and ensures that referrals to consider special education are appropriate. The general education problem-solving process may include comprehensive early intervening services based on whole-school approaches such as: a three-tiered model using scientifically based reading (and other content area) programs, positive behavior supports, and a response-to-intervention system.

Accommodations and instructional and/or behavioral interventions shall be attempted during the problem-solving process. These accommodations and interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and shall be clearly documented.

If the student shows adequate progress with general education interventions and accommodations, a referral to consider a special education evaluation may be unnecessary. However, if general education interventions and accommodations need to be provided on an ongoing basis or if the student shows limited or no progress *and* the student's performance is significantly discrepant from peers, a referral to consider a special education evaluation may be warranted. Also, a parent of a student may initiate a referral for special education at any time and a district may not deny that referral simply because the student had not gone through the general education intervention process.

See Chapter 4 for more information on problem-solving activities and the three tiered model.

### **B. Referral to Consider a Special Education Evaluation**

Following the problem-solving team's review of the student's response to general education interventions, if the team suspects that the student has a disability and may be in need of special education, the problem-solving team shall initiate a referral to consider a special education evaluation. The purpose of this referral is to bring a student to the attention of an evaluation team so that it can determine whether to conduct a special education evaluation.

A referral for a special education evaluation marks the point at which procedural safeguards are provided to the parent. The parent/adult student shall be involved in decisions once a written referral has been made to the evaluation team to consider a special education evaluation.

The evaluation team shall review existing data, which may include progress monitoring data from the student's IEP, assessments and information provided by the parent/adult student, and

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document the review process, to determine the need for further assessment. The evaluation team will procure the necessary written consents for additional assessments.

See Chapter 3 for more information on the referral process to consider a special education evaluation and who can make a referral.

**C. Written Notice and Written Consent** (completed by an evaluation team)

Before administering assessments as part of the special education evaluation, written notice shall be provided to the parent/adult student along with the procedural safeguards and written consent shall be requested from the parent/adult student. The district may use a single form that meets the requirements of written notice and consent for assessment. In addition, if the evaluation team needs information for an evaluation from a non-educational agency or an individual, such as a doctor, written consent for the release of information shall be obtained from the parent/adult student.

See Chapter 4 and Chapter 11 for more information.

**D. Evaluation and Eligibility Determination** (completed by evaluation team)

After receiving consent, the evaluation team shall schedule assessments and ensure they are conducted. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related-services needs. Next, the evaluation team reviews the assessment data, the response to general education targeted interventions, and parent/adult student input and recommendations to determine whether the student is eligible for special education services. Then the evaluation team compiles an *Eligibility Report* using data collected from individual assessments and provides the parent/adult student with a copy of the report. The eligibility report shall address, to the extent required, the general education classroom, targeted interventions previously employed and the student's response to those interventions.

For children transferring from the Infant Toddler Program (ITP), eligibility shall be determined and an IEP developed or IFSP adopted by the child's third (3<sup>rd</sup>) birthday. See Chapter 5 for guidance on expectations. If a child turns three (3) during the summer, and the child does not require Extended School Year (ESY) services, special education and related services may begin in the new school year.

For children ages three (3) through twenty-one (21), the time between receiving consent for initial assessment and determining eligibility cannot exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days (IDAPA 08.02.03.109.03), with the exception of ITP referrals which must be completed by the child's third (3<sup>rd</sup>) birthday. The parent and district may agree, in writing, to extend the sixty (60) day period. See Chapter 4 for guidance on timeline exceptions.

If the student is not eligible, the district shall provide written notice to the parent/adult student that the evaluation data does not indicate eligibility under the IDEA even though the parent is a

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member of the team that determines eligibility. The district shall maintain documentation in permanent records.

If the parent/adult student disagrees with the district's evaluation and/or the eligibility determination, he or she has the right to request SDE mediation, file a due process hearing challenging the decision, or seek an independent educational evaluation (IEE). See Chapter 11 for more information.

**E. IEP Development and Implementation** (completed by IEP team)

The following activities are included in the development and implementation of the IEP:

1. Conduct an IEP team meeting to develop and implement an IEP within thirty (30) calendar days of a determination that the student is eligible for special education and related services. For eligible students, the IEP can be developed at the same meeting at which eligibility is determined if all required IEP team members are present and agree to proceed.
2. After determining goals and services, determine the placement in the LRE in which the IEP can be implemented. For those goals that are aligned to the alternate academic achievement standards, objectives and benchmarks shall be written.
3. Obtain documentation indicating participation in the IEP team meeting.
4. Obtain consent from the parent/adult student for initial provision of special education services.
5. Provide copies of the IEP to the parent/adult student and other participants, as appropriate.
6. Provide written notice to the parent/adult student before implementing the IEP if the provision of FAPE or the educational placement is proposed to change or if the team refused to make a change based on the parent's request.
7. Make arrangements for IEP services by informing staff of their specific responsibilities under the IEP.
8. Implement the IEP as soon as possible, but no later than within thirty (30) days of eligibility. (See Chapter 4 for guidance on timeline exceptions.)
9. Provide the parent/adult student with periodic reports of the student's progress towards IEP goals (such as quarterly or other periodic reports, concurrent with the issuance of report cards).

See Chapter 5 for more information on IEP development.

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**F. Review and Revision of IEP and Placement Decision** (completed by IEP team)

1. Send the parent/adult student a *Procedural Safeguards Notice* with an invitation to attend an IEP team meeting (required at least once annually).
2. Convene an IEP team meeting under these circumstances:
  - a. when changes in the IEP are requested or if the student is not making progress. In addition, the IDEA allows changes to the IEP without an IEP team meeting between the annual review dates if the district and parent agree; and
  - b. at least annually to develop a new IEP
3. Provide a copy of the revised IEP to the parent and the adult student when an IEP is amended or rewritten. In addition, written notice is required if the district is proposing to change or refusing to change the educational placement or the provision of FAPE.
4. Under Idaho regulations, the parent/adult student has the right to file a written objection to an IEP program change or placement change. If, within ten (10) calendar days of receiving written notice from the district, the parent/adult student files a written objection, the district shall not implement the change(s) to which the parent/adult student objects. See Chapter 11 for more information.

See Chapter 5 for more information on IEP reviews.

**G. Reevaluation** (completed by evaluation team)

Reevaluations are conducted by the evaluation team. A reevaluation shall be completed as follows: (a) at least every three years, (b) when requested by the student's teacher or the parent/adult student, and (c) whenever conditions warrant. Approximately one month before conducting the reevaluation, the district shall inform the parent/adult student that a reevaluation is due. The parent/adult student and district may agree in writing that a three-year reevaluation is not necessary. In addition, a reevaluation need not be conducted more than once per year unless the district and the parents agree.

The evaluation team shall include the following activities in the reevaluation process:

1. Invite the parent/adult student to participate in the review of existing data and to determine what additional data, if any, is needed as part of the reevaluation. Unless the parent/adult student requests that the evaluation team members meet as a group in a formal meeting, data can be gathered from individual team members at various times using a variety of methods.
2. Obtain written consent from the parent/adult student if additional assessments shall

- 
- be conducted. After gaining consent, ensure the completion of assessments and eligibility reports. The IDEA does not require consent for a reevaluation if the district has made documented attempts to get consent and the parent has not responded.
3. If the evaluation team determines that additional assessments are not needed, provide written notice to the parent/adult student of this decision and of the parent's/adult student's right to request assessments.
  4. Prepare an *Eligibility Report* that details the eligibility requirements for the student, even when no new assessments are conducted. The report shall address each required eligibility component.
  5. Provide the parent/adult student with a copy of the *Eligibility Report*.

Determine whether revisions to the IEP are necessary and implement an IEP, if the student continues to be eligible. If the student is not eligible, follow procedures to discontinue services.

See Chapter 4 for more information on reevaluation.

#### **H. Discontinuation of Services**

Provide prior written notice to the parent/adult student informing them of the discontinuation of services when:

1. The evaluation team determines the student no longer meets eligibility requirements for special education services; or
2. The student meets the district and State requirements that apply to all students for receipt of a regular high school diploma; or
3. The student completes the semester in which he or she reaches the age of twenty-one (21) years.
4. Parent/adult student revokes consent for special education services.

When a student exits from special education as a result of graduating or aging out, the district shall provide the student with a summary of his or her academic achievement and functional performance, along with recommendations on how to assist the student in meeting postsecondary goals.

See Chapter 7 for more information on the discontinuation of services.

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## CHAPTER 2: FREE APPROPRIATE PUBLIC EDUCATION – TABLE OF CONTENTS

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## CHAPTER 2: FREE APPROPRIATE PUBLIC EDUCATION

The district (local education agency) is required to ensure that a free appropriate public education (FAPE) is available to residents, homeless individuals and individuals from migrant families ages three (3) to twenty-one (21) in the district and who are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

### Section 1. Definition of a Free Appropriate Public Education (FAPE)

The definition of FAPE under the IDEA means special education and related services that:

1. are provided at public expense (free);
2. are provided in conformity with an appropriately developed individualized education program, or IEP (appropriate);
3. are provided under public supervision and direction (public); and
4. include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

### Section 2. Provision of FAPE

#### A. District Obligation

The district is required to ensure that FAPE is available to students in the district who are eligible for special education. This includes students who reside in group, personal care, or foster homes, as well as institutions, if their legal guardian is a resident of Idaho, even though the guardian may reside in another Idaho school district. It also includes students who are migratory or homeless as defined by the McKinney-Vento Homeless Act (see Glossary). If a student from another state is placed in Idaho by an out-of-state agency, parent, or district, the placing district, parent, or agency is responsible for the educational costs. If a student is placed in a district by an Idaho agency, the student is entitled to FAPE and the responsible agency is determined by Idaho Code regarding the specific situation.

The district is obligated to make FAPE available to each eligible student in the district as follows:

1. The district shall provide FAPE to an individual who is at least three (3) years old and



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who qualifies for special education services unless the parent/adult student has refused special education services. Students aged three (3) to five (5) must have their special education services identified on an IEP since Idaho does not have state-funded preschool programs.

2. The district shall offer FAPE to parentally placed private school students in accordance to statutory and regulatory language, which states that parentally placed private school students with disabilities do not have an individual right to some or all of the special education and related services that the student would receive if enrolled in a public school.
3. A free appropriate public education shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade.

Note: Participation in Comprehensive Early Intervening Services neither limits nor creates a right to FAPE.

**B. Limit to District Obligation**

1. A student with a disability who has been placed in a private school or facility by the parent does not have an individual right to receive all or part of the special education and related services that the child would receive if enrolled in a public school. However the district would have Child Find responsibilities. See Chapter 9 for more information.
2. Students who are homeschooled are considered nonpublic students for the purpose of dual enrollment, however a student being homeschooled is not considered a private school student. Students who are dually enrolled in a school district's general education program may be considered for a Section 504 plan if needed to provide supports and/or accommodations for those general education courses in which they are enrolled. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

Homeschool students who are dually enrolled are considered to be nonpublic school students. The district shall allow homeschool students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a Section 504 plan, if needed.

Homeschool students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a

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disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

**C. When District Obligation to Provide FAPE Ends**

The District’s obligation to provide FAPE to a student ends:

1. at the completion of the semester in which the student turns twenty-one (21) years old;
2. when the student meets the district requirements and the Idaho Content Standards that apply to all students for receipt of a high school diploma; a high school diploma does not include an alternative degree that is not fully aligned with the Idaho Content Standards, such as a general educational development credential (GED);
3. when the student no longer meets the eligibility criteria for special education services, as determined by the team after a reevaluation; or
4. when a parent/adult student has revoked consent for the continued provision of special education services.

**D. Temporary Suspension of FAPE**

The district is not required to provide FAPE to an eligible student during the suspension of ten (10) cumulative school days or less during a school year (unless the district provides services to students who are not disabled who are also suspended); however, FAPE must be provided following this ten (10) day exception.

**Section 3. FAPE Considerations**

**A. Case Law Interpretations of FAPE**

The definition of FAPE has been further developed as a result of litigation between parents and districts.

In 1982, the United States Supreme Court in Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al. defined FAPE as:

1. an IEP developed in adequate compliance with the IDEA procedures; and
2. an IEP reasonably calculated to enable the student to receive educational benefit (the Rowley Standard).

In March 2017, the Court in Endrew F. v. Douglas County School District applies the Rowley Standard, indicating that a school must offer an IEP that is specially designed and reasonably calculated to enable a child to “make progress appropriate in light of the child’s circumstances”,

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emphasizing the unique needs of the child. The educational program offered “must be appropriately ambitious in light” of [Endrew F’s] unique circumstances just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom. They may differ [comparing Amy Rowley to Endrew F] but every child should have a chance to meet challenging objectives.

The Court expresses its confidence that school authorities will “be able to offer a cogent and responsive explanation for their decision”, demonstrating that the IEP is reasonably calculated to enable the student to make progress in light of the student’s individual circumstances.

### **B. Applicability to Charter and Alternative Schools**

Federal law requires the district to provide students with disabilities educational choices comparable to those choices offered to students without disabilities. These choices include the opportunity to attend a public charter school or alternative public school. Students enrolled in public charter and alternative schools are entitled to FAPE and retain all the rights and protections that are available under the IDEA.

### **C. Applicability to Detained Youth**

Students with disabilities or suspected disabilities who are detained in city or county jails, juvenile detention centers, juvenile correctional facilities, or in Idaho prisons are entitled to FAPE.

#### **1. Services to Youth Detained in City or County Jails**

The district in which the facility is located has the responsibility for Child Find and the provision of FAPE to eligible youth.

#### **2. Services to Youth Detained in Juvenile Detention Centers (JDC)**

The district in which the facility is located has the responsibility for the provision of FAPE to eligible youth. Typically, detention in a JDC is short term, and the student most likely returns to his or her home district. If a district has a student who is detained in a JDC not located within the district boundaries, the district may find it beneficial to coordinate school assignments through the JDC’s education staff while the student is in the facility.

#### **3. Services to Youth Placed in the Custody of the Department of Juvenile Corrections (DJC)**

When a student is placed in the custody of the Department of Juvenile Corrections, the responsibility for the provision of FAPE resides with the Department of Juvenile Corrections.

#### **4. Services to Youth in the Custody of the Department of Correction (DOC)**

When a student is placed in the custody of the Department of Correction, the responsibility for the provision of FAPE resides with the Department of Correction through an agreement

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between the SDE and the Department of Correction.

**D. Using Public and Private Insurance Funds to Provide FAPE**

If a student is covered by a parent's private or public insurance or benefits, the district may access this insurance only if the parent provides informed consent. The consent requirements are different for accessing a parent's private insurance as opposed to public insurance (such as Medicaid).

If a district proposes to access a parent's public insurance to cover any of the costs associated with the provision of special education and/or related services, the district must do the following:

1. Provide written notification regarding use of public benefits or insurance to the child's parents before accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent and annually thereafter. The written notification must explain all of the protections available to parents to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice must include a statement that the refusal to provide consent or the withdrawal of consent will not relieve the district's responsibility to ensure that all the required IEP services are provided at no cost to the parent. The notice must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.
2. Obtain a one-time written consent from the parent after providing the written notification regarding use of public benefits or insurance before accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (e.g., billing for services); and (c) the agency to which the disclosure may be made (e.g., Medicaid). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services. Such consent may be withdrawn at any time by the parent.
3. If the child on an IEP moves into a new district, the new district responsible for providing a FAPE must provide the parents with written notification regarding use of public benefits or insurance and must obtain consent before accessing the child's or parent's public insurance.

If a district is proposing to access a parent's private insurance to cover any of the costs associated with the provision of special education and/or related services, the district must get parental consent each time the district proposes to access private insurance.

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## CHAPTER 3: CHILD FIND

The Child Find system involves three basic components leading to the determination of whether or not a student has a disability and requires special education. The components are location, identification, and evaluation. This chapter describes location and identification activities. The evaluation process is covered in Chapter 4.

### Section 1. District Responsibility

The district is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students suspected of having disabilities, ages three (3) through the semester during which they turn twenty-one (21), who may need special education, regardless of the severity of the disabilities. The district is also responsible for coordinating with the Department of Health and Welfare (DHW) regarding the Child Find system for children ages birth through two (2) years. The district may appoint an individual to coordinate the development, revision, implementation, and documentation of the Child Find system.

The Child Find system shall include all students within the district's geographic boundaries including students who are:

1. enrolled in the district, however this would not include a student who is placed in that public school by another district;
2. enrolled in charter and alternative schools;
3. enrolled in homeschool;
4. enrolled in parentally placed private elementary and secondary schools (including religious schools) located in the district; including out-of-state parentally-placed private school children with disabilities;
5. not enrolled in elementary or secondary school, including resident children ages three (3) through five (5);
6. advancing from grade to grade;
7. highly mobile students (such as migrant and homeless as defined by the McKinney Vento Homeless Act [see Glossary]); and
8. wards of the state.



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## Section 2. Locating Students

Locating students who may have disabilities involves coordinating with other agencies and promoting public awareness.

### A. Coordination

For infants and toddlers, birth through two (2) years of age, Child Find is provided by the Idaho Infant/ Toddler Program (ITP). Although lead responsibility for the ITP has been designated to the DHW, interagency agreements provide for collaboration and coordination. The district shall use local interagency agreements for efficient use of resources and ease of service accessibility for students and families.

### B. Public Awareness

The district shall take and document the necessary steps to ensure that district staff and the general public are informed of the following:

1. the availability of special education services;
2. a student's right to a free appropriate public education (FAPE);
3. confidentiality protections; and
4. the referral process.

This information may be provided through a variety of methods such as distributing brochures or flyers, including information in school or district publications, disseminating articles and announcements to newspapers, arranging for radio and television messages and appearances, speaking at faculty meetings or district in-services, and making presentations.

## Section 3. Identification

The identification component of Child Find includes screening, early intervening through a problem-solving process, and referral to consider a special education evaluation. The procedural rights under the IDEA are afforded when the student is referred for a special education evaluation by the parent/adult student or the district.

### A. Screening

Screening is an informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards or Idaho Early Learning Guidelines (eGuidelines). A variety of methods may be used to screen students, including performance on statewide assessments, curriculum-based measures, daily work in the

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classroom, teacher observations, hearing and vision screeners, developmental milestones, and/or kindergarten readiness measures.

Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Although screening is an important part of the Child Find system, screening cannot be used to delay processing a referral to consider a special education evaluation where immediate action is warranted.

**B. General Education Intervention (Comprehensive Early Intervening Services)**

Under the Local Education Agency (LEA) funding option, early intervening services are services for K-12 students who need additional academic and behavioral support to succeed in the *general education environment*. When a school's screening process reveals that a student or groups of students are at risk of not meeting the Idaho Content Standards, the general education problem-solving team shall consider the students' need for "supported" instructional and/or behavioral interventions in order to help the students succeed. These interventions are referred to as early intervening services or general education interventions, accommodations, and strategies. It is important to remember that students who receive early intervening services are not currently identified as needing special education or related services and do not have a right to a free appropriate public education. Therefore, the IDEA procedural safeguards are not applicable at this time.

Districts shall implement comprehensive coordinated services and activities that involve providing educational and behavioral evaluations, services, and supports. These services may also include professional development for teachers and other staff to enable them to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software. Comprehensive Early Intervening Services (CEIS) should be based on whole-school approaches such as; the three-tiered model, scientifically based curriculum and instruction, positive behavior supports, and a response to intervention system.

If a district chooses to use up to 15% of IDEA Part B funds for CEIS for students in K-12 who are not currently identified as needing special education, but who need additional support in the general education environment, additional requirements may apply that will affect maintenance of effort. In addition, if IDEA Part B funds are used, the district must annually report to the SDE:

1. The number of children receiving CEIS; and
2. The number of children who received CEIS and subsequently received special education services during the preceding two year period.

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If a district is found to have a significant disproportionate representation in special education, there are additional requirements for use of funds in CEIS. Please see Chapter 10 for more information on CEIS.

### **C. General Education Problem Solving**

#### **1. Establishing a Problem-Solving Team**

The district shall establish a problem-solving team and a process to plan accommodations and interventions in general education and to ensure that referrals to consider a special education evaluation are appropriate. Team membership is established by the school or the district and would likely involve general educators and administrators, and could include counselors, specialists, and special education personnel. While parent/adult student involvement is valuable and encouraged, the district is not required to include the parent/adult student on the team.

When problem solving involves a child three to five (3-5) years of age, the team should seek input from family members, child care programs, private preschools, or Head Start Programs, as appropriate. An early childhood problem-solving process needs to consider early childhood environments and the preschool student's need for supported instructional interventions in order for the student to participate in appropriate activities. IDEA Part B funds cannot be used to provide CEIS to preschoolers.

#### **2. Referrals to the Problem-Solving Team**

Referrals to the problem-solving team may come from a variety of sources including parents, students, other family members, public or private school personnel, agencies, screening programs, or as a result of annual public notice.

Referrals may be made for a variety of reasons dealing with academic and behavioral concerns and may involve, but are not limited to, teaching strategies, material accommodations, social skills training, cooperative learning concepts, classroom organization, and scheduling.

#### **3. Interventions**

- a. Interventions in general education or an early childhood environment shall be attempted before a student is referred to an evaluation team, unless the student's performance indicates an evaluation is warranted or a parent makes a request for a referral for a special education evaluation.
- b. Interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and should be clearly documented.
- c. Documentation of the success or failure of accommodations and interventions shall be reviewed and discussed by the problem-solving team.

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#### 4. Problem-Solving Team Decisions Following General Education Intervention

Based on a review of data and information presented by the referring party and others, the team has several decision options. In the case of a preschool student, data and information shall be gathered and reviewed from such settings as child care programs, private preschools, Head Start Programs, or the home. Following an intervention, the problem-solving team shall review progress monitoring data from the intervention and other relevant information to determine what action is warranted. The team considers a variety of options, including whether to:

- a. continue the general education intervention because the student is making adequate progress but needs more time to reach goals;
- b. continue the intervention in a modified form;
- c. explore services or programs outside of special education (such as Title I of the Elementary and Secondary Education Act, including English language programs; Section 504 accommodations; counseling); or
- d. make a referral to consider a special education evaluation.

Although problem-solving activities are an important part of the system, they cannot be used to delay processing a referral for consideration of a special education evaluation where immediate action is warranted. Either a parent or a public agency may initiate a request for an initial evaluation. If a parent initiates a referral for a special education evaluation, the evaluation cannot be delayed or denied due to the child not completing the general education intervention process.

### Section 4. Referral to Consider a Special Education Evaluation

#### A. Evaluation Team

The evaluation team is the group of people established by the IDEA that has the responsibility for making decisions regarding evaluation, assessments, and eligibility. The composition of the evaluation team will vary depending on the nature of the student's suspected disability and other relevant factors. The evaluation team shall include the same membership (although not necessarily the same individuals) as the IEP team and other professionals as needed to ensure that appropriate, informed decisions are made.

Unlike an IEP team, an evaluation team has the flexibility of conducting business with or without a meeting. The case manager can gather input from evaluation team members in a variety of ways. The parent/adult student shall be included in the evaluation team and shall be given the opportunity to indicate whether he or she wishes the team to hold a meeting with all members attending.

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## B. Referrals to Consider Special Education

The procedure for handling referrals to consider a special education evaluation for students suspected of having a disability includes the following:

1. Unless immediate action is warranted and documented, a referral to consider a special education evaluation is sent to the evaluation team *after* the problem-solving team has determined:
    - a. the student's response to research-based interventions in general education (or age-appropriate activities for preschool) has not resulted in adequate progress; and
    - b. language and cultural issues are not the main source of the student's academic or behavioral discrepancy from peers.
  2. A Referral to Consider a Special Education Evaluation/Reevaluation form shall be completed.
  3. Procedural safeguards are activated when a referral is made to consider a special education evaluation. If the referral came from someone other than the parent/adult student (see Glossary) the parent/adult student shall be notified. In either case, the parent/adult student shall be provided with a copy of the *Procedural Safeguards Notice*. At the same time, the parent/adult student shall be afforded an opportunity to provide input regarding the need for and scope of the initial evaluation, including the opportunity to hold a meeting if desired.
  4. The evaluation team (including the parent/adult student) reviews all available records, including family and health history, past school experiences, the results of general education interventions, and previous assessments and evaluations. The evaluation team shall decide what additional assessments, if any, are needed. This review and determination process can take place at a face-to-face meeting of the evaluation team or through an alternate format, unless the parent/adult student desires that a meeting be held.
    - a. If the evaluation team determines that an evaluation is warranted, written notice shall be provided to the parent/adult student describing the proposed evaluation and written consent shall be obtained from the parent/adult student.
    - b. If the evaluation team determines that an evaluation is not warranted at this time, the team should seek other avenues for services to meet the student's needs. The person initiating the referral, if other than the parent/adult student, may be informed as to why the evaluation is not being conducted. Written notice of the district's refusal to evaluate a student for special education services shall be provided to the parent/adult student when he or she makes a referral
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for a special education evaluation and the district determines that the evaluation is not warranted.

Note: Districts are prohibited from requiring that a student obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation, or receiving services under the IDEA.

See Chapter 4 for more information on evaluation and eligibility.

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## CHAPTER 4: EVALUATION AND ELIGIBILITY

Chapter 3 discusses Child Find procedures used to locate and identify students with suspected disabilities. This chapter contains the requirements for the special education evaluation and eligibility process, from referral to consider special education through to the determination of eligibility. The Idaho State Department of Education has provided State Eligibility Criteria for special education services for eligibility consistent with the IDEA for districts to use while determining eligibility.

### Section 1. Evaluation Team

The evaluation team is a group of people outlined by IDEA with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the individualized education program (IEP) team (although not necessarily the same individuals) and other qualified professionals as needed to ensure that appropriate and informed decisions are made. The specific composition of the evaluation team reviewing existing data will vary depending upon the nature of the student's suspected disability and other relevant factors. The parent/adult student is a member of the evaluation team and shall be provided an opportunity to provide input and participate in making team decisions. The evaluation team may conduct its review without a meeting unless the parent/adult student requests that a meeting be held.

Additional Membership Requirements:

The determination of whether a student suspected of having a *specific learning disability* shall be made by the student's parents and a team of qualified professionals, which shall include:

1. The student's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; and
2. A school psychologist is a required member of the team. When considering oral expression and listening comprehension, a speech language pathologist is a required member who may collaborate with or replace the school psychologist as the professional required to conduct and interpret evaluative examinations

### Section 2. Purpose of an Evaluation

The purpose of the evaluation process is to determine the eligibility of a student for special education services. This pertains to both initial determination and three year review of eligibility, or re-evaluation. It is also a process for gathering important information about a student's strengths and service needs. An evaluation process shall include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic

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information about the student, including information provided by the parent.

### **A. Definitions**

Although the terms “evaluation” and “assessment” are often interchanged, there are significant differences between the meanings of the two terms. In an effort to clarify, the terms are defined as follows:

1. Evaluation refers to procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The screening of a student by a teacher or specialist to determine appropriate *instructional* strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.
2. Assessment is integral to the evaluation process and includes the formal and informal processes of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. A test is one method of obtaining credible information within the assessment process. Tests may be standardized or non-standardized, criterion-referenced (e.g. curriculum-based measures) or norm-referenced, and usually elicit responses from students to situations, questions, or problems to be solved. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal data.

### **B. Evaluation Components**

The district shall conduct a full and individual initial evaluation before the provision of special education and related services are provided to a student suspected of having a disability. A parent or a public agency may initiate a request for an initial evaluation to determine eligibility.

To be eligible for services under the IDEA, a student must have a disability that:

1. meets the Idaho state disability criteria;
2. adversely affects educational performance; and
3. results in the need for specially designed instruction and related services.

In addition, the information from the evaluation can be used to consider the following:

1. the nature and extent of special education and related services needed by the student in order to participate and progress in the general education curriculum or curriculum aligned to the Idaho Content Standards, or the Idaho Early Learning Guidelines (eGuidelines); and
2. the least restrictive environment (LRE) for the student.

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The above information also pertains to evaluations for determining Part B eligibility for children transitioning from the Infant/Toddler Program (ITP).

### Section 3. Written Notice and Consent for Assessment

Written notice shall be provided and informed consent shall be obtained before assessments are administered to a student as part of an evaluation.

#### A. Written Notice Requirements

Written notice shall be provided to the parent/adult student within a reasonable time before the district proposes to initiate the evaluation or re-evaluation of a student. Written notice shall be in words understandable to the general public. It shall be provided in the native language or other mode of communication normally used by a parent/adult student unless it is clearly not feasible to do so.

If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:

1. the notice is translated orally or by other means in the native language or other mode of communication;
2. the parent/adult student understands the content of the notice; and
3. there is written evidence that the above two requirements have been met.

The written notice shall include the following:

1. a description of the evaluation or reevaluation proposed or refused by the district;
2. an explanation of why the district proposes to evaluate or reevaluate the student;
3. a description of any other options the district considered and the reasons why those options were rejected;
4. a description of each assessment procedure, test, record, or report that the district used as a basis for the proposed or refused evaluation or reevaluation;
5. a description of any other factors relevant to the evaluation or reevaluation;
6. a statement that the parent/adult student has special education rights and how to obtain a copy of the *Procedural Safeguards Notice* (Note: If this is the initial evaluation, the parents should get a copy of the procedural safeguards with the initial notice of the special education evaluation); and

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7. sources for parents to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

Written notice shall be provided to the parent/adult student within a reasonable time in the following instances:

1. to conduct any additional assessments and review initial information as part of the initial evaluation or reevaluation;
2. to explain refusal to initiate assessment; and
3. when the evaluation team determines that additional assessments are not required

See Chapter 11 for more information on written notice.

## **B. Consent Requirements**

1. Definition of Consent: Consent means that the parent/adult student:
  - a. has been fully informed in his or her native language or other mode of communication of all information relevant to the assessment for which consent is sought;
  - b. understands and agrees in writing (as indicated by signature) to the activities described; and
  - c. understands that granting of consent is voluntary and may be revoked in writing at any time *before* the assessment is completed. However, once the assessment has been completed, revocation of consent cannot be used to have the assessment disregarded.
2. Consent for initial evaluation
  - a. Informed written consent shall be obtained from the parent/adult student before the district conducts assessments as a part of an initial evaluation of the student to determine if he or she qualifies as a child with a disability;
  - b. Parental consent for initial evaluation should not be construed as consent for initial provision of special education and related services;
  - c. The school district shall make reasonable documented efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child has a disability and to identify the educational needs of the child. If a parent refuses consent, the district does not violate its obligation to provide FAPE if it declines to pursue the evaluation. If the parent does not provide consent, the district may offer an SDE facilitated meeting, mediation, or request

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a due process hearing to challenge the decision.

- d. If the child is a ward of the State and is not residing with the child's parent, the district is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility if:
  - 1) despite reasonable efforts to do so, the district cannot locate the parent;
  - 2) the rights of the parents of the child have been terminated in accordance with Idaho law; or
  - 3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Idaho law and consent for initial evaluation has been given by an individual appointed by the judge to represent the child.
- e. If a district is using any data gathered during general education interventions for a student suspected of being a student with a disability, and that data may be used for a later eligibility determination, the district shall promptly request consent to evaluate the student.

**C. Consent for Reevaluation**

- 1. Written consent shall be sought for reevaluation that requires new assessments. Reevaluation consisting solely of review of existing data does not require written consent.
- 2. Informed parental consent for a reevaluation need not be obtained if the public agency can demonstrate through documentation that it made reasonable efforts to obtain consent and the child's parent has failed to respond.

**D. When Consent Is Not Required**

Parental consent is *not* required for:

- 1. the review of existing data as part of an evaluation or reevaluation;
- 2. the administration of a test or other assessment that is administered to all students, unless consent is required of parents of all students;
- 3. teacher or related service provider observations, ongoing classroom evaluations, or criterion-referenced tests that are used to determine the student's progress toward achieving goals on the IEP; and
- 4. screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation, which may include group or individual curriculum-based or

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norm-referenced measures.

**E. Refusing Consent or Failure to Respond to a Request for Consent**

1. The parent/adult student can refuse consent for assessment(s).
2. For an initial evaluation, if consent is refused or the parent/adult student fails to respond, the student cannot be assessed. However, the district may request SDE facilitation, mediation, or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates that assessment is appropriate and there is no appeal, then the student may be assessed. However, the district does not violate its obligations to provide FAPE if it declines to pursue the evaluation. Consent for the initial evaluation shall not be construed as consent for the initial provision of special education services should the student be deemed eligible.
3. If a parent of a child who is homeschooled or placed in a private school by the parents at their own expense does not provide consent for initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the district may not use SDE mediation or due process procedures in order to gain consent and the district is not required to consider the child eligible for services.

Note: A district shall not use a parent's refusal for consent to one service or activity to deny the parent or student any other service, benefit, or activity.

See Chapter 11 for more information on consent and reasonable efforts.

**F. Timeline**

The time between receiving written consent for initial assessment and eligibility determination cannot exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days. The time between eligibility determination and the development of the IEP cannot exceed thirty (30) calendar days. The implementation of the IEP shall not exceed thirty (30) calendar days from the eligibility determination, unless all parties agree to an extension. For children transferring from ITP, eligibility shall be determined and an IEP developed by the child's third birthday. If a child turns three during the summer, and the child does not require Extended School Year (ESY) services, special education and related services may begin in the new school year.

In unusual circumstances, all parties may agree in writing to an extension of the sixty (60) day period for the purpose of initial assessment. These circumstances may include the following:

1. The child enrolls in a school in another school district after the sixty (60) day timeline began and prior to the determination by the child's eligibility in the previous school district. If the new school district is making sufficient progress in determining eligibility, the parent and district may agree to a different timeline.

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2. The parent repeatedly fails or refuses to produce the student for an evaluation after the district has made reasonable efforts to schedule an evaluation.

#### Section 4. Information from Other Agencies or Districts

Consent for release of information shall be received before the district seeks to obtain information about the student from other agencies, unless otherwise authorized by law. Upon receipt of consent, the case manager will send letters requesting information to individuals or agencies that have relevant information about the student. A copy of the signed consent form for release of information shall be included with the letters and a copy shall be retained in the student's confidential file. Sources of this additional information may include records from health and social service agencies, private preschool programs, legal service agencies, and non-school professionals such as physicians, social workers, and psychologists.

Federal laws and regulations do not require consent for the district to:

1. request information from other districts that the student has attended; or
2. send information to other districts in which the student intends to enroll.

For children transferring from the ITP, eligibility shall be determined and the IEP developed by the date that the child turns three (3) years of age. See Chapter 5 for additional information on collaboration with the ITP throughout the transition process.

#### Section 5. Evaluation and Eligibility Determination Procedures

##### A. Areas to Assess

The student shall be assessed in all areas related to the suspected disability, which includes areas such as functional, developmental, and academic skills needed to participate and progress in the general education curriculum. If needed, qualified personnel shall conduct an individual assessment of assistive technology needs, including a functional evaluation in the individual's customary environment. The evaluation of each student with a suspected disability shall be full and individualized and sufficiently comprehensive to identify all of the student's suspected special education and related service needs whether or not commonly linked to the disability category in which the student may be classified. For youth with IEPs, no later than age sixteen (16), appropriate transition assessments shall be conducted. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), appropriate transition assessments shall be conducted.

Evaluation teams shall be especially mindful of cultural and linguistic differences during the evaluation and eligibility process. Caution is advised in the selection of informal or formal



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assessments that are nonbiased, administration of assessments, interpretation, and application of outcomes in order to appropriately identify culturally or linguistically diverse students for special education services.

**B. Determination of Needed Initial or Reevaluation Data**

As part of an initial evaluation or reevaluation, the evaluation team shall review existing evaluation data regarding the student including:

1. assessments and information provided by the parent/adult student concerning the student;
2. current classroom-based assessments and observations, and/or data regarding the student's response to scientific research-based interventions;
3. observations by teachers and related service providers; and
4. results from statewide and district wide testing.

Based on that review, and input from the parent/adult student, the evaluation team will decide on a case-by-case basis what additional data, if any, are needed to determine:

1. whether the student meets eligibility criteria for special education;
2. the student's present levels of academic and functional performance, including academic achievement and related developmental needs of the student;
3. whether the student needs specially designed instruction; or
4. whether any additions to the special education and related services are needed to enable the student to:
  - a. meet the measurable annual goals set out in the student's IEP; and
  - b. be involved in and progress in the general education curriculum (for preschool students, to participate in appropriate activities).

If the evaluation team determines additional assessments are not required for the purpose of determining whether the student meets eligibility criteria during an initial evaluation or a reevaluation, the district shall provide written notice to the parent/adult student of the decision and the reasons for that decision. The parent/adult student shall also be informed of his or her right to request assessments to determine eligibility and to determine the child's educational needs. The district will provide written notice if a parental request for additional assessment is denied.

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**C. Assessment Procedures and Instruments**

The district shall ensure the evaluation or reevaluation meets the following requirements:

1. The child shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and transition needs.
2. Assessments and other materials shall be selected and administered so as not to be discriminatory on a racial or cultural basis.
3. Assessments and other materials shall be provided and administered in the student's native language, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally unless it is not feasible to provide or administer. Attempts to provide a qualified examiner in the student's native language or mode of communication shall be documented.

In all direct contact with a student, the language normally used by the student in the home or learning environment shall be used. For an individual with blindness or deaf or hard of hearing, or for an individual with no written language, the mode of communication is that which is normally used by the individual (e.g., sign language, Braille, or oral communication).

4. Materials used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than solely measuring the student's English language skills.
5. A variety of assessment tools and strategies shall be used to gather relevant academic, developmental and functional information about the student, including information provided by the parent/adult student and information related to enabling the student to be involved in and progress in the general education curriculum (or, for a preschooler, to participate in appropriate activities).
6. Assessments are used for the purposes for which the assessments or measures are valid and reliable.
7. Assessments shall be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
8. Assessments and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient or standard score.
9. Assessments shall be selected and administered to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately

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reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those are the factors that the test purports to measure).

10. No single measure or assessment may be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.
11. The district shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.
12. The district shall provide and use assessment tools and strategies that produce relevant information that directly assists persons in determining the educational needs of the student.
13. All services and assessments shall be provided at no expense to the parent/adult student.
14. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with the child's prior and subsequent schools to ensure prompt completion of the full evaluation.
15. The evaluation shall be full and individualized and sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category.

**D. Eligibility Determination**

1. Upon completion of the student's initial evaluation or reevaluation, the evaluation team will consider the findings and determine whether the student meets or continues to meet eligibility criteria found in Section 7 of this chapter. The evaluation team will draw upon information from a variety of sources, such as norm-referenced, standardized tests, parent/adult student input, teacher input, physical condition, social or cultural background, adaptive behavior, and functional assessments to interpret evaluation data and determine eligibility.
2. Special Rule for Eligibility Determination

A student cannot be identified as a student with a disability if the primary reason for such a decision is:

- a. lack of appropriate instruction in reading, including the essential components of reading instruction as defined by the Elementary and Secondary Education Act—phonemic awareness, phonics, vocabulary development, reading fluency,

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including oral reading skills and reading comprehension strategies;

- b. lack of appropriate instruction in math; or
- c. Limited English Proficiency.

### 3. Related Services

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. An IEP team may determine that a student found eligible for special education has a need for a related service. However, if a student with a disability needs only a related service and not special education, then the student is not eligible for the related service, unless it is considered to be special education under State standards, as in the case of speech therapy and language therapy.

## **E. The Eligibility Report**

The evaluation team shall prepare an Eligibility Report and provide a copy of the report to the parent/adult student.

The Eligibility Report shall include:

1. names and positions of all evaluation team members;
2. information regarding the student's need for specially designed instruction (special education and related services);
3. confirmation and supporting data that the disability is not primarily due to lack of appropriate instruction in reading, including the essential components of reading — phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies or math;
4. information about how the student's disability adversely affects his or her educational performance;
5. all data on the student as required in the State Eligibility Criteria for the area of suspected disability;
6. confirmation and supporting data that the student's learning difficulties are not primarily due to Limited English Proficiency;
7. the date of the eligibility determination;
8. the name and position of all those administering assessments; and

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9. in the case of Specific Learning Disability eligibility determination, certification in writing that the report reflects each member's conclusions (agreement), and in the case of team member disagreement with the conclusions, a written statement shall be attached to the eligibility report presenting the dissenting team member's conclusions.

## Section 6. Reevaluation and Continuing Eligibility

### A. Reevaluation Requirements

The district shall ensure that an individual reevaluation of each student with a disability is conducted in accordance with all the required evaluation procedures outlined in this chapter.

A reevaluation:

1. shall occur at least once every three (3) years unless the parent/adult student and the district agree in writing that a three (3) year reevaluation is not necessary. However, an updated Eligibility Report, documenting all eligibility criteria, shall be completed by the reevaluation due date to establish and document continuing eligibility;
2. a reevaluation is not required more than once per year unless the parent/adult student and the district agree otherwise. If the parent makes a request within the year and the district does not agree, the district shall send written notice of refusal.

The district shall ensure a reevaluation is conducted more frequently than every three (3) years if:

1. it is determined that the education or related service needs, including academic achievement and functional performance, of the student warrants a reevaluation; or
2. if the parent/adult student or the student's teacher requests a reevaluation.

### B. Reevaluation Prior to Discontinuation

1. The district shall evaluate a student with a disability before the team determines that the student is no longer eligible for special education.
2. Reevaluation is not required in the following two circumstances:
  - a. before the termination of a child's eligibility due to graduation, if the student meets comparable academic requirements that are equally as rigorous as those required of nondisabled students and receives a regular diploma;
  - b. the student has reached the end of the semester in which he or she turns twenty-one (21) years of age.

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Note: Although a reevaluation is not required in these two cases, the district shall provide the student with a summary of his or her academic achievement and functional performance, including recommendations on how to assist the student in meeting his or her post school goals.

**C. Informing the Parent/Adult Student**

Approximately one month before the reevaluation is due, contact shall be made with the parent/adult student informing him or her that:

1. the reevaluation will be scheduled within the month, unless the district and parent/adult student agree it is unnecessary; and
2. input will be sought from the parent/adult student.

Note: The IDEA allows the process of reviewing existing data and determining what, if any, additional, assessments are required without a meeting.

**D. Nature and Extent of Reevaluation**

Before any reassessment of the student, the evaluation team will determine the nature and extent of the student's needs by reviewing existing data. See Section 5 of this chapter for more information regarding the determination of needed data.

1. No Additional Information Needed
  - a. If the evaluation team decides that no additional assessments are needed to determine whether the student continues to be eligible for special education services, the district shall provide written notice to the parent/adult student of his or her right to request further assessment.
  - b. If the parent/adult student requests an additional assessment to determine whether the student continues meet criteria for special education services under the IDEA, then the district shall conduct the assessment.
  - c. If the parent/adult student requests an additional assessment for reasons other than eligibility, such as admission to college, then the district shall consider the request and provide written notice of its decision.

2. Additional Assessments Needed

Based on recommendations from the evaluation team, the district will seek consent to administer the needed assessments and provide the parent/adult student with written notice regarding proposed assessments. If the parent/adult student fails to respond after the district has taken reasonable measures to obtain consent for assessments as part of a reevaluation, the district may proceed with the assessments. The district shall maintain documentation of its

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measures to seek consent. See section 3B of this chapter for a definition of reasonable measures.

If the parent/adult student denies consent to reassess, the student cannot be assessed. However, the district may request SDE mediation or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates the assessment is appropriate and there is no appeal, then the student may be assessed. All reevaluation procedures shall be provided at no cost to the parent/adult student.

### **E. Eligibility Report for Reevaluations**

The evaluation team will consider evaluation findings and determine whether the student continues to meet criteria for special education services.

The evaluation team is required to prepare an Eligibility Report detailing how review of existing data demonstrates that the student continues to meet eligibility requirements even if no new assessments were conducted. The report shall address each required eligibility component and include results of previous assessments if they are being used to determine eligibility. Refer to Section 5 of this chapter for eligibility requirements.

## **Section 7. State Eligibility Criteria**

The district will use the eligibility criteria and assessment procedures set forth by the SDE for placement in special education. This section contains a definition and the eligibility criteria for each specific disability that shall be used to determine whether an individual qualifies as a student with a disability in need of special education.

All disabilities except Specific Learning Disability (SLD) and Developmental Delay (DD) are applicable for students three (3) through twenty-one (21) years of age. For Specific Learning Disability, students must be legal kindergarten age through twenty-one (21) years. Only students ages three (3) through nine (9) can be identified in the Developmental Delay (DD) category. Use of the DD category is optional for the district. If the district elects to use the DD category, it applies only to students from age three (3) up until their tenth (10<sup>th</sup>) birthday, in addition to the criteria outlined in this chapter.

### **A. Three-Prong Test of Eligibility**

To demonstrate eligibility for special education services all three of the following criteria shall be met and documented. This is often called the three-prong test for eligibility.

The Eligibility Report shall document each of the following three criteria:

1. the student has a disability according to the established Idaho criteria;

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2. the student’s condition adversely affects educational performance; and
  3. the student needs specially designed instruction.

Meets State Eligibility Requirements: The state eligibility requirements for specific disabilities are listed in this chapter.

Adverse Impact: A determination made by the evaluation team that the student’s progress is impeded by the disability to the extent that the student’s educational performance measures significantly and consistently below the level of similar age peers preventing the student from benefiting from general education. Educational performance refers the student’s performance in academic achievement, developmental and or functional skills. The phrases “adverse impact” and “adverse effect” are used interchangeably in this Manual and have the same meaning.

Needs Specially Designed Instruction: Special education is specially designed instruction, provided at no cost to the parents, to meet the unique needs of a student with a disability. Specially designed instruction means adapted, as appropriate to meet the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student’s disability and to ensure access of the child to the general curriculum so that he or she can meet Idaho Content Standards that apply to all students.

## **B. Disability Categories**

### **1. Autism Spectrum Disorder**

**Definition:** An Autism Spectrum Disorder is a developmental disability, generally evident in the early developmental period, significantly affecting verbal or nonverbal communication and social interaction, and adversely affecting educational performance.

- a. Persistent deficits in social communication and social interaction across multiple contexts, currently or by history:
- b. Symptoms must be present in the early developmental period, but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life.
- c. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and hyper- or hypo-reactivity to sensory input.
- d. Characteristics vary from mild to severe as well as in the number of symptoms present and are not primarily the result of intellectual disability, developmental delay, or an emotional behavioral disorder.



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**State Eligibility Criteria for Autism:** An evaluation team will determine that a student is eligible for special education services as a student with autism when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;
- b. The student has a developmental disability, generally evident in the early developmental period that significantly affects social communication and social interaction;
- c. The student must meet the disability definition (above) of an autism spectrum disorder as determined by an evaluation team to include a school psychologist and a speech-language pathologist (a team must consider a private evaluation or diagnosis provided by a parent from a psychiatrist, a physician or a licensed psychologist as meeting the definition of autism spectrum disorder);
- d. The student's condition adversely affects educational performance;
- e. The student needs specially designed instruction

## 2. Intellectual Disability

**Definition:** Intellectual Disability is defined as significantly sub-average intellectual functioning that exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period, and adversely affect the student's educational performance.

**State Eligibility Criteria for Intellectual Disability:** An evaluation team will determine that a student is eligible for special education services as a student with an intellectual disability when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
  - b. The student has a full-scale intelligence standard score (IQ) at or below 70, plus or minus the standard error of measurement (at the 95 percent confidence level) of the test being used, based on an assessment by a licensed psychologist or certified school psychologist using an individually administered intelligence test.
  - c. The student exhibits concurrent deficits in adaptive functioning unexpected for his or her age in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, or safety.
  - d. The student's condition adversely affects educational performance.
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- e. The student needs specially designed instruction.

Caution is advised when assessing students with cultural and language issues to prevent inappropriate identification of these students as having an intellectual disability. When determining eligibility, tests measuring intellectual ability shall be used with care; that is, only those tests designed and normed for the population being tested may be used. Tests measuring intellectual ability that are translated into another language by the examiner or an interpreter yield invalid test results and shall not be used.

### 3. Deaf-Blindness

**Definition:** A student with deaf-blindness demonstrates both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be appropriately educated with special education services designed solely for students with deafness or blindness.

**State Eligibility Criteria for Deaf-Blindness:** An evaluation team will determine that a student is eligible for special education services as a student with deaf-blindness when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student exhibits simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.
- c. The student is diagnosed by an optometrist or ophthalmologist for vision loss and by an otologist, audiologist, or physician for hearing loss to make a final diagnosis as deaf-blindness.
- d. The student's condition adversely affects educational performance.
- e. The student needs specially designed instruction.

### 4. Deaf or Hard of Hearing

**Definition:** Deaf or Hard of Hearing means a child with a hearing loss, whether permanent or fluctuating, that impairs the access, comprehension, and/or use of linguistic information through hearing, with or without amplification, and that adversely affects a child's educational performance.

**State Eligibility Criteria for Deaf or Hard of Hearing:** An evaluation team will determine that a student is eligible for special education services as a student who is deaf or hard of hearing

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when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student exhibits a hearing loss that hinders his or her ability to access, comprehend, and/or use linguistic information through hearing, with or without amplification.
- c. The student has been diagnosed by an audiologist as having a hearing loss..
- d. The student's condition adversely affects educational performance.
- e. The student needs specially designed instruction.

### 5. Developmental Delay

**Definition:** The term developmental delay may be used only for students ages three (3) until their tenth (10<sup>th</sup>) birthday who are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

- a. cognitive development – includes skills involving perceptual discrimination, memory, reasoning, pre-academic/academic skills, and conceptual development;
- b. physical development – includes skills involving coordination of both the large and small muscles of the body (i.e., gross, fine, and perceptual motor skills);
- c. communication development – includes skills involving expressive and receptive communication abilities, verbal and nonverbal;
- d. social or emotional development – includes skills involving meaningful social interactions with adults and other children as well as those involved in emotional/behavioral regulation; or
- e. adaptive development – includes skills involved in independent functioning in major life activities, as well as self-help/daily living skills (e.g., eating, dressing, ,toileting, etc.).

The category of developmental delay should not be used when the student clearly meets the eligibility criteria for another specific disability category.

A student cannot qualify for special education services under developmental delay beyond his or her tenth (10<sup>th</sup>) birthday unless he or she has been determined to be eligible as having a disability other than developmental delay.

**State Eligibility Criteria for Developmental Delay:** An evaluation team may determine that a

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student is eligible for special education services as a student with a developmental delay when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student is at least three (3) years of age but less than ten (10) years of age.
- c. The student has developmental and/or learning problems that are not primarily the result of limited English proficiency, cultural difference, environmental disadvantage, or economic disadvantage.
- d. The student meets either of the following two criteria, in one or more of the broad developmental areas listed below.
  - 1) Criteria:
    - i. The student functions at least 2.0 standard deviations below the mean in one broad developmental area (30 percent delay in age equivalency, or functions at or below the 3rd percentile).
    - ii. The student functions at least 1.5 standard deviations below the mean in two or more broad developmental areas (25 percent delay in age equivalency, or functions at or below the 7th percentile).
  - 2) Broad Developmental Areas:
    - i. Cognitive skills (e.g., perceptual discrimination, memory, reasoning, pre-academic/academic, and conceptual development);
    - ii. Physical skills (i.e., fine, gross, and perceptual motor skills);
    - iii. Communication skills (includes skills involving expressive and receptive communication abilities, both verbal and nonverbal);
    - iv. Social or emotional skills; or
    - v. Adaptive skills, including daily living/self-help skills.
- e. The student's condition adversely affects educational performance.
- f. The student needs specially designed instruction.

## 6. Emotional Behavioral Disorder

**Definition:** A student with an emotional behavioral disorder exhibits one or more of the following characteristics over a long period of time, and to a marked degree, that adversely

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affects his or her educational performance:

- a. an inability to learn that is not primarily the result of intellectual disability; hearing, vision, or motor impairment, or other health impairment;
- b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- c. inappropriate types of behavior or feelings under normal circumstances;
- d. a general pervasive mood of unhappiness or depression;
- e. a tendency to develop physical symptoms or fears associated with personal or school problems; or
- f. Schizophrenia.

The term *does not* include students who are socially maladjusted unless it is determined they have an emotional behavioral disorder.

**State Eligibility Criteria for Emotional Behavioral Disorder:** An evaluation team will determine that a student is eligible for special education services as a student with emotional behavioral disorder when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student has been documented exhibiting characteristics consistent with the criteria (a-f in this section) by one or more of the following: school psychologist, licensed psychologist, psychiatrist, physician, or certified social worker.
- c. The student has been observed exhibiting one or more of the six (6) behavioral or emotional characteristics listed in the definition of emotional –behavioral disability.
- d. The characteristic(s) has been observed:
  - 1) for a long period of time (at least 6 months); and
  - 2) by more than one knowledgeable observer; and
  - 3) in more than one setting; and
  - 4) at a level of frequency, duration, and/or intensity that is significantly different from other students' behavior in the same or similar circumstances.

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- e. The student's condition adversely affects educational performance in the area of academics, peer and teacher interaction, participation in class activities, and/or classroom conduct.
  - f. The student needs specially designed instruction.

## 7. Other Health Impairment (OHI)

**Definition:** A student classified as having Other Health Impairment exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. These health problems may include, but are not limited to, asthma, attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, and stroke to such a degree that it adversely affects the student's educational performance.

A student with ADD/ADHD may also be eligible under another category (generally specific learning disability or emotional behavioral disorder) if he or she meets the criteria for that other category and needs special education and related services. All students with a diagnosis of ADD/ADHD are not necessarily eligible to receive special education under the IDEA, just as all students who have one of the other conditions listed under other health impairment are not necessarily eligible, unless it is determined to adversely affect educational performance and require specially designed instruction.

**State Eligibility Criteria for Other Health Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with an Other Health Impairment when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
  - b. The student exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems.
  - c. The student has been diagnosed by a physician with a condition consistent with an Other Health Impairment described above. In the case of ADD/ADHD, an educational determination may be provided by a school psychologist. Diagnosis from a licensed psychologist or other diagnostician must be considered by the evaluation team.
  - d. The student's condition adversely affects educational performance.
  - e. The student needs specially designed instruction.
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## 8. Specific Learning Disability

**Definition:** Specific Learning Disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

IDEA recognizes dyslexia as a type of SLD characterized by “difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction.” When considering SLD, particularly in the areas of Basic Reading Skills and Reading Fluency, the evaluation team may determine if there is a need to conduct assessment(s) specific to dyslexia.

Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional behavioral disorder, or of environmental, cultural, or economic disadvantage.

~~Only a school-age child may be identified as a student with a specific learning disability.~~

**State Eligibility Criteria for Specific Learning Disability:** In determining whether a child has ~~an~~ **SLD—a Specific Learning Disability**, the ~~child~~ student must meet at a minimum, the following criteria:

a. **Exclusionary Factors.** The student’s lack of achievement is not primarily the result of:

- 1) A visual, hearing, or motor impairment;
- 2) Intellectual disability;
- 3) Emotional behavioral disorder;
- 4) Environmental, cultural or economic disadvantage;
- 5) Limited English Proficiency;
- 6) A lack of appropriate instruction in reading, including the essential components of reading; and/or
- 7) A lack of appropriate instruction in math.

**AND**

b. **Evidence of Low Achievement.** The student demonstrates low achievement in the area(s) of suspected disability listed below as evidenced by a norm-referenced, standardized achievement assessment.

- 1) Oral expression;
- 2) Listening comprehension;
- 3) Written expression;
- 4) Basic reading skills;

- 5) Reading comprehension;
- 6) Reading fluency;
- 7) Mathematics calculation; and/or
- 8) Mathematics problem solving.

AND

c. **Observation.** The student has been observed in their learning environment to document academic performance and behavior in the area(s) of concern.

AND

d. **Response to Intervention OR Pattern of Strengths and Weaknesses.**

**1) Response to Intervention.** The student does not make sufficient progress in response to effective, evidence-based instruction and intervention for the student's age or to meet state-approved, grade-level standards in one or more of the following areas:

- 1) Oral expression;
- 2) Listening comprehension;
- 3) Written expression;
- 4) Basic reading skills;
- 5) Reading comprehension;
- 6) Reading fluency;
- 7) Mathematics calculation; and/or
- 8) Mathematics problem solving.

OR

**2) Pattern of Strengths and Weaknesses.** The student demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning.

AND

e. **Adverse Impact.** The disability adversely impacts the student's educational performance.

AND

f. **Need for Specially Designed Instruction.** The student requires specially designed instruction.

~~a. The student does not make sufficient progress in response to effective, evidence-based instruction and intervention for the child's age or to meet state-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards in one or more of the following areas:~~

- ~~1) Oral expression;~~
- ~~2) Listening comprehension;~~



- 
- ~~3) Written expression;~~
  - ~~4) Basic reading skills;~~
  - ~~5) Reading comprehension;~~
  - ~~6) Reading fluency~~
  - ~~7) Mathematics calculation; or~~
  - ~~8) Mathematics problem solving.~~

~~— AND~~

- ~~b. The student demonstrates low achievement in the area(s) of suspected disability listed above as evidenced by a norm-referenced, standardized achievement assessment. For culturally and linguistically diverse students, the preponderance of evidence must indicate low achievement.~~

~~— AND~~

- ~~c. The student demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning.~~

~~— AND~~

- ~~d. The student's lack of achievement is **not** primarily the result of:~~

- ~~1) A visual, hearing, or motor impairment;~~
- ~~2) Intellectual disability~~
- ~~3) Emotional behavioral disorder~~
- ~~4) Environmental, cultural or economic disadvantage~~
- ~~5) Limited English Proficiency~~
- ~~6) A lack of appropriate instruction in reading, including the essential components of reading;~~
- ~~7) A lack of appropriate instruction in math.~~

~~— AND~~

- ~~e. The disability adversely impacts the student's educational performance and the student requires specially designed instruction.~~
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~~Evaluation Procedures:~~

~~In order to demonstrate the initial eligibility criteria under this category, the following procedures must be followed.~~

- ~~1) The evaluation for determining SLD eligibility and requirements for parent notification and involvement shall be conducted in accordance with the procedures detailed in Chapter 4, Section 3, of this Manual.~~
- ~~2) The evaluation must address the eligibility criteria as listed in the *SLD Eligibility Criteria* (see above). To meet these criteria, the following information is required:
  - ~~i. Evidence of insufficient progress in response to effective, evidence-based instruction and intervention indicates the student's performance level and rate of improvement are significantly below that of grade-level peers. This is documented/demonstrated with the following data:
    - ~~a) Data that helps establish that the core curriculum is effective for most students. The most recent whole grade performance data to verify appropriate instruction in the area(s) of concern may include results from the standards-based assessment system. If the referred student belongs to a population of students whose performance is regularly disaggregated, whole grade data for the disaggregated group should also be reviewed and considered.~~
    - ~~b) Information documenting that prior to, or as part of, the referral process, the student was provided appropriate instruction in general education settings. Appropriate instruction includes consideration of both child-specific information and whole grade performance data. Child-specific data regarding appropriate instruction may include: (1) verification that core (universal) instruction was provided regularly; (2) data indicating that the student attended school regularly to receive instruction; (3) verification that core instruction was delivered according to its design and methodology by qualified personnel; and (4) verification that differentiated instruction in the core curriculum was provided.~~
    - ~~c) Data-based documentation of student progress during instruction and intervention using standardized, norm-referenced progress monitoring measures in the area of disability.~~
    - ~~d) A record of an observation of the student's academic performance and behavior in the child's learning environment~~~~~~

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~~(including the general classroom setting) has been conducted by an evaluation team member other than the student's general education teacher. The purpose of the observation is to document how the areas of concern impact the student's performance in the classroom. The observation should also document the name and title of the observer and the site, date, and duration of the observation. The team must decide to:~~

- ~~1. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was conducted before the child was referred for an evaluation; or~~
- ~~2. Have at least one member of the team conduct an observation of the child's academic performance in the educational environment after the child has been referred for an evaluation, and parental consent has been obtained.~~

~~AND~~

~~ii. Evidence of low achievement in one or more of the suspected area(s). These include:~~

- ~~a) Oral expression;~~
- ~~b) Listening comprehension;~~
- ~~c) Written expression;~~
- ~~d) Basic reading skills;~~
- ~~e) Reading comprehension;~~
- ~~f) Reading fluency~~
- ~~g) Mathematics calculation; or~~
- ~~h) Mathematics problem solving~~

~~This evidence must indicate performance that is significantly below the mean on a cluster, composite, or two (2) or more subtest scores of a norm-referenced, standardized, achievement assessment in the specific academic area(s) of suspected disability. There are cases when the use of norm-referenced assessment is not appropriate, for example, students who are culturally and linguistically diverse. Refer to guidance documents regarding procedures on evaluating students who are culturally and linguistically diverse and the use of preponderance of evidence.~~

~~AND~~

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- ~~iii. Evidence of a pattern of strengths and weaknesses in psychological processing skills that impact learning.~~

~~An assessment of psychological processing skills is linked to the failure to achieve adequately in the academic area(s) of suspected disability and must rely on standardized assessments. These assessments must be conducted by a professional who is qualified to administer and interpret the assessment results. The student's performance on a psychological processing assessment demonstrates a pattern of strengths and weaknesses that help explain why and how the student's learning difficulties occur. Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test psychological processing.~~

~~AND~~

- ~~iv. The following criteria must be considered when evaluating the student's low achievement. The team must determine that the student's learning difficulty is **not** primarily the result of:~~

- ~~a) a visual, hearing, or motor impairment~~
- ~~b) an intellectual disability~~
- ~~c) an emotional behavioral disorder~~
- ~~d) environmental or economic disadvantage~~
- ~~e) cultural factors~~
- ~~f) Limited English Proficiency (LEP)~~

## Required Evidence

**Required Evidence.** The evaluation for determining initial Specific Learning Disability eligibility and requirements for parent notification and involvement shall be conducted in accordance with the procedures detailed in Chapter 4 of this Manual. To demonstrate initial student eligibility under this category, the following evidence must be provided:

- a. **Exclusionary Factors.** The team must provide evidence that the student's learning difficulty is not primarily the result of:

- 1) A visual, hearing, or motor impairment;  
If prior to or during the *Referral to Consider a Special Education Evaluation* process, a vision, hearing, and/or motor impairment was suspected or identified as an area of concern for the student, provide evidence that such impairment is not the primary factor in the student's learning difficulties.

2) Intellectual disability;

Provide evidence that the student does not have an intellectual disability that is best served under the category of Intellectual Disability as defined in this *Manual*.

3) Emotional behavioral disorder;

If prior to or during the *Referral to Consider a Special Education Evaluation* process, an emotional behavioral disorder was suspected or identified as an area of concern for the student, provide evidence that such impairment is not the primary factor in the student's learning difficulties.

4) Environmental, cultural or economic disadvantage;

If prior to or during the *Referral to Consider a Special Education Evaluation* process, an environmental, cultural, and/or economic disadvantage was suspected or identified as an area of concern for the student, provide evidence that such factors are not the primary factor(s) in the student's learning difficulties.

5) Limited English Proficiency;

If the student is an English Learner, provide evidence that English language acquisition is not the primary factor in the student's learning difficulties.

If the student is an English Learner, provide evidence that the student received meaningful and equitable access to general education curriculum and English Learner services.

6) A lack of appropriate instruction in reading, including the essential components of reading; or

**Attendance.** Provide evidence that the student has attended school regularly. If the student meets the criteria as a student who is or has been chronically absent, provide evidence that attendance is not the primary factor in the student's learning difficulties.

**General Education Instruction.** Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in reading. If the student has not received grade-level, standards-aligned instruction in reading, provide evidence that lack of access to general education instruction in reading is not the primary factor in the student's learning difficulties.

**Qualified Personnel.** Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in reading from a qualified teacher. If the student has not received grade-level, standards-

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aligned instruction in reading from a certified teacher, provide evidence that lack of instruction from qualified personnel in reading is not the primary factor in the student's learning difficulties.

7) A lack of appropriate instruction in math.

**Attendance.** Provide evidence that the student has attended school regularly. If the student meets the criteria as a student who is or has been chronically absent, provide evidence that attendance is not the primary factor in the student's learning difficulties.

**General Education Instruction.** Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in math. If the student has not received grade-level, standards-aligned instruction in math, provide evidence that lack of access to general education instruction in math is not the primary factor in the student's learning difficulties.

**Qualified Personnel.** Provide evidence that the student has received grade-level, standards-aligned instruction in the regular education setting in math from a qualified teacher. If the student has not received grade-level, standards-aligned instruction in math from a certified teacher, provide evidence that lack of instruction from qualified personnel in math is not the primary factor in the student's learning difficulties.

**AND**

b. **Evidence of Low Achievement.** Provide evidence of low achievement in each area of concern. These include:

- 1) Oral expression;
- 2) Listening comprehension;
- 3) Written expression;
- 4) Basic reading skills;
- 5) Reading comprehension;
- 6) Reading fluency;
- 7) Mathematics calculation; and/or
- 8) Mathematics problem solving.

This evidence must indicate performance that is significantly below the mean on a norm-referenced, standardized academic achievement assessment in each area of concern. Significantly below the mean is defined as 1.5 standard deviations (SD) below the mean, with a standard score (SS) of 78 or lower. When the preponderance of evidence indicates the likely presence of a Specific Learning Disability (SLD), a more

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lenient threshold of 1.0 standard deviations below the mean or a standard score of 85 or lower may be used.

Scores must be reported for each area of concern using:

- 1) A cluster or composite score comprised of two or more subtests; or
- 2) Two or more subtest scores.

There are cases when the use of norm-referenced assessment is not appropriate. For example, this may not be appropriate for students who are culturally and linguistically diverse. In such cases, teams may consider the preponderance of evidence when providing evidence of low achievement.

**AND**

c. **Observation.** Provide a record of an observation in the student's learning environment (including the regular education setting) of the student's behavior and academic performance in EACH academic area of concern. The observation(s) must be conducted by an evaluation team member other than the student's general education teacher and may be conducted in one or both of the following ways:

- 1) Use information from an existing, current, and relevant observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation; or
- 2) Have at least one member of the team conduct observation(s) after the student has been referred for an evaluation and written parental consent has been obtained.

**AND**

d. **Response to Intervention OR Pattern of Strengths and Weaknesses in Psychological Processing.** All students being considered for Specific Learning Disability must participate in grade-level instruction and evidence-based intervention in general education in a tiered system of support (e.g., RtI or MTSS) prior to or as part of the referral process. Provide documentation of either failure to respond to scientific, evidence-based intervention (RtI) or the presence of a pattern of processing strengths and weaknesses that impact learning.

*Provide evidence for items 1 and 2. Then provide evidence for **either** item 3 **OR** item 4, listed below.*

- 1) **Parent Notification of General Education Instruction and Intervention.** Documentation that prior to or as part of the intervention and referral process, parents were notified about:
  - a. The state's policies regarding the amount and nature of student performance data collected and the general education services provided;
  - b. Strategies for increasing the student's rate of learning; and

- c. The parents' right to request an evaluation.

*This requirement may be met by providing such notification to parents using the document provided by the Idaho Department of Education or through an LEA-created document that addresses the above-listed requirements.*

- 2) **Effectiveness of Core Curriculum.** Provide documentation that instruction in the core curriculum is effective for most students. This is demonstrated using current data that helps establish that the grade-level, standards-aligned core curriculum is effective for most (50% plus 1) students based on growth and/or proficiency.

*If the referred student belongs to a population of students whose performance is regularly disaggregated, data for the disaggregated group shall also be reviewed and considered.*

- 3) **Option 1:** Response to Intervention. Provide evidence that the student failed to respond to scientific, evidence-based intervention in specific area(s) of concern.

- a. Provide a description of each targeted intervention that was provided to address specific skill deficit(s) in each area of concern; and
- b. Provide evidence that progress was monitored on identified skill deficits in each area of concern using a standardized, norm-referenced or criterion-referenced progress monitoring measure.
  - i. For each area of concern, provide information about the progress made during the intervention(s). The information must include a visual representation (e.g., graph or table) and description of each of the following:
    1. Aimline;
    2. Trendline;
    3. Decision points;
    4. The student's rate of improvement; and
    5. National or local norms describing expected performance for grade level peers.
  - ii. Provide a summary of how the evaluation team used this information to determine that the student has not made sufficient progress toward grade-level expectations and performs significantly and consistently below grade level peers.

OR

- 4) **Option 2:** Pattern of Processing Strengths and Weaknesses. Provide evidence of a pattern of strengths and weaknesses in psychological processing skills that impact learning.



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Provide evidence that the student’s psychological processing skills are linked to the failure to achieve adequately in the academic area(s) of concern. Evidence must rely on standardized assessments. These assessments must be conducted by a professional who is qualified to administer and interpret the assessment results. The student’s performance on a psychological processing assessment demonstrates a pattern of strengths and weaknesses that help explain why and how the student’s learning difficulties occur. Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test psychological processing.

- a. Report and describe processing strengths and weaknesses.
- b. Provide a description of how the identified pattern of strengths and weaknesses help explain learning difficulties in the area(s) of concern.

**AND**

- e. **Adverse Effect.** The disability adversely affects the student’s educational performance.

**AND**

- f. **Need for Specially Designed Instruction.** The student requires specially designed instruction.

## 9. Multiple Disabilities

**Definition:** Multiple disabilities are two or more co-existing severe impairments, one of which usually includes an intellectual disability, such as intellectual disability/blindness, intellectual disability/orthopedic, etc. Students with multiple disabilities exhibit impairments that are likely to be life long, significantly interfere with independent functioning, and may necessitate environmental accommodations or adaptations to enable the student to participate in school and society. The term does not include deaf-blindness.

**State Eligibility Criteria for Multiple Disabilities:** An evaluation team will determine that a student is eligible for special education services as a student with multiple disabilities when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student meets eligibility criteria for severe concomitant impairments, the combination of which causes such significant educational problems that the student cannot be accommodated by special education services designed solely for one of the disabilities.

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- c. The student meets State Eligibility Criteria as outlined for each disability category.
  - d. The student's condition adversely affects educational performance.
  - e. The student needs specially designed instruction.

### **10. Orthopedic Impairment**

**Definition:** Orthopedic impairment means a severe physical limitation that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (clubfoot, or absence of an appendage), an impairment caused by disease (poliomyelitis, bone tuberculosis, etc.), or an impairment from other causes (cerebral palsy, amputations, and fractures or burns that cause contracture).

**State Eligibility Criteria for Orthopedic Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with an orthopedic impairment when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student exhibits a severe orthopedic impairment. The term includes congenital anomalies, impairments caused by disease, and impairments from other causes that are so severe as to require special education services.
- c. The student has documentation of the condition by a physician or other qualified professional.
- d. The student's condition adversely affects educational performance.
- e. The student needs specially designed instruction.

### **11. Speech or Language Impairment: Language**

**Definition:** A language impairment exists when there is a disorder or delay in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems. The impairment may involve any one or a combination of the following:

- a. the form of language (morphological and syntactic systems);
- b. the content of language (semantic systems); and/or
- c. the function of language in communication (pragmatic systems).

A language disorder does not exist when language differences are due to non-standard English or regional dialect or when the evaluator cannot rule out environmental, cultural, or economic disadvantage as primary factors causing the impairment. The evaluation team is encouraged to

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ask if a hearing screening has been completed. Also note, a student can be considered as having a Language Impairment if the criteria for Deaf or Hard of Hearing have not been met.

**State Eligibility Criteria for Language Impairment:** An evaluation team will determine that a student is eligible for special education and related services as a student who has a language impairment when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. At least two procedures, at least one of which yields a standard score, are used to assess receptive language and/or expressive language.
- c. The student has attained scores on a standardized measure that are 1.5 standard deviations or more below the mean, or at or below the 7<sup>th</sup> percentile, in either receptive or expressive language.
- d. The student's disability adversely affects educational performance.
- e. The student needs specially designed instruction. (Speech/language therapy can be specially designed instruction or a related service.)

Caution is advised when evaluating a student whose native language is other than English. The acquisition of the English language is not to be mistaken as a language impairment.

## **12. Speech or Language Impairment: Speech**

The term speech impairment includes articulation/phonology disorders, voice disorders, or fluency disorders that adversely impact a child's educational performance. The following eligibility criteria and minimum assessment procedures have been established for all three types of speech impairments.

### ***a. Articulation/Phonology Disorder***

**Definition:** Articulation is the ability to speak distinctly and connectedly. Articulation disorders are incorrect productions of speech sounds including omissions, distortions, substitutions, and/or additions that may interfere with intelligibility. Phonology is the process used in our language that has common elements (sound patterns) that affect different sounds. Phonology disorders are errors involving phonemes, sound patterns, and the rules governing their combinations.

- 1) An articulation/phonology disorder exists when:
  - i. the disorder is exhibited by omissions, distortions, substitutions, or additions;

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- ii. the articulation interferes with communication and calls attention to itself; and
  - iii. the disorder adversely affects educational or developmental performance.
- 2) An articulation/phonology disorder does not exist when:
- i. errors are temporary in nature or are due to temporary conditions such as dental changes;
  - ii. differences are due to culture, bilingualism or dialect, or from being non-English speaking; or
  - iii. there are delays in developing the ability to articulate only the most difficult blends of sound or consonants within the broad range for the student's age.

**State Eligibility Criteria for Articulation/Phonology Disorder:** An evaluation team will determine that a student is eligible for special education and related services as a student who has an articulation/phonology disorder (speech impairment) when all of the following criteria are met:

- 1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- 2) At least two procedures are used to assess the student, one of which yields a standard score.
- 3) The student must have a score that is at least 1.5 standard deviations below the mean, or at or below the 7th percentile, on a standardized articulation/phonological assessment, or the speech impairment is judged as moderate on the standardized measure for students ages three (3) through twenty-one (21) years.
- 4) The student's disability adversely affects educational performance.
- 5) The student needs specially designed instruction. (Speech/language therapy can be specially designed instruction or a related service.)

***b. Fluency Disorder***

**Definition:** A fluency disorder consists of stoppages in the flow of speech that is abnormally frequent and/or abnormally long. The stoppages usually take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

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- 6) A fluency disorder exists when an abnormal rate of speaking, speech, interruptions, repetitions, prolongations, blockages of airflow and/or voicing interferes with effective communication.
  - 7) A fluency disorder does not exist when developmental dysfluencies are part of normal speech development and do not interfere with educational or developmental performance.

**State Eligibility Criteria for Fluency Disorder:** An evaluation team will determine that an individual is eligible for special education and related services as a student who has a fluency disorder (speech impairment) when all of the following criteria are met:

- 1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- 2) The student has a fluency rating of moderate or severe on the Fluency Communication Rating Scale for student's age three (3) through twenty-one (21) years. See the documents section of this chapter for the Fluency Communication Rating Scale.
- 8) The student's disability adversely affects educational performance.
- 9) The student needs specially designed instruction. (Speech/language therapy can be a primary or a related service.)

***c. Voice Disorder***

**Definition:** Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

A student who has a suspected laryngeal-based voice disorder and has not been evaluated by an ear, nose, and throat (ENT) physician (otorhinolaryngologist/otolaryngologist) may not receive voice therapy services from a speech-language pathologist.

- 10) A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:
  - i. interfere with communication;
  - ii. draw unfavorable attention to the speaker;
  - iii. adversely affect the speaker or listener; or
  - iv. are inappropriate to the age and gender of the speaker.
- 11) A voice disorder exists when the vocal characteristics of quality, pitch,

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intensity, or resonance:

- i. are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;
- ii. are the result of regional dialectic or cultural differences or economic disadvantage; or
- iii. do not interfere with educational or developmental performance.

**State Eligibility Criteria for Voice Disorder:** An evaluation team will determine that a student is eligible for special education and related services as a student who has a voice disorder (speech impairment) when all of the following criteria are met:

- 1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- 2) The student has a voice production rating of moderate or severe on the Voice Rating Scale for students aged three (3) through twenty-one (21) years. See the documents section of this chapter for the Voice Rating Scale.
- 3) An ear, nose, and throat (ENT) physician's (otorhinolaryngologist) statement documents that voice therapy is not contraindicated.
- 4) The student's disability adversely affects educational performance.
- 5) The student needs specially designed instruction. (Speech/language therapy can be a primary or a related service.)

See the documents section of this chapter for information on documenting adverse effects on educational performance for students with speech/language disorders.

NOTE: A student may receive speech or language services if he or she is eligible for special education under another disability category and needs speech or language services as a related service in order to benefit from special education without meeting the eligibility criteria for speech and language impairment.

### **13. Traumatic Brain Injury (TBI)**

**Definition:** Traumatic brain injury refers to an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced

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by birth trauma.

**State Eligibility Criteria for Traumatic Brain Injury:** An evaluation team will determine that a student is eligible for special education services as a student who has a traumatic brain injury when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student has an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both.
- c. The student has documentation of a traumatic brain injury.
- d. The student's condition adversely affects educational performance.
- e. The student needs specially designed instruction.

#### **14. Visual Impairment Including Blindness**

**Definition:** Visual impairment refers to an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. Partial sight refers to the ability to use vision as one channel of learning if educational materials are adapted. Blindness refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials.

**State Eligibility Criteria for Visual Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with blindness or a visual impairment when all of the following criteria are met:

- a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b. The student has documentation of blindness or a visual impairment, as determined by a qualified professional, including one or more of the following:
  - i. Blindness – visual acuity of 20/200 or less in the better eye with the best possible correction at distance and/or near, or visual field restriction of 20 degrees or less in the better eye;
  - ii. Visual Impairment – visual acuity better than 20/200 but worse than 20/70 in the better eye with the best possible correction at distance and/or near, or visual field restriction of 70 degree or less but better than 20 degrees in the better eye;
  - iii. Eye condition – including oculomotor apraxia, cortical visual impairment, convergence insufficiency, or other condition;

- iv. Progressive loss of vision which may affect a student's educational performance in the future;
  - v. Functional vision loss where acuity or visual field alone may not meet the criteria above.
- c. The student's eye condition, even with correction, adversely affects educational performance.
- d. The student needs specially designed instruction.





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## CHAPTER 5: INDIVIDUALIZED EDUCATION PROGRAMS

If a student is eligible for special education services, they have met the requirements of eligibility under the IDEA. Eligibility requires a student to meet the following three prongs: 1) the student has a disability that meets the criteria; 2) the disability adversely affects the student's educational performance; and 3) the student requires specially designed instruction.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability including instruction conducted in the classroom, the home, hospitals, institutions, and other settings. The definition of special education also includes the following: instruction in physical education, speech/language pathology, travel training, and vocational education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from his or her disability and to ensure access to the general curriculum so that the student can meet the Idaho Content Standards that apply to all students.

The Individualized Education Program (IEP) is a written document developed for each eligible student with a disability and documents the specially designed instruction and related services. The IEP is the product of team collaboration among a parent/adult student, district personnel, and other IEP team members who, through full and equal participation, identify the unique needs of a student with a disability and plan the special education services to meet those needs.

In developing each student's IEP, the IEP team shall consider:

- 1) the strengths of the student;
- 2) the concerns of the parents for enhancing the education of their child;
- 3) the results of the initial or most recent evaluation of the student;
- 4) the unique circumstances of the student; and
- 5) the academic achievement, developmental, and functional needs of the student.

### Section 1. IEP Initiation

#### A. Purpose of Meeting

The primary purpose of an IEP team meeting is to design an appropriately ambitious IEP that meets the unique needs of a student with a disability. The IEP team determines the special education and related services reasonably calculated to enable the student to receive

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educational benefits in the least restrictive environment. The parent/adult student shall be invited to the meeting and participate meaningfully. (Note: transition age students must be invited to the IEP team meeting). The IEP team members should come prepared to discuss specific information about the student's unique circumstances and the type of services to be provided to address the student's unique circumstances.

The meeting format should invite open discussion that allows participants to identify and consider the unique circumstances of the student related to his or her disability and what is necessary to provide access to, participate in, and make progress in the general education curriculum. Placement decisions shall be considered *after* the special education services are determined and shall not be the determining factor in developing the IEP content.

Informal or unscheduled conversations involving district personnel on various issues (e.g., teaching methodology, lesson plans, or coordination of service provisions) are not considered a meeting as long as no decisions are made regarding issues addressed on the student's IEP. A meeting does not include preparatory activities in which district personnel engage to develop a proposal or a response to a parent/adult student proposal that will be discussed at a later meeting.

### **B. Team Decision Making**

The IEP team meeting serves as a communication vehicle between IEP team members enabling them to make joint, informed decisions regarding the student's special education services as equal participants. All members of the IEP team are expected to work toward consensus regarding IEP decisions to ensure the student receives a free appropriate public education (FAPE). Consensus means consent of all IEP team members to support the decision of the team, which requires that all members of the team have an opportunity for meaningful participation.

If there is lack of consensus between the parent/adult student, district personnel, and other IEP team members regarding an IEP decision, then school personnel on the IEP team should seek consensus within the school team and provide written notice to the parent/adult student. If there is lack of consensus among school personnel, then the district representative on the IEP team shall make the decision and provide written notice to the parent/adult student. The parent/adult student should be made aware of the procedures in Section 2J of this chapter, "Parent/Adult Student Objection to the IEP" and their procedural safeguards, including due process rights.

### **C. When IEP Team Meetings Are Held**

An IEP team meeting shall be held for one or more of the following reasons:

1. to develop an IEP within thirty (30) calendar days of determination that the student is eligible for special education and related services;
2. to review the IEP periodically, but no longer than one year (365 days) from the date of

development of the current IEP, with the IEP in effect at the beginning of each school year;

3. when another agency fails to deliver transition or other services outlined in the IEP;
4. to consider revisions to the IEP if there is any lack of expected progress toward annual goals and/or in the general education curriculum, where appropriate;
5. at the reasonable request (as determined by the district) of any member of the IEP team (Note: Written notice shall be provided the parent/adult student who requests an IEP team meeting when a district refuses to hold one);
6. to review behavioral intervention strategies and/or develop a behavioral plan as part of the IEP;
7. to address the IDEA discipline requirements (see Chapter 12); and/or
8. to review the results of any reevaluation or independent educational evaluation (IEE).

NOTE: Under the IDEA, an IEP team meeting may not be required to amend the IEP (see IEP Amendments).

**D. IEP Team Members and Roles**

The IEP team is a group of individuals responsible for developing, reviewing, or revising an IEP for a student with a disability.

Role	Description
Parent of the student  or  Adult Student if rights have transferred	The term “parent” refers to a biological or adoptive parent, foster parent, a judicially decreed guardian (does not include State agency personnel if the student is a ward of the state), a person acting in place of a parent, or a surrogate parent who has been appointed by the district. The term “acting in place of a biological or adoptive parent” includes persons such as a grandparent, stepparent, or other relative with whom the student lives, as well as persons who are legally responsible for a student’s welfare. A foster parent may act as a parent if the natural parent’s authority to make educational decisions on behalf of his or her child has been terminated by law. A foster parent shall be an individual who is willing to make educational decisions required of a parent, and has no interest that would conflict with the interests of the student. If more than the biological or adoptive parents meet the definition of parent, the biological or adoptive parents serve as the parents in the IEP process, unless a judicial decree or order identifies a

Role	Description
	<p>specific person or persons to make educational decisions for the student.</p> <p>An “adult student” is a student with a disability who is eighteen (18) years of age or older to whom special education rights have transferred under the IDEA and Idaho Code. (See Chapter 11, Section 2C, for more information.) In this case, the parent may attend the IEP team meeting as an individual who has knowledge or special expertise regarding the student, at the invitation of the adult student or the district.</p>
District Representative	<p>The district representative or designee shall be qualified to provide or supervise the provision of special education to meet the unique needs of students with disabilities. The representative shall be knowledgeable about the general education curriculum and about the availability of resources in the district. They shall have the authority to allocate resources and to ensure that the IEP will be implemented. Examples of the district representative include the building principal, the special education director, the district superintendent, or others who meet the criteria described above. The district representative may be another member of the IEP team if all the criteria above are met.</p>
Special Education Teacher/Provider—not less than one	<p>This individual generally will be the student’s special education teacher or service provider who is responsible for implementing the student’s IEP. For example, in the case of a student receiving primary services from a speech-language pathologist, it is more appropriate for the speech-language pathologist to fill this role on the IEP team.</p>
General Education Teacher—not less than one	<p>A general education teacher of the student is required to participate in developing the IEP if a student is, or may be, participating in the general education environment. Regardless, a representative that is knowledgeable of the general education curriculum at the student’s grade level shall be present.</p> <p>For preschool-age students, the general education teacher may be the kindergarten teacher or an appropriate designee. Designees at the preschool level may include a care provider, Head Start teacher, or community preschool teacher, if that person meets State and/or national licensing standards.</p>
Individual who can	<p>This person may be someone who participated in the evaluation of</p>

Role	Description
interpret evaluation results and implications	the student. He or she shall be able to explain the results, the instructional implications, and the recommendations of the evaluation.
Student	Whenever appropriate, the IEP team includes the student with a disability. A student shall be invited by the district to attend any IEP team meeting at which post-secondary goals and transition services needed to assist the student in reaching those goals will be discussed. If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student's preferences and interests are considered.
Representative of a Private School  (if applicable)	If a student is enrolled in or referred to a private school, the district shall ensure that a representative of the private school is invited to the IEP team meeting. If a representative cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
Representative of Transition Agency(s) (Parent/Adult student consent shall be obtained prior to inviting the Transition Agency Representative to participate in the IEP team meeting).	If transition services are being discussed, a representative of any participating agency likely to be responsible for providing or paying for transition services shall be invited (with the prior consent of a parent/adult student). If a representative does not attend, steps should be taken to obtain participation from the agency in transition planning.
Part C Coordinator or Representative	A Part C coordinator or other representative may be invited by the district to participate in the team IEP meeting for a preschooler transitioning to Part B services. Parents shall be informed of their right to request an invitation for an Infant Toddler Program representative(s) to the initial IEP team meeting.
Other	At the discretion of the parent/adult student or the district, other individuals who have knowledge or special expertise regarding the student, including related service personnel, may be included as IEP team members. The determination of having knowledge and special expertise regarding the student shall be made by the parent/adult student or district person who invited the individual to be a member of the IEP team.



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NOTE: The general education teacher, special education teacher, district representative, or individual who can interpret implications of evaluation results may be excused from an IEP team meeting, in whole or in part, if the parent/adult student and district agree in writing. If the meeting deals with the excused member's areas of the curriculum and/or services, he or she shall provide written input to the IEP team prior to the meeting. Written input shall include substantive data (e.g., interpreting assessment findings, providing meaningful guidance to the team, regarding the purpose of the meeting, reflecting on general education curriculum). If a district representative is excused, a staff member in attendance shall have the authority to bind the district to the decisions of the team.

### **E. The General Educator's Role in IEP Development**

If a student is or may be participating in the general education curriculum or environment, not less than one of the student's general education teachers shall participate in developing the IEP, to the extent appropriate. The general education teacher's role in the development, review, and revision of the IEP includes:

1. discussion of the student's involvement and progress in the general education curriculum, if known;
2. discussion of appropriate positive behavioral interventions and other strategies for the student; and
3. discussion of supplementary aids and services, program accommodations/adaptations, to be provided by supports for school personnel in the general education classroom.

### **F. Invitation to IEP Team Meetings**

To the extent possible, the district should encourage the consolidation of all team meetings, including meetings that may involve eligibility, reevaluation and IEP development.

The district shall meet the requirements outlined below.

1. Schedule the meeting at a place and time mutually agreed upon by the parent/adult student and the district.
2. Invite the parent/adult student and the secondary transition age student, if applicable, to the meeting early enough to ensure that he or she can attend. The district shall keep a record of this invitation. The invitation shall include the following:
  - a. the purpose(s), time, and location of the meeting;
  - b. who will attend the meeting, by role;
  - c. information regarding the parent's/adult student's right to bring other people to the meeting and invite a Part C representative, if appropriate; and

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- d. notification that post-secondary goals and transition services will be discussed, as applicable.

The invitation should clarify the parent's/adult student's (or secondary transition age student's) role on the team and request that he or she come prepared to discuss the unique needs and characteristics of the student, the types of services needed, and the goals that would indicate the success of the services.

- 3. Invite the student, if appropriate or required, to attend and participate in his or her IEP team meeting. If the student is a minor, the parent shall make the decision regarding the student's attendance. If a purpose of the meeting is to consider transition but the student does not attend, the district shall take other steps to ensure that the student's preferences and interests are considered.
  - 4. The invitation may be written or oral. In either case, the district shall document that all the required components noted in item 2 above were included in the invitation. In addition, the parent/adult student shall be given a physical copy of the *Procedural Safeguards Notice* at least annually, preferably at the annual review, unless the parent requests additional copies.
  - 5. When one purpose of the IEP team meeting is to consider transition services, the invitation shall:
    - a. indicate this purpose;
    - b. invite the student; and
    - c. identify any other agency that will be invited to send a representative, with parent's/adult student's consent.
  - 6. The district shall take appropriate action to ensure that a parent/adult student understands the proceedings at an IEP team meeting, including arranging for an interpreter for a parent/adult student who has hearing loss or whose native language is other than English.
  - 7. The IEP team may meet without the parent/adult student if he or she cannot attend the meeting or cannot be convinced to attend the meeting. However, the district shall document its attempts to arrange a mutually agreed upon time and place for the meeting. Documentation could include records of telephone calls or conversations, copies of correspondence sent to the parent/adult student and any responses received, and/or detailed records of any visits made to the parent's/adult student's residence. If a meeting is held without the parent/adult student, the district shall offer and document alternative methods, such as conference calls, to gain his or her participation in the development of the IEP.
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Alternatives to physical meetings such as video and telephone conferencing, may take the place of physical IEP team meetings if the parent/adult student and district agree.

## Section 2. IEP Development

The IDEA clearly defines the required components of an IEP and the Idaho IEP form is designed to include only those IDEA required components. Therefore, no additional information may be required in a student's IEP beyond what is explicitly required by IDEA, nor can information be required under one component of a student's IEP that is already contained under another component of the student's IEP.

NOTE: IEP team meeting minutes are not part of the official IEP document.

### **A. General Demographic Components for All IEPs**

All IEPs shall include the date of the IEP team meeting and the following general demographic components: the student's name as it appears in school records, native language, birth date, and identification number (for State reporting or Medicaid purposes only), names of parents, address, phone number, school, and grade.

### **B. Documentation of Participants**

The district shall ensure the attendance and participation of the IEP team members at the IEP team meeting. Documentation of attendance can be accomplished by listing team member roles on the IEP and checking their attendance status. Prior to the beginning of the meeting, an excusal form identifying any required district members not present at the IEP team meeting, with the parent/adult student's signature of approval, shall be attached.

The attendance list is not a reflection of agreement or disagreement with the IEP; it is only an indication of attendance. As with any team member, the parent's/adult student's inclusion on the list does not indicate agreement or disagreement with the IEP contents. If the parent/adult student disagrees with all or part of the IEP, the district should remind the parent/adult student that he or she may file a written objection. Any participant at the IEP team meeting may file a minority report if he or she disagrees with a program decision. A minority report shall not prevent the implementation of an IEP team decision.

NOTE: See Section 2J of this chapter for additional information on parent/adult student objections.

### **C. Present Levels of Academic Achievement and Functional Performance, Goals, Objectives and Benchmarks**

The IEP identifies present levels of academic achievement and functional performance (PLAAFP) and measurable goals that enable the IEP team to track the effectiveness of services and to

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report progress toward goals.

1. Statements of PLAAFP in an area of need include:
    - a. How a school-age student’s disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).
    - b. For preschool students, PLAAFP should describe how the disability affects the student’s participation in age-appropriate activities.
  2. Although the content of present levels of academic and functional performance statements are different for each student, individual present level of academic and functional performance statements will meet the following requirements:
    - a. The statement shall be written in objective, measurable terms using easy-to-understand non-technical language;
    - b. The other components of the IEP, including special education services, annual goals, and, objectives and benchmarks for students who participate in alternate assessments (AA) , shall show a direct relationship to the content of present levels of academic and functional performance;
    - c. The statement shall provide baseline data for goal development;
    - d. The statement shall reference Idaho Content Standards, Idaho Workplace Skills Career Readiness Standards, Idaho Extended Content Standards Core Content Connectors, or Idaho Early Learning Guidelines (eGuidelines), as applicable;
    - e. The statement shall include the student’s strengths and needs; and
    - f. The statement shall include parental concerns for enhancing the student’s education; and
    - g. The statement shall address how a student’s disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).
  3. Annual IEP goals shall be appropriately challenging and reflect the needs described in the present levels of academic and functional performance statements. Measurable academic achievement, developmental, and functional annual goals are designed to meet the student’s unique needs that result from the student’s disability, to enable the student to be involved in and make progress in the general education curriculum, and to meet each of the student’s other educational needs that result from the student’s disability.
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- a. A goal is a written, measurable statement, developed from the baseline data, describing what a student is reasonably expected to accomplish within the time period covered by the IEP, generally one year.
  - b. Goals are written to enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability.
  - c. A goal shall be appropriately challenging given the circumstances of the student and include the behavior, the performance criteria, and the evaluation procedure.
4. Objectives and benchmarks are required for students taking AAs. Objectives and benchmarks shall align with the PLAAFP and the annual goal, as a progression toward meeting the annual goal.

#### **D. Progress Toward Goals**

The IEP shall include a statement describing:

1. How the student's progress toward IEP goals will be measured and the progress monitoring schedule;
2. How and when the parent/adult student will be informed of the student's progress toward the annual goals, including the extent to which progress is sufficient to enable the student to achieve the goals by the end of the IEP time period.

At minimum, periodic written progress statements related to progress toward annual goals will be reported concurrent with the issuance of report cards.

#### **E. Statements of Special Education and Related Services**

Each student's IEP shall describe the specific special education and related services that will be provided to or on behalf of the student, based on peer-reviewed research to the extent practicable. Special education includes specially designed instruction to meet the unique needs of the student.

The term "related services" refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education as described in the IEP. These services include, but are not limited to:

- Audiology
- early identification and assessment of student's disabilities
- interpreter services

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- language therapy
  - medical services for diagnostic or evaluative purposes
  - occupational therapy
  - orientation and mobility services
  - parent counseling and training. Parent counseling and training includes helping a parent understand child development and the special needs of his or her child and acquire skills to support the implementation of his or her child's IEP.
  - physical therapy
  - psychological services
  - rehabilitation counseling services
  - school nurse services
  - social work services in school
  - speech therapy
  - supports for school staff
  - therapeutic recreation

The above list of related services is not exhaustive and may include other developmental, corrective, or supportive services, transition services or assistive technology. Although services may be of benefit to a student with a disability, all of the services listed above may not be required for each individual student. Related services are the responsibility of the district only if the IEP team determines they are required to assist the student to benefit from special education. Further, the student is not entitled to related services if he or she is not eligible for special education or the parent/adult student does not consent to initial provision of special education services.

EXCEPTION: "Related Services" does not include a medical device that is surgically implanted or the replacement of such device, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. The district is responsible to appropriately monitor and check devices to make sure the devices are functioning properly. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

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THIRD PARTY PAYERS: Consent from the parents/adult student is required when the district bills Medicaid or the parent's insurance for services provided. See Chapter 11 for details.

**F. Supplementary Aids, Services, and Other IEP Considerations**

Supplementary aids and services may include general education curriculum accommodations and/or adaptations, support for school staff, positive behavioral intervention plans, extended school year services, transportation, transition services, assistive technology services, and travel training services deemed appropriate by the IEP team and shall be provided whether or not the district currently has these services in place.

The description of services in the IEP shall:

1. Identify the program accommodations and supplementary aids to be provided to the student in the areas of need.
2. List the specific services that will meet the unique needs of the student, allowing him or her to advance appropriately toward attaining the annual goals, and:
  - a. be involved in and make progress in the general education curriculum;
  - b. participate in extracurricular and other nonacademic activities; and
  - c. be educated and participate with other students with disabilities and with students without disabilities to the maximum extent appropriate.

NOTE: The public agency shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

3. State the projected starting date and expected duration of the services, accommodations, and/or adaptations.
4. List the anticipated time and frequency of sessions per week or month. The amount of service may not be stated as a range.
5. State the location where services and accommodations/adaptations will be provided (such as a general education classroom, resource room, etc.) Note: Location does not mean specific site.

Based on the unique needs of each student, the IEP team shall consider any services listed below that may be appropriate for the student and shall document such services on the IEP accordingly.

1. Supplementary Aids and Services

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“Supplementary aids and services” are aids, services, and other supports that are provided in general education classes, other education-related settings and extracurricular and nonacademic settings to enable students with disabilities to be educated with students without disabilities to the maximum extent appropriate in accordance with LRE requirements.

The determination of which supplementary aids and services are appropriate for a particular student shall be made on an individual basis. Supplementary aids and services may include the following: assistance of an itinerant special education teacher, related service provider, or paraprofessional; support or training for the general educator; use of resource services; provision of note takers; supports for extracurricular or other nonacademic activities; and supports for participation state- or district-wide assessments.

## 2. Accommodations and Adaptations

NOTE: “Modifications” include accommodations and adaptations. Idaho uses the terms accommodations and adaptations to describe two separate instructional and assessment practices.

Accommodations and adaptations include any changes that allow students with disabilities the same opportunity as students without disabilities to participate in and benefit from the educational program, activities, and services of the district.

Accommodations are intended to make educational opportunities more accessible. This may involve the setting, communication modality, equipment, and/or supplemental aids and services. Examples include Braille editions, large print, pencil grips, audio recording, note takers, and computers with spell check.

Accommodations are changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology, as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results and do not fundamentally alter the requirements or course expectations.

Adaptations are changes in educational expectations for the student with a disability compared to peers without disabilities. These adaptations include actual changes in the general education curriculum and instruction or the use of an alternative or supplemental curriculum. Adaptations include strategies such as reading aloud the reading portion of a test, using spell/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and may invalidate assessment results or provide non-comparable results. Examples include fewer concepts to be mastered, different test questions, and material at a different reading level.

Whenever the IEP team determines that accommodations and/or adaptations are needed to ensure academic progress, these shall be indicated in the IEP. Any accommodations and/or

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adaptations required in physical education, vocational education, and state- or district-wide assessments shall be documented in the IEP.

### 3. Assistive Technology Devices and/or Services

The district shall ensure that assistive technology devices and/or services are made available to a student, if required, as special education, related services, or supplementary aids and services. The following points are definitions and clarifications of terms:

- a. "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a device that is surgically implanted or the replacement of such device.

The district shall permit the student to use school-purchased assistive technology devices at home and in other settings if the IEP team determines that the student needs access to these devices in non-school settings to receive FAPE. An example of this would be to complete homework. The district may hold a parent/adult student liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the district if it is lost, stolen, or damaged because of negligence or misuse at home or in another setting outside of school.

Assistive technology devices should be designed using "universal design" principles. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities. This includes products and services that are directly accessible (without requiring assistive technologies) and products and services that are compatible with assistive technologies.

- b. "Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:
  - 1) an evaluation of the student's assistive technology needs, including a functional assessment in the student's customary environment;
  - 2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
  - 3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
  - 4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing

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education and rehabilitation plans and programs;

- 5) training or technical assistance for a student with a disability or, if appropriate, that student's family; and
  - 6) training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services or are otherwise substantially involved in the major life functions of a student with a disability.
- c. The district shall ensure that the hearing technology worn by students who are deaf or hard-of-hearing in school are functioning properly.
  - d. The district is responsible for appropriately monitoring and checking surgically implanted devices to make sure the devices are functioning properly, if the team has determined that those services are necessary. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is at school or being transported to and from school.

#### 4. Extended School Year Services

The district shall provide extended school year (ESY) services for students with disabilities who qualify for such services. The ESY programs for eligible students shall meet the requirements of FAPE. The student's educational program is based on individual needs and is not determined by what programs are readily available within the district. The student cannot be required to fail or to go for an entire school year without ESY services, simply to prove a need. The IEP team shall consider the following in the development and provision of an ESY program:

- a. The term "extended school year services" means special education and/or related services that are provided beyond the regular school year:
  - 1) to a student with a disability;
  - 2) in accordance with the student's IEP; and
  - 3) at no cost to the parent/adult student.

The goal of ESY services is to assist students with disabilities with the emergence and maintenance of specific IEP goals addressed during the school year preceding the ESY. These may include goals related to independence, behavior, socialization, communication, and academics. The ESY services for special education students provide a different focus from general summer school programs.

- b. The ESY services shall be considered in light of the totality of the circumstances, including the following:

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- 1) Emerging skill: Few, if any, gains are made during the regular school year. A skill is in the process of emerging, and the IEP team believes that with ESY services the student would make reasonable gains; or
  - 2) Regression-recoupment: The student in the absence of an educational program will experience significant regression and the amount of time required to relearn a skill or behavior becomes so significant that the student would be unable to benefit from his or her special education; or
  - 3) Self-sufficiency: An interruption in services would threaten the acquisition of critical life skills that aid in the student's ability to function as independently as possible, thereby continuing the student's reliance on caretakers, including institutionalized care. Critical life skills relate to those skills that lead to independent functioning. Development of these skills can lead to reduced future dependency on caretakers and enhance the student's integration with individuals without disabilities. Skills may include toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.
- c. Decisions concerning ESY services shall be based on student performance data and written documentation. Types of data and information may include, but are not limited to, those listed below.
- 1) Criterion-referenced test data: Consider daily/weekly probes or pre-test/post-test data.
  - 2) Norm-referenced test data: Consider pre-test/post-test data.
  - 3) Anecdotal records: Consider information collected throughout the school year.
  - 4) Physical, mental, or emotional health factors: Consider the educational, medical, and psychological records of the student as well as the prognosis or judgments of educators, medical personnel, parents, and others who work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.
  - 5) History: Consider evidence of past regression or past ESY services. The IEP team should not automatically assume that a student who has received ESY services in the past will be eligible for ESY services in the future, but it is a factor to consider.
  - 6) Data on observed performance: Consider data maintained on the
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student concerning performance observed in the classroom, during community-based activities, and as part of IEP progress monitoring.

- 7) Teacher interviews and recommendations: Consider progress reports by teachers, therapists, and others who have direct contact with the student before and after breaks in educational programming.
  - 8) Parent/Adult student input: Consider parent observations of the student, as well as parent/adult student requests for ESY services.
- d. The ESY services shall be clearly described in an IEP. The district can meet this requirement by amending the current IEP using an amendment form or by developing a complete ESY IEP. See Section 1C of this chapter for more information.
  - e. The district may not limit ESY services to particular categories of disability or unilaterally limit the amount or duration of these services.

#### 5. Transportation

Transportation is a related service intended for a student whose disability requires special arrangements for him or her to benefit from special education. The student's individual needs concerning his or her education are the main considerations in determining services—this includes transportation services.

The IEP team shall consider how the student's disability affects his or her need for transportation, including determining whether the student's disability prevents the student from using the same transportation provided to students without disabilities, or from getting to school in the same manner as students without disabilities. This includes transporting a preschool-age student to the site at which the district provides special education and related services to the student, if that site is different from the site at which the student receives other preschool or day-care services.

When the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA shall be afforded to the student in matters concerning transportation.

Transportation needs may include, but are not limited to, the following:

- a. travel to and from school and between schools to access special education;
- b. travel in and around school buildings;
- c. specialized equipment including lifts and ramps, if required to provide special transportation; or

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- d. other services that support the student's use of transportation, such as:
- 1) special assistance (e.g., an aide on the bus and/or assistance getting on and off the bus);
  - 2) safety restraints, wheelchair restraints, and/or child safety seats;
  - 3) accommodations (e.g., preferential seating, a positive behavioral support plan for the student on the bus, and/or altering the bus route);
  - 4) training for the bus driver regarding the student's disability or special health-related needs; or
  - 5) attending non-academic and extracurricular activities, if required by the IEP.

#### 6. Special Considerations

As appropriate, the IEP team shall also consider and include the issues listed below in the IEP.

- a. If the student's behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, supports and other strategies to address that behavior.
- b. If the student has limited English proficiency, the IEP team shall consider the language needs of the student. A student's cognitive academic language proficiency (CALP) shall be determined using the State adopted English language proficiency assessment.
- c. If the student is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines that Braille is not appropriate for the student. This determination can only be made after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille).
- d. The IEP team shall consider the communication needs of the student. In the case of the student who is deaf or hard of hearing, the IEP team shall consider the language needs of the student, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, the student's academic level, and his or her full range of needs including opportunities for direct instruction in the student's language and communication mode.

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## G. Statewide and Districtwide Achievement Testing

Section 1111(b)(2) of the Every Student Succeeds Act (ESSA) requires includes requirements that all students participate in statewide assessments.

Students with disabilities shall participate in all state- and district- wide assessments. Participation rates and performance data, both aggregate and disaggregate, for students with disabilities are reported to the public annually.

The IEP team shall determine how the student will participate in state- and district- wide assessments: without accommodations, with supports and accommodations, or by means of the AA. The IEP team determines the supports and accommodations a student will use based on those that are used regularly by the student during instruction or classroom testing and on what is documented in the accommodations section of the IEP.

The following guidelines shall be used to determine how the student will participate in state- and district-wide assessments:

### 1. General Assessment without Accommodations

The IEP team determines and documents in the IEP that a student with a disability can adequately demonstrate his or her knowledge, abilities, or skills on state- and district-wide assessments without accommodations.

### 2. General Assessment with Supports and Accommodations

Appropriate supports and accommodations for students with disabilities shall be based on the individual needs of each student. Supports and accommodations decisions are made by the IEP team and shall be recorded in the IEP. Accommodations should facilitate an accurate demonstration of academic achievement, developmental, and functional performance on state- and district-wide assessments. They should not provide the student with an unfair advantage or change the underlying skills that are being measured by the test. Supports and accommodations shall be the same or nearly the same as those used by the student in completing classroom assignments and assessment activities. The supports and accommodations shall be necessary for enabling the student to demonstrate knowledge, ability, skill, or mastery of academic content. Accommodations *do not* invalidate test results.

Students taking state- and district-wide assessments with supports and/or accommodations shall be given opportunities to practice and become familiar with said supports and/or accommodations in the relevant test delivery system before they begin testing.

### 3. Alternate Assessments based on Alternate Academic Achievement Standards (AAs)

AAs are a statewide testing option intended only for those students with the most significant

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cognitive impairments, in lieu of the general education assessment, with or without supports and accommodations. Participation in AAs reflects the pervasive nature of a significant cognitive impairment and requires that a student meet all participation eligibility criteria. Students with the most significant cognitive impairments represent about 1% of the total student population.

The IEP team shall consider a student's participation in AAs on an annual basis using the participation criteria listed below. The IEP team shall document the student's testing status in the appropriate sections of the IEP.

- a. A student must meet **all four** of the following participation criteria to qualify for the AA.
  - 1) The student has a significant cognitive impairment.
  - 2) The student is receiving academic instruction that is aligned with the Idaho Extended Content Standards.
    - a) The student's instruction and IEP goals/objectives/benchmarks address knowledge and skills that are appropriate and challenging for the student.
  - 3) The student's course of study is primarily adaptive skills oriented typically not measured by state or district assessments.
    - a) Adaptive skills are essential to living independently and functioning safely in daily life, and include, but are not limited to motor skills, socialization, communication, personal care, self-direction, functional academics, and personal health and safety.
  - 4) The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in the grade- and age-appropriate curriculum.
    - a) The student consistently requires individualized instruction in core academic and adaptive skills at a substantially lower level relative to other peers with disabilities.
    - b) It is extremely difficult for the student to acquire, maintain, generalize, and apply academic and adaptive skills in multiple settings, across all content areas, even with high-quality extensive/intensive pervasive, frequent, and individualized instruction.
    - c) The student requires pervasive supports, substantially adapted

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materials, and individualized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate, and transfer skills across multiple settings.

- b. Students shall not qualify to participate in Alternate Assessments based on Alternate Achievement Standards solely based on any of the following reasons:
- 1) Having a disability
  - 2) Poor attendance or extended absences
  - 3) Native language/social, cultural or economic differences
  - 4) Expected poor performance or past basic/below basic performance on the regular education assessment
  - 5) Academic and other services student receives
  - 6) Educational environment or instructional setting
  - 7) Percent of time receiving special education services
  - 8) English Language Learner (ELL) status
  - 9) Low reading level/achievement level
  - 10) Anticipated disruptive behavior
  - 11) Impact of student scores on the accountability system
  - 12) Administrative decision
  - 13) Anticipated emotional distress
  - 14) Need for accommodations (e.g., assistive technology/AAC) to participate in the assessment

#### **H. LRE Explanation and Placement Decisions**

The IEP shall explain the extent, if any, to which the student will *not* participate in the general education classroom, the general education curriculum, and/or extracurricular or other nonacademic activities.

In recommending the appropriate placement in the least restrictive environment (LRE) for the student with a disability, the IEP team shall consider the student's unique circumstances and the continuum of services available to meet those unique circumstances. The parent/adult student shall be involved in the placement decision. Removal from the general education

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environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. A student with a disability is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and adaptations in the general education curriculum. In addition, a student with a disability shall be educated with students without disabilities in the general education classroom to the maximum extent appropriate.

NOTE: The district's reassignment of students (with or without disabilities) to another classroom or building in the district is *not* a change of placement for a student with a disability, as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; or going to a different school as a result of moving from one grade level to another grade level.

See Chapter 6 for more information on placement in the LRE

### **I. Consent for Initial Provision of Special Education and Related Services**

The district shall make reasonable efforts to obtain informed consent from the parent/adult student before the initial provision of special education and related services for the student.

If the parent/adult student communicates in writing that he or she refuses special education and related services following the evaluation and eligibility determination, the district shall not provide special education and related services to the student. If the parent/adult student fails to respond to a district's documented efforts to gain consent for initial provision of special education and related services, the district shall not provide special education and related services to the student. In both cases:

1. The district shall not be in violation of the requirement to provide FAPE to the student or the requirement to provide special education and related services;
2. The district shall not be required to convene an IEP team meeting or develop an IEP for the student; and
3. The district shall not use mediation and/or due process in order to obtain consent or a ruling allowing initial placement.

If the parent/adult student wishes to move forward with the provision of services stated on the IEP and placement in special education, consent for initial placement in special education shall be obtained after the development of an IEP. Consent means that the parent/adult student understands and agrees in writing to the carrying out of the activity for which consent is sought.

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## **J. Parent/Adult Student Objection to the IEP**

If the parent/adult student disagrees with an IEP team's proposed IEP for the student, the parent or adult student may file a written objection to all or parts of the proposed IEP. If the parent/adult student files a written objection that is emailed, postmarked or hand delivered within ten (10) days of the date he or she receives written notice from the district of the proposed IEP, the changes to which the parent/adult student objects cannot be implemented for fifteen (15) calendar days, or as extended through mutual agreement by the district and the parent or adult student, while parties work to resolve the dispute. If the changes have already been implemented, implementation of those changes shall cease. The district and parent/adult student may use methods such as additional IEP team meetings, IEP facilitation, or SDE mediation to resolve the disagreement. If these attempts to resolve the dispute fail or are refused, the proposed IEP shall be implemented after fifteen (15) calendar days unless a due process hearing is filed to obtain a hearing officer's decision regarding the proposed IEP, unless it is an initial IEP. The written objection cannot be used to prevent the district from placing a student in an interim alternative educational setting (IAES) in accordance with the IDEA procedures for discipline of a student, or to challenge an eligibility/identification determination.

If the parent/adult student files a written objection to an IEP change or placement change proposed by the district any time *after* ten (10) calendar days of receiving written notice, the student shall remain in the placement described in the disputed IEP, and that IEP is implemented as written until the disagreement is resolved unless the parent/adult student and the district agree otherwise.

See Chapter 11 for information about the prior written notice requirements regarding the provision of FAPE and educational placement.

See Chapter 13 for more information about the various forms of dispute resolution including facilitation and mediation.

## **K. Additional Transition Components for Secondary-Level IEPs**

Secondary transition services are defined as a coordinated set of activities for a student with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post school activities including postsecondary education, vocational education, integrated employment (including supported employment), continuing in adult education, adult services, independent living, or community participation. The activities include instruction, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These activities are based on the individual student's needs, taking into account the student's strengths, preferences and interests. The following are required components for all secondary students receiving special education services.

1. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or
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younger if determined appropriate by the IEP team), the IEP shall include:

- a. present levels of academic and/or functional performance and a functional vocational evaluation where appropriate;
- b. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
- c. transition services, including a course of study, that will reasonably enable the student in reaching postsecondary goals identified on the IEP which may include postsecondary education and training, employment and career counseling, community participation, independent living or adult services;
- d. evidence that the student was invited to the IEP team meeting where transition services are to be discussed; if the student does not attend the IEP team meeting, the IEP team must take other steps to ensure the student's preferences and interests are considered;
- e. evidence that a representatives of any participating agency was invited to the IEP team meeting with a prior consent of the parent or student who has reached age of majority; and
- f. the graduation requirements for the student receiving special education services. Refer to Chapter 7 for more detailed information on documentation of high school graduation in the IEP.

The postsecondary goals and transition services shall be updated on the IEP annually.

2. Not later than the student's seventeenth (17th ) birthday, the IEP shall include a statement that the student and parent has been informed whether or not special education rights will transfer to the student on his or her eighteenth (18th ) birthday. Special education rights will transfer from the parent to the student when the student turns eighteen (18) years old unless the IEP team determines that:
  - a. the student is unable to provide informed consent with respect to his or her special education program; or
  - b. the parent has obtained legal guardianship.

(For more information on the transfer of rights, see Chapter 11)

3. When a student exits from special education as a result of complying with the Idaho Content Standards and such applicable district graduation requirements or aging out, the district shall provide the student with a summary of his or her academic achievement and performance along with recommendations concerning how to assist

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the student in meeting postsecondary goals.

**L. Following the Meeting**

Following the IEP team meeting, a copy of the IEP and written notice of proposed or refused actions shall be given to the parent/adult student. IEPs and written notice should also be given to the parent/adult student whenever a change is made to the IEP or upon request.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the IEP shall have access to the IEP and be informed of his or her specific responsibilities. This includes being informed of any specific accommodations, adaptations, or supports that shall be provided to the student to ensure that the IEP is implemented appropriately.

### Section 3. IEP Reviews

**A. Annual Reviews**

Each student's IEP shall be reviewed at least annually by the IEP team, once every year (365 days). Meetings may be held any time throughout the school year, as long as the IEP is reviewed annually and is in effect at the beginning of each school year. Either at or after the annual review, written notice that the new IEP changes will be implemented shall be provided to the parent/adult student.

The IEP review includes the following purposes:

1. to determine whether the student's annual goals have been achieved;
2. to revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. to determine whether any additional assessments are necessary and to address the results of those conducted;
4. to address information about the student provided to, or by, the parent/adult student;
5. to address the student's anticipated needs;
6. to monitor the continuing eligibility of the student based on an evaluation or review of a variety of data, which may include formal or informal assessment, progress toward IEP goals and when applicable objectives and benchmarks;
7. to write a new IEP; and
8. to consider a reevaluation to determine if a student is no longer eligible and special

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education services should be discontinued.

**B. IEP Amendments**

In making changes to a student’s IEP after the annual IEP team meeting for a school year, the parent/adult student and the district may agree in writing not to convene an IEP team meeting for the purposes of making such changes, and instead may develop a written document to amend the student’s current IEP. The parent/adult student will be provided with a revised copy of the IEP with the amendments incorporated. The annual review date remains the date of the original IEP.

If the parent/adult student believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP team meeting. The district shall grant any reasonable request for such a meeting. If the district refuses to convene an IEP team meeting requested by the parent/adult student, the district shall provide written notice to the parent/adult student, including an explanation of why the district has determined the meeting is unnecessary.

If any other member of the IEP team feels that the student’s placement or IEP services are not appropriate, that team member may request an IEP team meeting.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the amended IEP shall have access to the amendment and be informed of his or her specific responsibilities.

**Section 4. IEPs for Transfer Students**

Idaho Administrative Procedures Act [IDAPA 08.02.03.109.04(f)] requires the new (receiving) district to request a copy of the eligibility documentation and most current IEP within two (2) school days. Within five (5) school days of receiving this information, the new district determines if a new assessment is required. In the meantime, if the parent agrees, an interim IEP may be developed and implemented, or the existing IEP implemented. If there is no agreement, the student is placed in general education. Within fourteen (14) calendar days the receiving district will request the full educational record of the transferring student from the former school.

**A. Transfer from an Idaho School District**

When a student with a disability transfers school districts with a current IEP in Idaho, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent/adult student, until such time as the district adopts the previously held IEP or develops, adopts, and implements a new IEP. The receiving district shall request, as soon as possible, but no more than two (2) school days, the eligibility documents and the most current IEP from the sending district. Once the

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district has formally received a request for a student's record from another Idaho district, the district shall forward copies or the original documents as soon as possible, but no more than five (5) school days, of the request. Within fourteen (14) calendar days the receiving district will request the full educational record of the transferring student from the former school. If originals are sent, the sending district shall maintain a copy for audit purposes.

Note: The current IEP shall be implemented if a new IEP cannot be developed within five (5) school days of the student's enrollment or if a reevaluation will be taking place.

**B. Transfer from an Out-of-State District**

When a student with a disability transfers from out of state to an Idaho school district with a current IEP in that other state, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent/adult student, until such time as the district conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP.

**C. Transfer to an Out-of-State District**

Within ten (10) school days of receiving a request from an out of state school district for copies of eligibility documentation and a transferring student's IEP, a district shall send the requested information to the receiving district.

**Section 5. IEPs for Children from the Infant/Toddler Program**

**A. Interagency Agreement and Protocols**

The school district, as the local lead agency for Part B, shall initiate the development of a signed interagency protocol with the regional Infant/Toddler Program (ITP) of the Department of Health and Welfare (DHW), the lead agency under Part C of the IDEA. The protocol shall be in accordance with the current state Interagency Agreement for Early Childhood Special Education Services and Early Intervention for Children Ages Two through Five.

The protocol will outline the obligations of each agency to ensure:

1. a smooth and effective transition of children served under Part C to early childhood special education services (ECSE) under Part B;
2. by the child's third birthday, eligibility for Part B services has been determined and an IEP or Individual Family Service Plan (IFSP) has been developed and implemented; and
3. each district and agency shall participate in transition planning conferences.

NOTE: A child, who turns three (3) after May 1, has been determined eligible for Part B services,

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and parental consent has been obtained for initial placement for Part B services, can be served as outlined in the IFSP by the ITP until school starts in the fall. This is the case unless specified differently in the local interagency protocol.

**B. Part C to Part B Transition Planning**

In the case of a child who may be eligible for ECSE services, the district shall participate in a transition planning conference with the family arranged by the ITP. The conference will be conducted at least ninety (90) calendar days (and up to nine (9) months at the discretion of all parties) before the child's third (3<sup>rd</sup>) birthday to discuss eligibility requirements under Part B of the IDEA, needs and concerns of the child and family, and any services the child may receive.

The ITP has the responsibility to:

1. notify the school district and SDE of potentially eligible children;
2. invite and coordinate a transition planning meeting to review the process to determine eligibility and assess service options available;
3. establish a plan for facilitating the transition of the toddler with a disability to early childhood special education services;
4. provide the district with current IFSP, all addendums/outcomes to the most recent IFSP, other progress reports, evaluations and assessments if within the last six months; and
5. upon invitation, attend the initial IEP team meeting.

The school district has the responsibility to:

1. make contact with the family and provide notice of procedural safeguards and written information about the Part B and early childhood special education services (this information may be provide in person, at a transition conference, or by mail);
2. attend and participate in the transition planning meeting;
3. determine eligibility and develop an IEP or IFSP prior to child's third birthday;
4. invite ITP representatives, at the request of the parent, to the initial IEP team meeting; and
5. obtain consent for initial provision of special education and related services under Part B.

**C. IEP or IFSP Required**

1. By the child's third (3<sup>rd</sup>) birthday, the district shall have an IEP or IFSP in place for each student three (3) through five (5) years old who is eligible for ECSE services.

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2. In developing the IEP, the IEP team shall consider the content of the IFSP including:
    - a. the least restrictive environment statement; and
    - b. the educational component that promotes school readiness, pre-literacy, language and numeracy skills.
  3. The IFSP may serve as the IEP of the child, if:
    - a. agreed by the district and the child's parents;
    - b. a detailed explanation of the differences between the IFSP and the IEP is provided to the parents};
    - c. parental written informed consent is obtained; and
    - d. developed according to the IEP procedures outlined in Section 2 of this chapter. If the district elects to use an IFSP, the district is required to implement only the educational components of the IFSP.

**D. Consent and Notice Requirements**

1. Notice Announcing Initial IEP Team Meeting: The district shall inform the parents of their rights to request the participation of ITP representatives at the initial IEP team meeting for children previously served by Part C.
2. Release of Information: The district shall obtain written parental consent for the release of information to obtain pertinent student records from non-educational agencies such as ITP, developmental disabilities agencies, medical providers, day-care centers, and Head Start.
3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility, the student's present levels of academic and functional performance, and goals or services on the IEP, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier under Part C). Otherwise, only written notice to inform the parent of the district's decision to use the current evaluation data, and not to conduct any further assessments, shall be provided to the parent. The parent shall also be informed of his or her right to request additional assessments.
4. Consent for Initial Provision of Special Education and Related Services: Parental consent for the initial provision of special education and related services and written notice for the implementation of the IEP or IFSP under Part B is required. Eligibility, initial provision of services, and LRE placement shall be documented for Part B services.



## Section 6. Students with Disabilities in Adult Prisons

The following requirements apply for students with disabilities ages eighteen (18) to the semester when they turn twenty-one (21) who are convicted as adults under Idaho law and incarcerated in adult prisons:

1. A student identified as a student with a disability, who is eligible for special education, and who is convicted as an adult and incarcerated in an adult prison, is not subject to child find, but if already identified is entitled to FAPE until age twenty-one (21).
2. The student will not participate in statewide assessments.
3. Transition planning and services do not apply if the student will remain in prison beyond the semester of his or her twenty-first (21<sup>st</sup>) birthday.

The IEP team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

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## CHAPTER 6: LEAST RESTRICTIVE ENVIRONMENT - TABLE OF CONTENTS

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## CHAPTER 6: LEAST RESTRICTIVE ENVIRONMENT

The IDEA states that, to the maximum extent appropriate, all students with disabilities, three (3) to twenty-one (21) years of age, are to be educated with age appropriate peers who are nondisabled. This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The district shall have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student.

An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an individualized education program (IEP) while being educated with peers who are nondisabled to the maximum extent appropriate as determined by the IEP team on a case by case basis. The student's IEP shall indicate the LRE for the student and explain to what extent, if any, the student will or will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. This provision includes students with disabilities placed in public or private institutions or other care facilities.

Special classes, separate schooling, and other removals of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education class, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

### Section 1. Least Restrictive Environment Considerations

#### A. When to Make and Review Placement Decisions

1. Placement decisions for a student with a disability are made following the determination of the individual needs, goals, and required services.
2. Placement decisions are revisited at least annually by the IEP team, which includes the parent/adult student and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options available.
3. Placement decisions are reconsidered, as appropriate, when an IEP team is convened to review a student's academic, functional, or developmental progress.

#### B. Considerations in Placement Decisions

LRE decisions are made, at least annually, individually for each student. The IEP team shall consider the following when determining the LRE in which the IEP can be implemented:

1. IEP Goals and Services: The student's goals and services are developed prior to the

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determination of the services and settings. The services and settings needed by each student with a disability must be based on the student's unique needs that result from his or her disability, not on the student's category of disability.

2. Age Appropriate Peers: Students with disabilities shall be educated with age-appropriate peers to the maximum extent appropriate. A student with a disability is not removed from age-appropriate general education environments solely because of needed accommodations and/or adaptations in the general education curriculum.
3. School of Attendance: A student with a disability shall be educated in the school he or she should attend if not disabled unless the IEP requires some other arrangement. In such case, the child's placement shall be based on the child's IEP and as close to possible to the child's home.
4. Harmful Effects: Consideration shall be given to any potential harmful effect on the student or on the quality of services the student needs.
5. Accommodations and/or Adaptations: A student with a disability is not removed from general education settings solely because of needed accommodations and/or adaptations in the general education curriculum.
6. Participation in Nonacademic and Extracurricular Services and Activities:
  - a. A student with a disability shall be allowed to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development, and assistance in making outside employment available.
  - b. The IEP team determines the supplementary aids and services that are appropriate and necessary for the student to participate in nonacademic settings and extracurricular services and activities.

### **C. Documentation of Placement Decisions**

If the student will not participate *entirely* in the general education classroom, curriculum, and/or nonacademic and extracurricular activities, the IEP shall include a written explanation justifying the IEP team's decisions including the consideration of supplementary aids and services. The district shall provide the parent/adult student with prior written notice whenever the IEP team proposes to change or refuses to change the educational placement of the student.

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## Section 2. District Responsibility for Continuum of Settings and Services

The continuum of settings includes instruction in general classes, special classes, special schools, home instruction and instruction in hospitals and institutions. In addition, the continuum makes provision for supplemental services, such as resource services or itinerant instruction, to be provided in conjunction with the general classroom. In determining appropriate settings and services for a student with a disability, the IEP team shall consider the student's needs and the continuum of alternate placements and related services available to meet those needs. Regardless of placement, the student shall be given appropriate access to the general education curriculum, as determined by the IEP team. The district shall be able to justify the available continuum of services and placement decisions for individual students.

All LRE considerations also apply to preschool students ages three (3) to five (5) years with disabilities who are entitled to receive a free appropriate public education (FAPE). Settings for implementing IEPs for students of legal kindergarten-age are the same as for all other school-age students. Settings for implementing IEPs for preschool-age students may include public or private early childhood programs. Public schools that do not operate early childhood programs for preschool students without disabilities are not required to initiate such programs solely to satisfy LRE requirements. IEP teams in public schools that do not have an inclusive public preschool that can provide all the appropriate services and supports to meet the individual needs of preschool students with disabilities, shall explore alternative methods to ensure LRE requirements are met for preschool students ages three (3) to five (5) years, which may include:

1. providing opportunities for participation (even part-time) of preschool students with disabilities in public or private regular early childhood programs operated for preschool students without disabilities by other agencies, such as Head Start;
2. placing preschool students with disabilities in the following:
  - a. private early childhood programs for preschool students *without* disabilities; or,
  - b. private early childhood programs or other community-based early childhood settings that integrate students *with and without* disabilities; and,
3. locating classes for preschool students with disabilities in elementary schools.

See Chapter 11 for information regarding prior written notice requirements that apply to proposed or refused changes in educational placement.

## Section 3. Federal Reporting of LRE

The IEP includes a section for reporting the educational environments required for the Federal Child Count (annual report of children served collected on any date between October 1 and

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December 1 of each year). This section is for reporting the amount of time the student spends in the general education environment, with or without special education and related services. After determining the LRE and the educational environments in which the student will receive their general education instruction and special education services, the IEP team will document the educational environment for federal reporting.

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**CHAPTER 7: DISCONTINUATION OF SERVICES, GRADUATION, AND  
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## CHAPTER 7: DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING

### Section 1. Discontinuation of Services

#### A. Students Who Are No Longer Entitled to Services

The district will follow appropriate procedures to discontinue special education services to students who are no longer entitled to those services.

##### 1. Student No Longer Meets Eligibility Criteria

If it is suspected that a student no longer meets the eligibility criteria for the IDEA, the evaluation team will conduct a reevaluation and arrange to have additional assessments conducted if necessary. If the student is no longer eligible under the Idaho eligibility standards, the district will provide the parent/adult student with written notice of this decision prior to discontinuing special education services.

##### 2. Student Completes Requirements for a High School Diploma

The district's obligation to provide special education services ends when the student meets the district and State requirements that apply to all students for receipt of a high school diploma without adaptations. Although this is considered a change of placement, a reevaluation is not required. Prior to graduation and the discontinuation of special education services the district shall:

- a. provide the parent/adult student with written notice of the district's obligation to provide special education services ends when the student has met the Idaho High School Graduation and such applicable district requirements; and
- b. provide the parent/adult student with a written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

##### 3. Student Reaches Maximum Age

For students who have not yet met the Idaho High School graduation and such district's graduation requirements, the district's obligation to provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age. This is considered a change of placement that does not require a reevaluation. If a student is turning twenty-one (21), the district shall:

- a. provide the parent/adult student with written notice the district's obligation to
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provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age; and,

- b. provide the parent/adult student written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

## **B. Change in District Obligation to Provide Services**

Under certain circumstances, a student may continue to be eligible for special education services, but the district's obligation to provide services changes.

### **1. Transfer to Another District**

When a student is no longer a legal resident of the district, the district will forward the student's special education records electronically or by mail within five (5) calendar days of the request from the new district. The records shall include, at least, the student's most recent individualized education program (IEP) and eligibility documentation. The sending district will retain copies or originals of the most recent five (5) years of programmatic and fiscal records, including IEPs and eligibility documentation. During an audit or monitoring this documentation may be needed to demonstrate that the student was eligible for special education and received special education services from the district. Note: Districts are required to maintain Medicaid-related records for six (6) years. See Chapter 11 for more information.

### **2. Enrollment in Private School or Receives Homeschooling**

When a parent/adult student withdraws a student from public school and enrolls him or her in a private school or provides homeschooling, the district's responsibilities vary depending on the circumstances. See Chapters 2 and 9 for more information.

### **3. Dropouts**

When a student drops out of school, written notice will be sent to the parent/adult student and a copy of the notice will be placed in the student's special education confidential file. If the student reenrolls and is still eligible for special education, the previous IEP can be implemented if it is current and appropriate. A new IEP shall be developed if needed.

## **C. Parent/Adult Student Revokes Consent for Special Education Services**

When a parent/adult student revokes consent for special education services in writing, prior written notice shall be provided specifying when the special education and related services will cease. Note: A parent/adult student has the right to revoke consent for IEP services in their entirety, not service by service. The written notice shall include a statement indicating the district stands ready, willing, and able to provide FAPE should the student remain eligible for

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special education services.

## Section 2. Graduation

Graduation means meeting district and State requirements for receipt of a high school diploma. If a student is not granted a high school diploma or if the high school diploma is granted based on completion of adapted graduation requirements, the student is entitled to receive a free appropriate public education (FAPE) through the semester in which he or she turns twenty-one (21) years of age or determined no longer eligible as a result of a reevaluation. A General Education Development (GED) certificate does not meet the Idaho Content Standards and district requirements that are comparable to a high school diploma. The IEP team considering a student with a disability's graduation from high school shall include a district representative knowledgeable about Idaho Content Standards and such applicable district graduation requirements.

### **A. Individualized Education Program (IEP) Team Requirements Regarding Graduation**

1. Determine whether the student will meet all state and local requirements to be eligible to graduate from high school and anticipated graduation date.
2. Develop the course of study in collaboration with the Parent Approved Student Learning Plan required for every student prior to the end of eighth (8th) grade. The Student Learning Plan will be reviewed annually and may be revised at any time.
3. Beginning no later than the end of the student's ninth (9th) grade, review annually the student's course of study, identify and make changes to the course of study needed for the student to meet graduation requirements.
4. Document any accommodations and adaptations made to the district's and State's regular graduation requirements on the student's behalf.

#### a. Graduation Requirements with Accommodations

Accommodations to graduation requirements are determined by the IEP team and are deemed necessary for the student to complete graduation requirements. Further:

- 1) Accommodations to graduation requirements must specifically address completion of the student's secondary program.
- 2) Accommodations will maintain the same level of rigor to the district and State graduation requirements. For example, a teacher may use different instructional strategies or alternate methods for assessing the student's acquisition of skills that are equally rigorous.

- 3) Accommodations made to any district or State graduation requirement shall be stated in the student's IEP.

b. Graduation Requirements with Adaptations

Long-term consequences for the student shall be considered when adaptations are made to graduation requirements. Further:

- 1) Adaptations to graduation requirements shall specifically address completion of the student's secondary program.
- 2) Adaptations may alter the level of rigor required in the district or State graduation requirements. Examples of adaptations include changes made to course content, objectives, or grading standard that alter the level of rigor but will not include exempting or excluding the student from an opportunity to pursue or meet the Idaho Content Standards.

**B. Graduation Ceremonies**

A special education student who completes his or her secondary program through meeting graduation requirements or criteria established on his or her IEP will be afforded the same opportunity to participate in graduation ceremonies, senior class trips, etc., as students without disabilities. Participation in a graduation ceremony does not mean that the student will receive a high school diploma or indicate the completion of a secondary program.

### Section 3. Transcripts and Diplomas

**A. Transcript**

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts shall adhere to the following conditions:

1. Accommodations that allow the student to complete and demonstrate that he or she has met graduation requirements will not be noted on the transcript.
2. Adapted course work may be noted on the transcript if the parent/adult student is informed in advance and the designation is not discriminatory or identify the student as having a disability or receiving special education.
3. Course designations, titles, or symbols that are used solely to identify adapted course work that is taken by students with disabilities will not be used.

**B. Diploma**

1. For students who are eligible for special education services, the district will use the high school diploma at the completion of their secondary program through meeting graduation requirements or criteria established on his or her IEP; this includes students who meet the graduation requirements with accommodations and/or adaptations.
2. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities in the same graduating class.

**Section 4. Grades, Class Ranking, and Honor Roll**

Grades earned by students with disabilities will not be categorically disregarded or excluded from district wide grade point average (GPA) standing. The district may establish objective criteria for class rankings, honors, etc., that weight courses according to degree of difficulty or exclude non-core courses so long as such practices are nondiscriminatory.

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## CHAPTER 8: CHARTER SCHOOLS

Federal law requires that students with disabilities be offered educational choices comparable to those offered to students without disabilities. One of these choices is the opportunity to attend a public charter school. Each public charter school, whether a charter school within a district or a charter school LEA (Local Education Agency), shares in the obligation to accept and appropriately serve students with disabilities under the IDEA in the same manner as any other public school.

The LEA charter school board of directors/trustees is required to adopt and ensure that the LEA implements this Manual.

### Section 1. Definition and Parent/Student Rights

#### A. Definition of Charter Schools

In Idaho, a charter school is a public school authorized by Section 33-5205, Idaho Code. A charter school operates as a nonprofit, publicly funded, nonsectarian school in one of three ways:

1. as a school within a district, if authorized by the local board of trustees of a school district (LEA);
2. as a school authorized by the district, but operating as a separate LEA; or
3. as its own LEA, if authorized by the Idaho Public Charter School Commission or a college or university.

A charter school is bound by the conditions of its charter, all applicable state and federal law.

#### B. The Rights of Charter School Students and Their Parents

A charter school student is a public school student. Students with disabilities who attend charter schools and their parents have all of the same rights granted to students who attend other public schools. These rights are provided under the IDEA: the Elementary and Secondary Education Act (ESEA); the Every Student Succeeds Act (ESSA); Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA); and the Family Education Rights and Privacy Act (FERPA). Idaho law specifically states that charter schools cannot discriminate against any student on any basis prohibited by federal or state constitutions or any federal, state or local law.

1. Charter schools must have open enrollment that includes:
  - a. giving all students an equal opportunity to attend

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- b. being open and accessible to all students, including students with disabilities; and
    - c. admitting students on the basis of a lottery if more students apply for admission than can be accommodated
  2. A charter school shall not adopt an admission standard, policy or procedure that would have the effect of prohibiting or discouraging a student with a disability from enrolling or attending, or have the effect of prohibiting or discouraging a parent of a student with a disability from enrolling his or her child in the charter school by:
    - a. establishing an examination or other academic criteria for admission;
    - b. requiring any activity in which the school is unwilling to accommodate or adapt their curriculum or academic standards to meet the needs of the student with a disability; and
    - c. requiring any activity in which the school suggests implicitly or explicitly that another school district would be a better placement or more capable of providing special education services or delivering education instruction (commonly referred to as “counseling out”).
  3. A charter school must provide every student with a disability a Free and Appropriate Public Education (FAPE), which shall include appropriate special education services starting the first day of school or upon the first day the student enrolls and begins attending school.

Under Idaho state law, the charter of an authorized charter school outlines specific mission statements, policies and procedures, and the manner by which special education services will be provided.

## Section 2. Responsibility for Services

### **A. Charter School Authorized by the District and Not an LEA (See definition in Section 1.A.1)**

The district is ultimately responsible to ensure that the requirements of the IDEA are met with respect to students attending charter schools authorized by the district. A charter school’s compliance with the IDEA, Part B, is required regardless of whether the charter school receives any Part B funds.

1. To ensure that a charter school authorized by the district meets the IDEA requirements, the district shall ensure services to students with disabilities attending the charter schools are provided in the same manner as the district serves students with disabilities

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in its' other schools, including providing supplementary and related services onsite at the charter school to the same extent to which the district has a policy or practice of providing such services on the site to its' other public schools.

2. The district shall have information on file with the State Department of Education (SDE) that demonstrates students with disabilities who attend charter schools authorized by the district will receive special education and related services from either the district or the charter school (or a combination of both).
3. The district will ensure that its charter schools participate in all monitoring activities conducted by the SDE.
4. The district shall provide Part B funds and comparable services to the charter school within the district on the same basis as it provides such funds to other public schools within the district.

**B. Charter School Operating as an LEA (See definition in Section 1.A.2)**

Charter schools authorized by the Idaho Public Charter School Commission are automatically LEAs. A charter school LEA, whether virtual or brick-and-mortar or combination thereof, has an obligation to accept and appropriately serve students with disabilities and is solely responsible to ensure that the requirements of the IDEA are met with respect to students enrolled. Compliance with the IDEA, Part B, is required regardless of whether the public charter school receives any Part B funds. A charter school LEA shall:

1. participate in all monitoring activities conducted by the SDE; and,
2. in its first year of operation, participate in an onsite technical assistance visit by an SDE special education team to ensure that the essential components of a special education program are in place.

### Section 3. Charter Schools and Dual Enrollment

Under Section 33-204, Idaho Code, parents of public charter school students “shall be allowed to enroll the student in a public school for dual enrollment purposes.” Special education services (specially designed instruction and services calculated to meet the unique needs of a student with a disability) shall be the obligation of the public charter school. The district shall allow public charter school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled

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on a 504 plan, if needed.

Public charter school students may not dually enroll solely for special education. The Board of Directors/Trustees of the public charter school and the traditional school district shall adopt procedures governing dual enrollment.

For detailed requirements and responsibilities governing dual enrollment of charter school students, see Section 33-203, Idaho Code.

## Section 4. Funding

### A. State Funds

The SDE will make apportionment payments (from state general funds) to each charter school based on attendance figures. The SDE will pay state funds directly to charter schools using the funding formula described in state law. A charter school may also be eligible for the following funds:

1. state funds for special education students who live in licensed group, foster, or personal care services homes under the provision of Section 33-1002B, Idaho Code;
2. district-to-agency contract funds under a provision of Section 33-2004, Idaho Code;
3. funds to serve high numbers of students with emotional behavioral disorder under Section 33-2005, Idaho Code; and
4. state enhancement funding sources.

### B. Federal Funds

The SDE disburses federal flow-through funds to all authorized local education agencies (LEAs).

1. Charter School as Part of a District (not an independent LEA)

The district provides funds under Part B to those charter schools that are part of the district on the same basis as the district provides funds and comparable services to the other public schools. This includes proportional distribution based on relative enrollment of students with disabilities. This distribution is made at the same time as the district distributes funds to their other public schools and must be consistent with Idaho's charter school law. The individual school's approved charter will identify whether the district will provide funding or services of comparable value.

- a. The amount of funds or comparable services will generally be equal to the per student amount the district is allocated from the SDE in the current year

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multiplied by the charter school's Child Count from the previous school year.

- b. Under certain circumstances the district shall allocate Part B funds to an eligible charter school based on the number of special students enrolled and served in the current school year.
  - 1) The district will allocate funds to a charter school within five (5) months of opening or significantly expanding its enrollment if the charter school notifies the district at least 120 calendar days before it opens or significantly expands its enrollment due to a significant event that is unlikely to occur on a regular basis (such as the addition of one or more grades or educational programs in major curriculum areas), and it takes place before the first Friday in February.
  - 2) When these conditions are met, the district will allocate funds to the charter school as follows:
    - i. If the opening or expansion occurs prior to the first Friday in November, the charter school will be allocated funds in the current school year based on the current school year's Child Count.
    - ii. If the opening or expansion occurs after the first Friday in November but before the first Friday in February, the charter school will be allocated a pro-rata share of funds in the current school year based on the number of enrolled special education students with active IEPs 30 days after the opening or expansion. The pro-rata share will be the number of days the charter school will be open or expanded, divided by the number of days in the school year, multiplied by the number of special education students.
  - 3) If the opening or expansion occurs on or after the first Friday in February, the charter school will be allocated funds in the following school year based on the following school year's Child Count.
- c. For school districts that have authorized a virtual charter school and the charter school's students are enrolled in the district but live outside district boundaries and receive education outside the district, the SDE will determine the district's Part B funding in the following way:
  - 1) The calculation of the district's allocation will be made exclusive of the charter school's enrollment and special education enrollment (student count).

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- 2) After calculating the allocations for all districts using the federal funding formula and the distribution formula for any supplemental award, the SDE will determine the statewide average per-student allocation.
  - 3) The SDE will add to the district's base allocation an amount equal to the statewide average per-student allocation times the number of students with disabilities enrolled in and determined to be eligible for and receiving special education services.

## 2. Charter School Operating as an LEA

Public charter schools that are LEA's are responsible for adopting and implementing approved policies and procedures for special education and providing an assurance that funds will be used in accordance with Part B allowable uses.

- a. In the second and subsequent years of operation, Charter School LEAs will be allocated Part B funds in the same manner as all school districts – in accordance with the federally prescribed funding formula for the distribution of flow through funds.
- b. The policy for providing federal special education funds to new charter LEAs in the first year of operation, as required by federal regulation, includes the following steps:
  - 1) The LEA submits its Child Count as required by IDEA.
  - 2) A SDE Special Education Monitoring Team visits the new LEA to review the files of the students reported on the Child Count.
  - 3) The monitoring team determines the number of students meeting all eligibility requirements and receiving appropriate special education and related services.
  - 4) Based upon the number of students determined to be eligible, amounts of first- year Part B funds for allocation to the charter LEA are calculated as follows:
    - i. The statewide average per-student amount of Part B funding in the current year is determined.
    - ii. That amount is multiplied by the number of students who meet all eligibility requirements and are receiving appropriate special education services to determine the total allocation.
  - 5) The charter LEA then shall complete the Part B application

documents. These include:

- i. Assurances and Policies and Procedures Adoption
  - ii. Maintenance of Effort Assurance
  - iii. IDEA Part B Budget Form
- 6) Once the application is submitted and approved, the charter LEA may begin drawing down these funds for the approved special education purposes.



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## CHAPTER 9: PRIVATE SCHOOL STUDENTS

Note: For the purposes of this Manual, the term “private school student” is the same as a “nonpublic school student.” A homeschool student is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

The IDEA and IDAPA include the following:

- statutory and regulatory language, which states that students who are voluntarily enrolled in private schools are not entitled to all of the same services, including the right to a free appropriate public education (FAPE), as public school students;
- district responsibilities for special education students under Idaho’s dual enrollment law; and
- the legal requirements that come into play when a parent unilaterally enrolls his or her child in a private school and asks the district for reimbursement of these costs.

### Section 1. Definitions of Private School Placements

In order to describe the district’s responsibilities for serving private school students, it is helpful to distinguish three separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why.

#### **A. Definition of Voluntary Enrollment by a Parent**

A parent may choose to enroll his or her child in a private school for a variety of personal reasons, such as to obtain a religious education, to attend a school with a particular philosophy or curriculum, or because the parent is dissatisfied with the services offered or provided by the district. This is considered a voluntary enrollment. See Section 2 and Section 4 of this chapter for district responsibilities. Note: The IDEA distinguishes between for profit and nonprofit private schools. If a student is placed in a for profit private school by their parents the service plan provisions do not apply.

#### **B. Definition of District Placement**

At times, the district may place a student in a private school or facility to fulfill its obligation to provide FAPE. These placements are always made by an individualized education program (IEP) team in accordance with the requirements of Section 3 of this chapter.

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**C. Definition of Unilateral Placement by Parents when FAPE is an Issue**

A parent may enroll a student in a private school or provide services from a private provider at parental expense. The parent may initiate a due process hearing to seek reimbursement for the costs associated with the placement from the district. All students who are placed by a parent when FAPE is an issue are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of student enrollment in a private school in this situation is included in Section 5 of this chapter.

**Section 2. Students Voluntarily Enrolled by Parents**

**A. District Consultation with Private School Representatives** (may be done in coordination with Title 1 requirements for consultation)

To ensure timely and meaningful consultation a district will consult with private nonprofit elementary and secondary school representatives and representatives of parents of parentally placed private school students with disabilities during the design and development of special education and related services for the students. The consultation process shall include:

1. **Child Find:** The Child Find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
2. **Proportionate Share of Funds:** The determination of the proportionate amount of federal special education funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated. Refer to Section 2G of this chapter for information regarding the calculation of the proportionate share of funds.
3. **Determination of Special Education and Related Services:** Given the amount of funds to be dedicated by the district, the discussion will include the consideration of how, where, and by whom special education and related services will be provided for parentally placed private school students with disabilities, including:
  - a. types of services, including direct services and alternate service delivery mechanisms;
  - b. how such services will be apportioned if funds are insufficient to serve all students;
  - c. how and when these decisions will be made; and
  - d. how the provided services will be evaluated.

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4. Ongoing Communication: Clarify how the private school and district will operate throughout the school year to ensure that parentally placed private school students with disabilities identified through the Child Find process can meaningfully participate in special education and related services. Annual consultation is not required to make these decisions. The district determines the period between consultations based on changing circumstances within the district, such as significant changes in the total amount of funds to be expended and/or the number and location of private school students with disabilities.
  5. Written Affirmation: When timely and meaningful consultation has occurred:
    - a. the district will obtain a written affirmation signed by the representatives of participating private schools;
    - b. if the representatives do not provide the affirmation within a reasonable period of time the district will forward the documentation of the consultation process to the State Department of Education (SDE).
  6. District Decisions: Following consultation with the private school representatives, the district will make final decisions concerning items a-d addressed above in number 3.
  7. Written Explanation by the District Regarding Services: If the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

**B. Compliance with Consultation Process**

1. General Compliance: A private school official has the right to submit a complaint to the SDE that the district:
  - a. did not engage in consultation that was meaningful and timely; or
  - b. did not give due consideration to the views of the private school official.
2. Procedure for Complaint
  - a. If the private school official wishes to submit a complaint, the official will provide the basis of the complaint to the SDE consistent with the procedures provided in Chapter 13.
  - b. In response the district will forward the appropriate documentation to the SDE.
  - c. The SDE will render a written decision determining whether the district complied

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with the consultation process requirements and provide the decision to the district and private school official.

- d. If the private school official is dissatisfied with the decision of the SDE, the official may submit a complaint to the Secretary of the US Department of Education by providing the basis of the complaint against the district to the Secretary, and the SDE will forward the appropriate documentation to the Secretary.

### **C. Child Find Requirements**

The district shall have an ongoing Child Find system to locate, identify, and evaluate all students with disabilities ages three (3) through twenty-one (21) who are educated within the district's geographic boundaries. This includes students who have been placed by a parent in a private nonprofit elementary or secondary school (including a religious school) located in the district regardless of the student's state or local residency. Note: Parents can also ask the district of residence (assuming it is different than the district where the private school is located) to evaluate their student. Both districts would have Child Find responsibilities and cannot share information between the districts without written parental consent. The district of residence would have Child Find responsibilities for students placed in for-profit schools and for children aged three (3) to five (5).

The Child Find process will be designed to encompass the following:

1. The Child Find process will ensure the equitable participation of parentally placed private and homeschool students with disabilities.
2. Child Find activities for private school students will be similar to Child Find activities for public school students, which include the evaluation process within comparable timelines.
3. The district will consult with private school representatives and representatives of parents who place their children in private schools regarding the Child Find procedures.

Note: The cost of Child Find is not counted toward the pro-rated proportionate share that the district must spend on services.

### **D. Annual Count of Eligible Students**

The district shall conduct an annual count of eligible students and report to the State Department of Education the number of private school children evaluated, the number found eligible and the number who are provided with special education services. Students aged three (3) to five (5) must have their special education services identified on an IEP or a Service Plan. This count will be used to determine the amount of funds the district shall expend providing special education and related services to private school students in the next school year (see

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Section 2E). The district will consult with representatives of private school students to determine how to conduct the count.

### **E. Provision of Services**

Provision of services applies to all eligible students who attend non-profit private elementary and secondary schools within the district's geographical boundaries regardless of where they reside. Parentally placed private school students with disabilities do not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Services offered to parentally placed private school students are determined through the district and private school consultation process.

#### **1. District Responsibilities**

- a. Private school students with disabilities may receive a different amount of services than public students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private school student to receive only a related service or piece of equipment.
- b. Special education and related services provided to parentally placed private school students with disabilities, including materials and equipment, will be secular, neutral and non-ideological.
- c. The district is required to offer FAPE to private school students who reside in their district, including when the student attends a private school outside of the district boundaries. Unless the parent makes clear their intention to keep their child in the private school, the district of residence must develop an IEP.
- d. Services may be provided at a public school building or another agreed upon site (including parochial schools to the extent consistent with the law) determined by the district in consultation with appropriate representatives of private school students.
- e. Services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

#### **2. Eligibility for Services**

If an evaluation team determines that a student needs special education and related services:

- a. The district of residence shall offer to make FAPE available upon enrollment in a district public school. The district of residence must develop an IEP for the student who is parentally placed in private school unless the parent makes clear



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an intent not to consider public school enrollment. The district has no obligation to implement that IEP unless the student enrolls in the public school.

- b. If the parent chooses not to enroll the student in the district of residence and designated funds are available in the district in which the private school is located, a meeting will be held to develop a Services Plan (SP). The meeting will include a representative of the private school to develop a SP. The SP is developed by the same members that would constitute the IEP team.
- c. Any services the district provides to a private school student shall be in accordance with an SP.

### 3. Service Plan (SP) Development

The SP shall describe the specific special education and related services that will be provided to the student in light of the determinations that have been made by the district. To the extent appropriate, the district shall initiate and conduct meetings to develop, review, and revise SPs in accordance with the following requirements:

- a. Given the services that the district has elected to provide to private school students, the SP must meet the requirements of the IEP to the extent appropriate (see Chapter 5). The SP excludes sections pertaining to:
  - 1) extended school year (ESY) services;
  - 2) participation in statewide and district wide assessments;
  - 3) placement determination (least restrictive environment);
  - 4) Child Count federal report settings; and
  - 5) elements that, although typical for an IEP, would be inappropriate given the services the district has elected to provide.
- b. An SP shall be in effect at the beginning of each school year and accessible to each person responsible for its implementation.
- c. Meetings shall be held to review and revise SPs at least annually to address any lack of student progress toward goals and in the general education curriculum.
- d. The SP team members include the same members as an IEP team. The district will ensure that a representative of the private school attends these meetings or participates by some other means.
- e. A parent shall be invited to SP meetings at a mutually agreed upon date and time. The invitation must indicate the purpose, time, and location of the

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meeting. The parent shall be informed that he or she may bring other persons knowledgeable about the student to the meeting. A copy of the SP will be given to the parent.

- f. The team developing the SP will consider the student's strengths and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the SP.
- g. If necessary for a private school student to benefit from or participate in the services the district has elected to provide, the district shall provide transportation from the student's school or home to the site where services will be provided. The district shall take the student back to either the private school or the home, depending on the timing of the services. In this sense, transportation is not a related service but a means of making the services offered accessible. Transportation costs may be included in the district's expenditure requirement. The district is not required to transport the student from home to the private school.

#### **F. Dispute Resolution**

Due process hearings are available to parents of private school students only on the issue of Child Find and evaluation. Parents may challenge decisions regarding the provision of services by filing a state complaint with the SDE. (See Chapter 13 for more information on dispute resolution options.)

#### **G. Determining the Proportionate Funding for Private School Students**

IDEA requires school districts to dedicate at least a proportionate share of funds received under Part B to provide services for parentally placed students with disabilities who attend private schools within the boundaries of the district, regardless of their place of residence. To determine this proportionate amount, the district shall first determine the number of these private school students through the Child Find activities developed in the consultation process with private school representatives.

The number of parentally placed private school students is divided by the total (public and private) number of students with disabilities in the district to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by the district under Part B grants Section 611 (ages three (3) to twenty-one (21) and Section 619 (ages three (3) to five (5) to determine the district's obligation.

Example for the XYZ School District:

- a. The number of parentally placed private school children within the district on December 1, 2017: **10**

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- b. The number of public school children with disabilities on December 1, 2017: **90**
  - c. Percentage of private school children with disabilities: A divided by A+B = **10%**
  - d. Total Part B funds allocated for school year 2017-2018: **\$150,000**
  - e. Amount the district shall spend on providing special education and related services to parentally placed private school students in 2017-2018: C x D = **\$15,000**
1. State and local funds may supplement but may not supplant the proportionate amount of federal funds required to be expended for parentally placed private school children with disabilities.
  2. The costs of private school consultations and of carrying out Child Find activities may not be paid from the proportionate share of funds.
  3. The cost of any special education or related service, such as direct service, consultation, equipment, materials, or transportation may be used to determine that the district has satisfied its expenditure requirement for private school students with disabilities.
  4. If all proportionate funds set aside for private school students in a given fiscal year are not expended in that year they shall be carried forward into the next year for the purpose of providing equitable services.

#### **H. Expenditure Guidelines**

1. The district may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the district shall:
    - a. retain title and exercise continuing administrative control over all equipment and supplies;
    - b. ensure that all equipment and supplies are used only for Part B purposes;
    - c. ensure that all equipment and supplies can be removed without remodeling the private school; and
    - d. remove equipment and supplies if necessary to prevent unauthorized use.
  2. The district may use Part B funds to pay an employee of a private school to provide services to students with disabilities when the employee performs the services:
    - a. outside of his or her regular hours of duty; and
    - b. under public supervision and control.
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3. Part B funds shall not be used to:
    - a. finance the existing level of instruction in the private school or otherwise benefit the private school;
    - b. meet the needs of the private school; or
    - c. meet the general needs of students enrolled in the private school.
  4. Part B funds shall not be used for repairs, remodeling, or construction of private school facilities.
  5. If it is possible for classes to include students enrolled in both public and private schools, then the classes must not be organized separately on the basis of school enrollment or religion.
  6. The district shall not appropriate any funds to private schools controlled by any church, sectarian, or religious denomination.

### Section 3. Students Placed by the District

When the district places a student with a disability in a private school or facility, as a means of providing special education services through the IEP team process, the district shall ensure the following:

1. All special education procedures and timelines are followed.
2. Special education and related services are provided in accordance with an IEP.
3. A representative of the private school or facility attends or participates in the meeting to develop the IEP. If the representative cannot attend other measures such as conference telephone calls will be used to ensure participation.
4. The responsibility for reviewing and revising IEPs remain with the district.
5. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP team meeting conducted in a geographical area outside the jurisdiction of the district.
6. The placement in the private school or facility is the least restrictive environment for that student.
7. The student is provided an education that meets state and district standards.
8. The student is afforded the same rights as students with disabilities who attend public

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schools.

9. The parent is afforded the same rights as parents of students attending public schools.

In accordance with federal and state law, the SDE shall approve special education programs in private schools and facilities. The district shall ensure a program is approved prior to placing a student in that school or facility.

At the discretion of the district, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting, the district shall ensure that the parent and a district representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

#### Section 4. Dual Enrollment of Private School Students by Parents

According to Idaho Code, parents of private school students “shall be allowed to enroll the student in a public school for dual enrollment purposes.” Private school students who are dually enrolled are considered to be nonpublic school students. The district shall allow private school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a Section 504 plan, if needed.

Private school students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

The reporting of attendance for private school students in the district is allowed under dual enrollment. If a student attends at least 2.5 hours per week without rounding hours, he or she shall be included in the weekly aggregate attendance. The average daily attendance (A.D.A.) is computed as .5 if the aggregate weekly hours are 2.5 or greater but less than 4.0 hours. When there are 4.0 hours or greater, divide by 4 to get the A.D.A.

Dually enrolled private school students could also be eligible to receive services that have been agreed upon through the district and private school consultation process. These services would be delivered through a SP.

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## Section 5. Unilateral Placement of Student by Parents when FAPE is an Issue

### A. General Provisions for Reimbursement to the Parent

1. The district is required to make FAPE available to all eligible students with disabilities. If parents do not access FAPE, then the district is required to make provisions for private school students to receive Part B services consistent with Section 2E of this chapter.
2. The district is not required to pay for costs of tuition, special education, or related services and associated costs at a private school or facility for a student who was unilaterally placed there by a parent if the district made FAPE available to the student in a timely manner. If a parent disagrees with the availability of FAPE and there is a question about financial responsibility, the parent may request a due process hearing.
3. If the parent of a student with a disability enrolls the student in a private elementary or secondary school, without the consent of the district, a court or hearing officer may order the district to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:
  - a. the district had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and
  - b. the parent's placement is appropriate.
4. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards. A private school will be deemed appropriate if the parent demonstrates that the private placement provides educational instruction specially designed to meet the unique needs of the child with a disability, supported by such services as are necessary to permit the child to benefit from that instruction.

### B. Denial or Reduction of Reimbursement to the Parent

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. The parent did not inform the district that he or she rejected the placement proposed by the district to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This notification by the parent shall be provided to:
  - a. the IEP team at the most recent IEP team meeting prior to removing the student from the public school; or
  - b. the district, in writing, at least ten (10) business days (including any holidays that

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occur on a business day) prior to removing the student from public school.

2. Prior to removal of the student from the public school, the district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.
3. A judicial decision finds unreasonableness with respect to the actions taken by the parent.

Reimbursement shall not be reduced or denied under any of the following circumstances:

1. The district did not notify the parent of his or her obligation to provide the notice set forth in number 3 above or the district prevented the parent from providing that notice.
2. The parent had not received written notice.
3. The district's proposed placement would likely result in physical harm to the student.

Reimbursement may not be reduced or denied at the discretion of a court or hearing officer for failure to provide this notice if:

1. The parents are not literate or cannot write in English, or
2. The district's proposed placement would likely result in serious emotional harm to the student.

## Section 6. Out of State Students Residing in Residential Facilities

For school-age special education students from outside the state of Idaho who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities within the state of Idaho, the school district in which the residential facility is located will provide education services to such students if requested by the licensed public or private residential facility and an agreement is entered into with the residential facility. The district will be given the opportunity to provide input on any federally required education programs or plans for such students.

### **A. Contract for Education Services**

The contract with a residential facility will include the following provisions:

1. The education services to be provided by the district.
2. The amount to be paid by the licensed public or private residential facility.

The amount paid will be equal to the district's full cost of providing the education services delineated by the contract as determined by the district. Such students will be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the district.

In the event a residential facility fails to sign a contract with the district agreeing to pay the full cost for providing education services, the school district in which the residential facility is located will not be responsible for providing education services to the out-of-state students residing in the residential facility.

**B. Determining Residency**

In determining whether a student is from outside the state of Idaho, the school district in which the residential facility is located will determine the primary residency of the student's parent or guardian. Proof of Idaho residency will be established by showing an Idaho motor vehicle driver's license, payment of Idaho state income taxes, or other documentation evidencing residency within the state of Idaho.



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## CHAPTER 10: IMPROVING RESULTS

This chapter reflects the changes in the IDEA that focus on improving educational outcomes, analyzing and reporting data to the public, and ensuring that personnel who work with students with disabilities are prepared to meet their unique needs.

### Section 1. Monitoring Priorities and Indicators

The Idaho State Department of Education (SDE) is responsible for the design and implementation of a system of general supervision that monitors the fulfillment of the Individuals with Disabilities Education Act (IDEA) of 2007. The activities under the Idaho Special Education Results Driven Accountability (RDA) Monitoring System monitor local education agencies (LEAs) for results and compliance. Based on stakeholder input, the monitoring system includes a focus on providing supports to LEAs to meet the requirements of IDEA.

The Guiding Principles of the Results Driven Accountability Monitoring System are:

- A. Improving educational results and functional outcomes for all students with disabilities, and ensuring that Idaho meets the program required by IDEA, with a particular emphasis on those requirements that are most closely related to improving education results for students with disabilities.
- B. The RDA Monitoring System provides the framework for the SDE to partner with (LEAs to be mutually responsible for student outcomes and is designed to guide and support districts in their pursuit of preparing students with disabilities to persevere in life and be ready for college and careers. To meet the general supervision requirements, the SDE will conduct an annual review of each LEA's performance on a pre-identified set of results and compliance indicators and special conditions areas. Data from the annual review will be compiled into the RDA Determination Report.

The district is required to submit timely and accurate data from which the district's performance will be calculated based on the indicators in the Idaho's State Performance Plan, posted online annually on the SDE website.

#### **A. SDE Responsibility**

As part of the SDE general supervision responsibilities, the SDE is required to collect, review, and analyze data on an annual basis to determine if the state and districts are making progress toward the required performance goals. This accountability process includes:

1. measuring performance on goals both for the state and the districts;

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2. monitoring based on district result and compliance data with the IDEA, and progress made toward meeting state goals;
  3. identifying districts in one of the following RDA Determination categories: Meets Requirements, Needs Assistance, Needs Intervention, Needs Substantial Intervention;
  4. identifying districts in of the following Differentiated Levels of Support categories: Support and Guiding, Assisting and Mentoring, Directing;
  5. providing professional development and technical assistance statewide and targeted technical assistance to districts demonstrating the highest needs;
  6. reporting to the public on the state and districts' performance on state goals; and
  7. developing and submitting an Annual Performance Report/State Performance Plan, as needed, to address state performance on required goals.

#### **B. District Responsibility**

Progress on the state's performance goals is directly linked to the districts' efforts and progress in these same areas. On an annual basis and as part of the SDE's general supervision and accountability, the district shall:

1. ensure the data it collects and reports to the SDE regarding special education students and personnel is accurate;
2. use data-based decision-making procedures to review and analyze data to determine if the district is making adequate progress toward performance goals; and
3. adjust strategies, as needed, to meet goals and improve student outcomes.

### **Section 2. Comprehensive Early Intervening Services (CEIS)**

Under the IDEA, the district may use up to 15% of its IDEA Part B allocation in any fiscal year to provide comprehensive early intervening services (CEIS) for students in kindergarten through grade twelve (12), (with a particular emphasis on students in kindergarten through grade three (3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

These funds may be used for activities that include:

1. Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use

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of adaptive and instructional software

2. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

Should a district be found in having significant disproportionality as provided under Part B, the district shall use 15% of its IDEA Part B allocations to provide comprehensive coordinated early intervening services.

#### **A Budget Requirements**

If the district chooses to use IDEA Part B funds in any fiscal year to provide CEIS, the district will budget the amount used to provide these services, up to a maximum of 15% of the total allocation, in the Part B budget that is submitted annually to the SDE as part of the Part B and Preschool Application.

#### **B Reporting Requirements**

When the district uses IDEA Part B funds to provide CEIS, an annual report shall be submitted to the SDE on:

1. The number of children who received CEIS; and
2. The number of children who received CEIS and subsequently receive special education and related services during the preceding two (2) year period.

#### **Relationship between FAPE and CEIS**

CEIS provided by the district shall not be construed to either limit or create a right to FAPE under the IDEA or to delay appropriate evaluation of a student suspected of having a disability.

### **Section 3. Personnel**

The district shall ensure that personnel working with students with disabilities meet the qualifications established by the SDE and have the content knowledge and skills to meet the needs of these students.

#### **A. Appropriate Certification or Licensure**

Public school personnel shall meet the appropriate certification or licensure requirements for position assignments. Complete certification standards for personnel providing special education or related services may be found in the handbook titled Idaho Standards for the Initial Certification of Professional School Personnel. This handbook is available from the SDE Certification and Professional Standards Department.

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The lists that follow are examples only. They do not include every possible position or licensing situation. For more information, call the SDE Certification and Professional Standards Department at (208) 332-6800.

1. The following special education and related services positions require individuals who are employed by the district to be certificated and to meet any additional licensure requirements:
  - a. audiologist;
  - b. consulting teacher;
  - c. counselor;
  - d. director of special education;
  - e. early childhood special education teacher;
  - f. school psychologist;
  - g. special education teacher;
  - h. speech-language pathologist; and
  - i. supervisor/coordinator of special education.
2. Some special education service providers need both licensure in their area of expertise and certification from the SDE.
  - a. School nurses are certificated by the SDE and licensed by the Idaho Board of Nursing.
  - b. School social workers are certificated by the SDE and licensed by the Idaho Board of Social Work Examiners.
3. Some special education service providers must meet the licensure or certification requirements in their respective professions, but certification from the SDE is not required.
  - a. Occupational therapists and physical therapists are licensed by the Occupational Therapy Licensure Board of Idaho.
  - b. Physical therapists are licensed by the Idaho Physical Therapy Licensure Board.
  - c. Vocational education teachers are certificated by the Idaho Division of Career and Technical Education.

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- d. Vocational rehabilitation counselors must meet national standards for Certified Rehabilitation Counseling (CRC) to be employed by the Idaho Division of Vocational Rehabilitation.
  4. An emergency provisional certificate cannot be used as an alternative for individuals to become certificated teachers in Idaho. The district shall use the alternative authorization options to request alternative endorsement/certification when a professional position cannot be filled with someone who holds the appropriate endorsement/certification.

### **B. Shortage of Personnel**

If there is a shortage of qualified personnel, the district shall take measurable steps to recruit and hire qualified personnel to provide special education and related services to students with disabilities. However, when a professional position cannot be filled with an individual who has the appropriate certification, vacant positions may be filled with personnel on the following approved alternate pathways to teaching:

1. **Teacher to New Certification:** An individual holds a Bachelor's degree and a valid teaching certificate without full endorsement in area of need. The candidate works towards completing a preparation program for special education certification and is employed by the district.
2. **Content Specialist:** An individual who is uniquely qualified in an area and holds a Bachelor's degree. The candidate works towards completing a preparation program while employed by the district. The preparation program must include mentoring, one classroom observation per month until certified, and prior to entering the classroom; the candidate completes an accelerated study in education pedagogy.
3. **Non-Traditional Route to Certification:** An individual may acquire interim certification through a non-traditional alternative route to teacher certification that is approved by the State Board of Education. During the interim certification, teaching shall be done in conjunction with a two-year mentoring program approved by the State Board of Education.

Further information and all requirements for each alternative route to certification are available in Idaho Administrative Code (IDAPA 08.02.02).

Nothing in the IDEA creates a right of action on behalf of a student or class of students for failure to employ qualified staff.

### **C. Paraprofessionals, Assistants, and Aides**

The district may employ paraprofessionals, assistants, and aides who are appropriately trained and supervised to assist in the provision of special education and related services to students

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with disabilities if they meet standards established by the SDE (find the “Standards for Paraprofessionals Supporting Students with Special Needs” on the SDE website).

Appropriate duties to be performed by paraprofessionals are:

1. provide one-on-one services for students as specified in the students’ IEP;
2. assist with classroom management and organizing materials;
3. provide assistance in a computer lab or media center;
4. conduct parental involvement activities;
5. act as a translator;
6. assist in provision of services only under the direct supervision of a certified teacher or related service provider, specifically:
  - a. a teacher/related service provider plans instruction and evaluates student achievement; and
  - b. the paraprofessional works in conjunction with the teacher or related service provider as determined by the student’s IEP.

A special education paraprofessional shall be qualified as follows.

1. All paraprofessionals must have a secondary school diploma or its recognized equivalent.
2. Additionally, except as noted below, paraprofessionals must have:
  - a. Completed two years of study at an institution of higher education; **or**
  - b. Obtained an associate’s (or higher) degree; **or**
  - c. Met a rigorous standard of quality and be able to demonstrate, through a formal State or local academic assessment, knowledge of and the ability to assist in instructing, reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness) (in Idaho this is the ETS Parapro Praxis with a minimum score of 460).

The district may encourage qualified paraprofessionals employed in their classrooms to become certified teachers.

#### **D. Educational Interpreters**

The district may only employ an individual as an educational interpreter if they have met the

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state qualifications identified in Section 33-1304, Idaho Code. Educational interpreters employed by the district shall complete a minimum of eighty (80) hours of training in the areas of interpreting or translating every five (5) years.

**E. Supervision of Staff**

A teacher and/or a related service provider with appropriate certification or licensure who has been informed of his or her specific responsibilities related to a student's IEP has the primary responsibility to ensure the appropriate implementation of the IEP. The district has policies and procedures for the supervision and evaluation of all certificated/licensed or contracted employees.

The certificated/licensed teacher and/or related service provider will generally be responsible for the supervision of all paraprofessionals, assistants, and aides who provide direct services to students with disabilities. All paraprofessionals, assistants, and aides must have a supervision plan developed by a certificated or licensed professional.

**F. Professional Development Plan**

The district will take measures to ensure that all personnel necessary to provide special education and related services according to the IDEA are appropriately and adequately prepared. Personnel may use a variety of opportunities for technical assistance and training activities to further develop professional knowledge and skills in order to meet the needs of students with disabilities.

To the extent the district determines it is appropriate, paraprofessional personnel may use the technical assistance and training activities offered by the district or SDE to improve practice for paraprofessional supports for special needs.

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## CHAPTER 11: PROCEDURAL SAFEGUARDS

This chapter reflects changes in procedural safeguards as a result of the IDEA.

### Section 1. Procedural Safeguards Notice

A parent/adult student has specific procedural safeguards given to him or her by the IDEA and state law. Each district has a document titled *Procedural Safeguards Notice* that is provided to parents/adult students which contains a full explanation of the special education rights. The *Procedural Safeguards Notice* shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner.

#### A Procedural Safeguards Notice Contents

The following table lists various topics contained in the *Procedural Safeguards Notice* and identifies what chapter in this Manual provides more information about each topic.

Topic	Chapter
1. parental consent	11
2. written notice	11
3. access to educational records	11
4. independent educational evaluation (IEE)	11
5. the opportunity to present and resolve complaints, including: <ul style="list-style-type: none"> <li>a. the time period in which to make a complaint</li> <li>b. the opportunity for the district to resolve the complaint</li> <li>c. the availability of SDE mediation</li> <li>d. the differences between a due process hearing complaint and state complaint</li> </ul>	13
6. the student's placement during pendency of due process proceedings	13
7. procedures for students who are subject to placement in an interim alternative educational setting (IAES)	12

8. requirements for unilateral placement by parents of students in private schools at public expense	9
9. due process hearings, including requirements for disclosure of evaluation results and recommendations	13
10. civil actions, including the time period in which to file such actions	13
11. attorney fees	13

**B When the Procedural Safeguards Notice Is Provided**

The district will provide a *Procedural Safeguards Notice* that includes a full explanation of the special education rights afforded the parent/adult student only once per year, except that a copy will be given to the parent/adult student:

1. upon an initial referral or parent/adult student request for evaluation;
2. upon the first occurrence of a filing of a due process hearing or a state complaint;
3. when a decision is made to take a disciplinary action that constitutes a change of placement; and
4. upon request by the parent.

A *Procedural Safeguards Notice* suitable for copying can be found in the document section of this chapter.

**Section 2. Domestic Considerations**

**A. Parent**

1. Definition

The term “parent” means:

- a. a biological, adoptive, or foster parent of a child;
- b. a guardian (but not the state if the child is a ward of the state);
- c. an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives;
- d. an individual who is legally responsible for the child’s welfare;

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- e. an adult student; or
  - f. a surrogate parent who has been appointed by the district.

## 2. Determining Who Has Parental Rights

In determining who has parental rights, individuals should be considered in the following order of priority:

- a. a biological parent; unless a Court orders a specific person to act as the parent or to make educational decisions on behalf of the child;
- b. a person who has legal documentation (guardianship, power of attorney, custody agreement) of being responsible for the student's welfare;
- c. a grandparent, stepparent, other relative, or foster parent with whom the student lives and who is acting as a parent; or
- d. a surrogate parent appointed by the district to represent the student's interests in educational decisions.

## **B. Surrogate Parent**

### 1. Definition

A "surrogate parent" is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA in any of the following circumstances:

- a. No parent can be identified or located for a particular student.
- b. The student is a ward of the state.
- c. The student is an unaccompanied homeless youth.

The surrogate parent has the same rights as a biological parent throughout the special educational decision-making process.

### 2. Referral for a Surrogate Parent

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district's special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

- a. A parent cannot be identified.
- b. A parent cannot be found after reasonable efforts to locate the parent.



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- c. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student's education, including special education, provided he or she meets the criteria for a district-appointed surrogate
  - d. The student is a homeless youth who is unaccompanied.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the biological parent is available but chooses not to participate. When a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth in item 3, below. The district will make reasonable efforts to assign a surrogate within thirty (30) calendar days after it determines that the student needs a surrogate.

### 3. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement, and the provision of FAPE. The surrogate parent shall:

- a. Have knowledge and skills that ensure effective representation.
- b. Have no personal or professional interest that conflicts with the interest of the student.
- c. Meet the following conditions:
  - 1) is not an employee of the SDE, the district, or any other agency that is involved in the education or care of the student; and
  - 2) is not an employee of a nonpublic agency that provides educational care for the student.

Note: A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate can be appointed that meets all the requirements.

### **C. Adult Students and the Transfer of Rights**

An "adult student" is a student who is at least eighteen (18) years of age to whom special education rights have transferred under the IDEA and Idaho Code.

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1. Discussion of the Transfer of Rights: Not later than the student's seventeenth (17<sup>th</sup>) birthday, the IEP team shall discuss the transfer of special education rights to the student. Special education rights will transfer from the parent to the adult student when the student turns eighteen (18) years of age unless:
    - a. the IEP team determines that the student does not have the ability to make informed decisions with respect to his or her educational program; or
    - b. a parent has obtained legal guardianship from a Court including the scope of educational matters.
  2. Basis for Denial of Transfer: During the IEP team meeting to discuss the transfer of rights, the IEP team will use the following as the basis for any denial of the transfer:
    - a. Evaluation data, test results, written reports, teacher observation, education records, and parent input, including whether the parent intends to seek guardianship.
    - b. Answers to the following questions:
      - 1) Is the student capable of understanding his or her rights?
      - 2) Is the student capable of exercising his or her rights?
      - 3) Is the student capable of understanding the consequences and impact of his or her decisions?
  3. Following a Determination Concerning the Transfer of Rights: When the student's special education rights transfer at age eighteen (18), the parent and student will be informed that rights have transferred. The IEP shall contain a statement referring to the transfer (or not) of rights:
    - a. If the team determines that there is no relevant information about the student to prohibit the transfer of rights at age eighteen (18), the student's IEP shall contain a statement that the student has been informed that special education rights will transfer to him or her. The parent retains the right to receive notices required by the IDEA.
    - b. If the IEP team determines that the student lacks the ability to provide informed consent with respect to his or her educational program, a statement will be included in the IEP indicating that the parent, or other individual if the parent is not available, will retain all special education rights after the student reaches age eighteen (18).
    - c. If rights have transferred, the district shall continue to provide notices to the parent, but nothing under the IDEA requires parent participation in the process.
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4. **Revoking a Transfer of Rights:** There is nothing in federal or state law that prohibits the IEP team from changing its decision later, based on new information and input. Under state law, a parent can provide legal documentation of a student's incompetence *after* the student reaches age eighteen (18).

#### **D. Emancipated or Married Minors**

Idaho law does not provide for the emancipation of minors. However, minors who have been emancipated by a court of law in another state are considered an adult in Idaho. Emancipated minors should be able to provide the legal court document awarding them the power and capacity of an adult. A student under age eighteen (18) who claims to be an emancipated minor, but is unable to provide documentation should be assigned a surrogate parent by the district if a parent cannot be located.

Students under the age of eighteen (18) who are married to an adult, eighteen (18) years or older, are not emancipated minors in Idaho and do not have the power and capacity of an adult student. Instead, the spouse acts as the guardian of the student regarding legal rights and responsibilities.

#### **E. Ward of the State**

The term "ward of the state" means a child who, as determined by the state where the child resides, is a foster child, or a ward of the state *or* is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 2A.

#### **F. Child Custody**

##### **1. Definitions of Custody**

The following definitions of custody are used by Idaho courts in divorce proceedings:

- a. **Joint custody** means an order awarding custody of a minor child to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child frequent or continuing contact with both parents. A court may award either joint physical custody or joint legal custody, or both. If the court has declined an order awarding joint custody, the court order shall state in the decision the reason for denial of joint custody.
- b. **Joint physical custody** means awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents. The actual amount of time with each parent is determined by the court. Generally, one of the parents is awarded primary physical custody.
- c. **Joint legal custody** means that the parents or parties are required to share the

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decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of a child. In Idaho, parents have joint legal custody unless the rights of one or both parents have been terminated.

2. Conflicts Between Parents Who Have Joint Custody

- a. **Custody questions:** When it is known that a custody question exists that involves the relevant legal status of one or both parents of a student, the district will ask the parent(s) to furnish a copy of the pertinent court order or decree, if one exists, to clarify the question at issue. School personnel will abide by the most recent court order or decree.
- b. When district personnel receive conflicting information about custody, they will (a) initially follow the instructions of the parent with whom the child currently resides and (b) request a certified court document to clarify the custody issue.
- c. **Conflicting instructions:** When parents who have joint legal custody give conflicting instructions, the district's obligation is to inform the parents that any action proposed or refused will be based on the needs of the student and in accordance with the IDEA requirements. Both the district and either parent have options under the IDEA to resolve disagreements, including SDE Dispute Resolution processes such as mediation and due process hearings.
- d. **Access to records:** A parent who does not have primary physical custody has the same right to access records and to participate in special education decision making as does the parent with primary physical custody, unless otherwise specifically stipulated by a court. Idaho Code states, "Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child's custodial parent." Another provision of the law allows the parent with primary physical custody to request in writing that a minor child's address be deleted from any record to prohibit the other parent from learning the child's address by having access to school records.
- e. **Parental disagreement of consent:** When parents, both with legal authority to make educational decisions for their child, disagree on the revocation of consent for special education and related services, one parent may revoke consent for his or her child's receipt of special education and related services at any time. The district must accept either parent's revocation of consent, and provide written notice to the parents. After revoking consent, a parent maintains the right to subsequently request an initial evaluation which must be treated as an initial evaluation and not a re-evaluation for special education. A parent who disagrees with another parent regarding revocation of special education services is not entitled to resolve the dispute through an IDEA due process hearing.

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## Section 3. Informed Consent

### A. Definition

Consent is written approval given by a parent/adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information shall be provided in the native language or mode of communication of the parent/adult student, unless not feasible. The parent/adult student shall be informed that the approval is voluntary and may be revoked at any time prior to the action. Consent is indicated by the parent's/adult student's signature.

### B. Actions Requiring Consent

The following actions require the district to obtain written consent. Some of the actions that require written consent from the parent/adult student also require prior written notice from the district.

1. Informed written consent *and* written notice are required when:
    - a. Conducting assessments as part of an initial evaluation to determine whether a student is eligible for special education.
    - b. Conducting any assessment for reevaluation that involves more than a review of existing information. This includes any assessments that are conducted after a student has been determined eligible for special education. If a specific assessment was not listed on the *Consent for Assessment* form, then the district shall secure written consent again in order to conduct that particular assessment.
    - c. Initially providing special education and related services to a student with a disability.
  2. Informed written consent is required when:
    - a. Using an individual family service plan (IFSP) instead of an IEP for students ages three (3) through five (5).
    - b. Disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations. The written consent shall specify the records that may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.
    - c. Accessing private insurance to pay for services listed in the IEP.
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- d. The district requests to bill Medicaid (with some exceptions). The parent/adult student shall be informed of the frequency, amount, and type of services that the district will be submitting to Medicaid for reimbursement as identified on the student's IEP.
  - e. Inviting outside agency representatives providing transition services to an IEP team meeting.
  - f. Sharing of information between the district of location and the district of residence with a parentally placed elementary or secondary student.
  - g. The excusal of an IEP team member from an IEP team meeting when the meeting involves a modification or discussion of the member's area of the curriculum or related services.

### **C. When Consent Is Not Required**

The district is not required to obtain informed consent when:

- 1. a review of existing data is part of an evaluation or a reevaluation;
- 2. tests are administered to both general and special education students in a grade or class and consent is not required for all students;
- 3. teacher or related-service-provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals, objectives and benchmarks on the IEP;
- 4. screening to determine appropriate instruction strategies for curriculum implementation;
- 5. a disclosure of personally identifiable information to persons authorized to have access under FERPA or the Idaho Student Data Privacy Act, Section 33-133, Idaho Code; **or**
- 6. an IEP team reviews and revises a student's IEP. However, the parent/adult student may file a written objection if he or she disagrees with all or part of the changes to the IEP.

### **D. Refusal to Give Consent**

A parent/adult student may refuse to give written consent for an assessment, initial services or the release of information that the district believes is necessary to ensure FAPE during the reevaluation process.

If the parent does not provide consent for the reevaluation assessment, the district may choose not to pursue requesting SDE mediation and/or a due process hearing if the district determines through a review of existing data, that the information does not continue to support the

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determination of eligibility for special education services. In this case the district shall provide the parent with written notice of the proposed action to discontinue the provision of FAPE to the student based on a review of existing data.

The district may also choose to pursue the reevaluation through SDE mediation and/or by requesting a due process hearing. If the hearing officer determines that the action is necessary, and the parent/adult student does not appeal the decision, the district may proceed with the proposed action. The district shall provide the parent with written notice of the proposed actions.

The district shall secure written consent for the initial provision of special education and related services. There is no mechanism available to overturn a parent's/adult student's decision *not* to provide written consent for initial evaluation or initial provision of services. In the case of an initial evaluation or initial provision of services, if a parent/adult student fails to respond to reasonable measures to gain consent or does not consent, the district cannot be charged with failing to provide FAPE to the student and is not required to convene an IEP team meeting or develop an IEP for special education or related services.

**E. Failure to Respond to a Request for Consent Regarding Reevaluation Assessment**

When a parent/adult student fails to respond to reasonable measures taken by the district to obtain written consent to determine continued eligibility, the district may proceed with the evaluation. The district shall have a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment. Failure to respond is not the same as refusing consent for reevaluation.

**F. Revoking Consent for Evaluation**

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked only before the action occurs. If consent is revoked for evaluation, the district may continue to pursue the action by requesting a due process hearing. If the hearing officer determines that the action for which consent is sought is necessary, and the decision is not appealed, the district may proceed with the action without the written consent of the parent/adult student. Consent must be revoked in writing.

**Section 4. Written Notice**

**A. Definition**

Written notice is the act of informing a parent/adult student in writing within a reasonable amount of time, before the district proposes to initiate or change, or refuses to initiate or

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change, the student's special education identification, the evaluation, educational placement, or provision of FAPE.

**B. Criteria for Written Notice**

1. Written notice must be provided in a reasonable amount of time before implementing the proposed action.
2. Written notice shall be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the parent/adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:
  - a. The notice is translated orally or by other means in the native language or other mode of communication.
  - b. The parent/adult student understands the content of the notice.
  - c. There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

When a parent/adult student disagrees with the district's written notice of a proposed or refused action, he or she can attempt to remedy the dispute using SDE processes, such as IEP facilitation, mediation, formal complaint procedures, or due process hearing procedures afforded by the IDEA. In addition, the parent/adult student may have the right to prevent the district from taking action by filing a written objection with the district.

**C. Written Notice Is Required**

1. The district shall provide written notice before proposing to initiate or change the following:
  - a. identification of the student;
  - b. any assessments for initial evaluation or reevaluation;
  - c. educational placement; or
  - d. the provision of FAPE.
2. After the district's decision to refuse a parent's/adult student's request to initiate or change the identification, assessment, placement, or provision of FAPE.
3. If the district refuses to convene an IEP team meeting at the request of a parent/adult



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student.

4. If the district makes a change in the IEP after an IEP team meeting to correct a typographical error which results in a change in the services provided a student.
5. When the evaluation team determines that additional assessments are not required during a reevaluation to determine whether the student continues to meet eligibility criteria, the district shall provide written notice to the parent/adult student of the decision and the reasons for that decision. The parent/adult student must also be informed of his or her right to request assessments when necessary to determine continued eligibility.
6. If a parent files a due process hearing request, the district is required to give written notice specific to the issues raised in the due process hearing request within ten (10) days.
7. If the district has determined that the student is being removed for disciplinary purposes which constitutes a change of placement.
8. If the parent/adult student revokes consent for the continued provision of special education.

**D. Written Notice is Not Required**

The district is not required to provide written notice in the following situations:

1. when reviewing existing data as part of an evaluation or a reevaluation (however, the parent/adult student shall be afforded the opportunity to participate in the review of existing data);
2. when tests are administered to both general and special education students in a grade or class;
3. when teacher or related service provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals, objectives and benchmarks on the IEP; or
4. if outside observation is in relation to teacher's general practices.

**E. Content of Written Notice**

The content of written notice is intended to provide the parent/adult student with enough information so that he or she is able to fully understand the district's proposed action or refused action and to make informed decisions, if necessary.

The written notice shall include the following:

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1. a description of the action proposed or refused by the district;
  2. an explanation of why the district proposes or refuses to take the action;
  3. a description of any other options the IEP team considered and the reasons why those options were rejected;
  4. a description of each procedure, assessment, record, or report that the district used as a basis for the proposed or refused action;
  5. a description of any other factors relevant to the proposed or refused action;
  6. a statement that the parent/adult student has special education rights and a description of how to obtain a copy of the *Procedural Safeguards Notice*; and
  7. sources to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

**F. Objection to District Proposal**

If a parent/adult student disagrees with an IEP program change or placement change that is proposed by the IEP team, he or she may file a written objection to all or part of the proposed change. The district will respond as follows:

1. If the objection is postmarked or hand delivered within ten (10) calendar days of the date the parent/adult student received the written notice, the changes to which the parent/adult student objects cannot be implemented for fifteen (15) calendar days or as extended through mutual agreement by the district and parent/adult student while the parties work to resolve the dispute.
2. If a proposed change is being implemented during the ten (10) day period and an objection is received, the implementation of that change shall cease.
3. If an objection is made after ten (10) calendar days, the district may continue to implement the change, but the parent/adult student retains the right to exercise other procedures under the IDEA.

The parties may resolve a disagreement using methods such as holding additional IEP team meetings or utilizing SDE Dispute Resolution processes, such as facilitation or mediation. If these attempts fail or are refused, the proposed IEP shall be implemented after fifteen (15) calendar days unless a due process hearing request is filed to obtain a hearing officer's decision regarding the proposed IEP, unless it is an initial IEP. A parent's/adult student's written objection to an IEP or placement change cannot be used to prevent the district from unilaterally placing the student in an IAES in accordance with the IDEA procedures for discipline of a student or to challenge an eligibility/identification determination.

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## Section 5. Confidentiality and Access to Records

The district shall collect, use, and maintain information about a student to make appropriate decisions concerning special education and the provision of FAPE. A student's special education case manager, usually the special education teacher, should organize all relevant records specific to district guidelines and the IDEA requirements.

The IDEA and FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes also provide for the right to review and inspect records.

### **A. Definition**

A "record" is defined as personally identifiable information directly related to the student and maintained by the district or a party acting for the district. A student record can be written or electronic.

1. The term "record" may include, but is not limited to, the following:
  - a. identifying data (name, address, parents, siblings, Social Security number, list of personal characteristics making identification reasonably certain by a person in the school community);
  - b. academic work completed (courses taken, transcript);
  - c. level of achievement (grades, portfolios, performance assessments, scores on standardized achievement tests, etc.);
  - d. attendance data;
  - e. scores and protocols of standardized intelligence, aptitude, and psychological tests;
  - f. records of teachers, counselors, medical personnel, and psychologists working directly with a student if disclosed to others;
  - g. interest inventory results;
  - h. observations and verified reports of serious or recurring behavior patterns;
  - i. videotapes or audiotapes;
  - j. health data including medical assessments;
  - k. family background information;

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- l. transportation records;
  - m. student records maintained by agencies and individuals contracting with the district; and
  - n. email, text messages, or other written notes sent regarding the student or the student's family.
2. The term "record" does not include:
- a. records of instructional, supervisory, ancillary, and administrative personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
  - b. records created by law enforcement units of schools and maintained separately for non-educational purposes; and
  - c. employment records about a student who is employed by a school or district. (Note: Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted);
  - d. records on a student who is eighteen (18) years of age or older, or is attending an institution of postsecondary education, that are:
    - 1) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
    - 2) made, maintained, or used only in connection with treatment of the student;
    - 3) disclosed only to individuals providing the treatment (Note: "Treatment" does not include remediation educational activities or activities that a part of the program of instruction); and
  - e. grades on peer-graded papers before they are collected and recorded by a teacher.

## **B. Protection of Records**

The district shall prevent unauthorized disclosure of personally identifiable information pertaining to students with disabilities. "Disclosure" is the release, transfer, or other communication of education records or of personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic. Districts must

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have a policy to protect personally identifiable information from security risk resulting from unsecured data transmittal or storage.

To ensure protection of records, the district shall do the following:

1. Obtain written and dated consent from the parent/adult student before disclosing personally identifiable information:
  - a. to unauthorized individuals; or
  - b. for any purpose except as authorized by law.
2. Designate and train a records manager to assure security of confidential records for students with disabilities.
3. Maintain a log of requests for access to education records if the request is not from a:
  - a. a parent/adult student;
  - b. a school employee with a legitimate educational interest;
  - c. a party seeking designated directory information; or
  - d. a party receiving the records as directed by a federal jury or other subpoena ordering no one to disclose the existence of the request to access records.

This log includes the name, agency affiliation, date, and purpose for accessing the records. A log documenting denials for records and partially fulfilled requests should also be maintained.

4. Maintain, for public inspection, a current listing of names and positions of employees who have access to personally identifiable information.
5. Establish procedures to ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
6. Ensure that, if any education record includes information on more than one student, a parent/adult student will only be allowed to inspect, review, or be informed about the record of the student at issue.
7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality. All staff members, even those who do not have access to special education records, should be informed about what is considered appropriate and inappropriate access to and use of information within the records. The district may maintain a record of the training provided—including the name of the person or persons providing the training, dates of the training, those attending, and the subjects covered—for the purpose of

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documenting that new staff members have been trained as soon as possible after they have been hired.

**C. Access to Records**

The district shall:

1. Annually notify the parents of all students, including students with disabilities currently in attendance, of their rights under FERPA. The notice shall include all of the following:
  - a. procedures for exercising the right to inspect and review education records;
  - b. procedures for requesting amendment of records; and
  - c. a specification of criteria for determining who constitutes a school official or employee in the district and what constitutes a legitimate educational interest.
2. Permit a parent/adult student, or his or her representative, to inspect and review any record relating to educational matters that is collected, maintained, or used by the district. The district will presume that a custodial or non-custodial parent has the authority to inspect and review a record relating to his or her child unless there are legal documents limiting access to those records under state law. A minor student's address will be deleted from any record if requested in writing by a custodial parent to prohibit a non-custodial parent from learning the address simply by having access to the school records.

The district will make records available to a parent/adult student for review:

- a. without delay but no later than forty-five (45) days after the request;
- b. before any meeting regarding an IEP;
- c. before a resolution session; and
- d. not less than five (5) business days before any due process hearing.

The district should note that test protocols may be part of a student's educational record. Test publishers require districts to maintain the integrity and validity of tests. Parents or others authorized by the parent/adult student interested in a student's test results are allowed to view the student's responses to test items, but only if the information is shared in the presence of a person qualified to explain the results and meaning of the various items and data contained in the protocol.

3. Upon request, provide a parent/adult student with a list of the types of education records the school collects, maintains, or uses and where they are kept.

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4. Respond to any reasonable request made by a parent/adult student for an explanation and interpretation of a record.
  5. Provide a copy of education records if a parent/adult student would otherwise be unable to effectively exercise his or her right to inspect and review those records. An education record may include copyrighted test protocols which include personally identifiable information. A fee may be charged for the copies, but not to search for or retrieve information. The district shall publish a schedule of fees it intends to charge.
  6. Always provide a parent/adult student a copy of the IEP and any documentation of identification and eligibility.

**D. Disclosures Not Requiring Consent**

Consent is generally required to disclose personally identifiable information to others. However, consent is not required when:

1. A school official or employee has a legitimate educational interest to access the records.
2. A representative of the Federal Comptroller General, the United States Department of Education, or the State Department of Education (SDE) accesses records necessary for an audit or evaluation of a federal program or for enforcement or compliance with federal regulations.
3. A student transfers to another school or school system in which the student intends to enroll unless a district has adopted a procedure requiring consent. However, the parent/adult student should be notified of the request for records at the last known address of the parent/adult student unless he or she initiated the request.
4. The health and safety of the student or other individuals is in jeopardy because of an emergency.
5. The disclosure concerns the juvenile justice system's ability to effectively serve the student or the ability to respond to court orders or subpoenas, as specified in state law. The district will make a reasonable effort to notify the parent of the court order in advance of compliance, unless the subpoena specifically states that it is not to be disclosed.
6. An organization conducts studies on behalf of education agencies or institutions under specified FERPA criteria.
7. The disclosure is in connection with an application for financial aid and is necessary to determine eligibility for the aid, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid ("financial aid" means a payment of funds to an individual that is conditioned on the individual's attendance at an education agency

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or institution).

8. The district has designated information as “directory information” under the conditions in FERPA.

#### **E. Destruction of Records**

The district will maintain education records, including eligibility documentation and IEPs, for at least five (5) years after disenrollment from the district to demonstrate fiscal accountability and program compliance with the IDEA requirements. The district shall inform a parent/adult student when personally identifiable information collected, maintained, or used is to be destroyed because the information is no longer needed to provide educational services to the student.

Electronic copies will be treated as the original so long as those copies adequately capture any handwritten notes and signatures. Test Protocols and other assessment information shall be maintained during the period in which the report, which utilizes such information, is in effect.

Note: Medicaid-related records, specifically expenditure documentation, cost allocation process, all student records related to the Medicaid billing and service delivery (e.g., data sheets, IEPs, health care plans, physician recommendations for assessments and IEP services, evaluation recommendations, documented supervision of paraprofessionals), and revenue documentation, must be kept for a period of six (6) years.

The parent/adult student must be informed of the personally identifiable information that the district intends to destroy and that the information will be destroyed no earlier than forty-five (45) calendar days from the date of the notice. The parent/adult student must also be informed of the procedure to follow if he or she wishes to formally object to the destruction of the information and wants the records sent to him or her.

Written and electronic records of individual students are confidential. The district will ensure the complete destruction of the records, which may include but is not limited to shredding, permanently deleting, or burning, under supervision of the staff member responsible for the records if not released to the parent/adult student. The records manager should maintain a log that documents the date of destruction or release of records.

A permanent record of the student’s name, address, phone number, grades, classes attended, immunization records, test scores, attendance record, grade level, and year completed may be maintained by the district without a time limitation. Any other personally identifiable information shall be destroyed at the request of the parent/adult former student. When informing the parent/adult student of his or her rights, the district should remind the parent/adult student that the records might be needed for Social Security benefits or other purposes in the future.



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## **F. Request for Amendment of Records**

A parent/adult student may request that the district amend the student's records if he or she believes that information collected, maintained, or used in the education record is inaccurate, misleading, or in violation of the privacy or other rights of the student. The district will use the following procedure:

1. The district, within a reasonable period of time—not to exceed forty-five (45) days of receipt of the request—must decide whether to amend the record. If the district refuses to amend the record, the parent/adult student must be informed of the refusal and be advised of the right to and procedure for requesting a district hearing under the district's FERPA policy. A district hearing is an informal hearing that does not have all the requirements of a due process hearing.
2. If a district hearing is requested and the district decides that the information is inaccurate, misleading, or in violation of the student's rights, the district shall amend the record and inform the parent/adult student in writing.
3. If a district hearing is requested and the district decides the information is accurate and does not violate the student's rights, the district shall inform the parent/adult student that he or she may place a statement in the record. This statement may comment on the information in the record or set forth the parent's/adult student's reasons for disagreeing with the district. Any statement placed with a record must accompany the record for as long as the district maintains the record. If the district discloses the record to any person, the district shall also disclose the statement.

## **G. District Hearings on Procedures for Records**

Each district is required to have a FERPA policy which includes the rights to request a hearing challenging the accuracy of records.

## **H. Students' Rights**

When special education rights transfer to a student under the IDEA and Idaho Code, the FERPA rights regarding education records also transfer to the student. The district shall inform the parent/adult student that both the IDEA and FERPA rights regarding education records transfer although FERPA gives the parent of a student who is claimed to be a dependent for IRS purposes the right to request access without the consent of the student.

## **Section 6. Independent Educational Evaluations**

### **A. Definition**

An independent educational evaluation (IEE) means one or more individual assessments, each

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completed by a qualified examiner who is not employed by the district responsible for the education of the student in question.

**B. Right to an IEE**

1. A parent/adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the district. The parent/adult student is entitled to only one IEE at public expense for each district evaluation.
2. The parent/adult student has the right to an IEE at his or her own expense at any time, and the IEP team shall consider the results.
3. The parent/adult student is not automatically entitled to have additional assessments beyond those determined necessary by the district for an evaluation. However, if parent/adult student is interested in additional or different assessments and the district refuses to provide them and provides written notice of refusal. The parent/adult student may request a due process hearing.
4. A district may initiate a due process hearing, without undue delay, to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the evaluation conducted by the district was appropriate, the parent and/or adult student still has the right to an IEE but at his or her own expense.
5. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the district was not appropriate.

**C. Procedures for Requesting an IEE**

If a parent/adult student requests an IEE at public expense, the district may ask why he or she disagrees with the evaluation obtained by the district, but the district cannot require an explanation. The district shall give the parent/adult student the criteria under which an IEE can be obtained. The district's IEE criteria shall include the following information:

1. the location for the evaluation;
2. the required qualifications of the examiner;
3. the eligibility requirements for the specific disability categories; and
4. reasonable cost containment criteria applicable to personnel for specified assessments to eliminate unreasonably excessive fees.

Except for the criteria listed above, the district may not impose other conditions or timelines if doing so would be inconsistent with the parent's/adult student's right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

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A parent/adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's cost criteria. If an IEE that falls outside the district's cost criteria is justified, that IEE will be publicly funded.

**D. District Responsibilities Following IEE Requests**

1. If a parent/adult student requests an IEE at public expense, the district shall do one of the following without unnecessary delay:
  - a. Provide the district's IEE criteria and information about where an IEE may be obtained.
  - b. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the parent/adult student may pursue an IEE, but at his or her own expense.
2. If a parent/adult student asks the district to pay for an IEE that has already been obtained, the district shall pay for the IEE if it meets the criteria for publicly funded IEEs. If the district believes that its evaluation was appropriate, but agrees to pay for the IEE, the district should state this in writing within the same document in which it agrees to pay. The district can also request SDE mediation.

**E. Consideration of the IEE Results**

If a parent/adult student obtains an IEE and makes that evaluation available to the district, the results must be considered by the district in any decision made with respect to the provision of FAPE. The results may also be presented as evidence at a hearing regarding the student. This is true regardless of whether the IEE is at the expense of the parent/adult student or district.

The results of an IEE cannot be the sole determining factor for eligibility. The evaluation team has the responsibility to use existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA.

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## **Part B** Procedural Safeguards Notice

Revised: June 2016

Dear Parent,

This document provides you with the required notice of the procedural safeguards available under the Individuals with Disabilities Education Act (IDEA) and U.S. Department of Education regulations. The IDEA, the Federal law concerning the education of students with disabilities, requires schools to provide the parent(s) of a child with a disability a notice containing a full explanation of the procedural safeguards available. A copy of this notice must be given only one time per school year, except that a copy must also be given:

- (1) Upon initial referral or your request for evaluation;
- (2) Upon receipt of your first State complaint and upon receipt of your first due process complaint in a school year;
- (3) When a decision is made to take a disciplinary action against your child that constitutes a change of placement; and
- (4) Upon your request.

**Please contact the school district for more information on these rights.**

**For further explanation you may also contact:**

***Idaho Special Education Dispute Resolution, State Dept. of Education***

P.O. Box 83720

Boise, ID 83720-0027

Phone: (208) 332-6914 Toll-free: (800) 432-4601 V/TT: (800) 377-3529

Fax: (208) 334-2228

Web: [www.sde.idaho.gov](http://www.sde.idaho.gov)

**For further assistance in matters relating to dispute resolution, you may contact:**

***DisAbility Rights Idaho  
Boise Office***

4477 Emerald Street,  
Suite B-100

Boise, ID 83706-2066

Phone: (208) 336-5353

Toll-free: (800) 632-5125

Fax: (208) 336-5396

Web: [disabilityrightsidaho.org](http://disabilityrightsidaho.org)

***DisAbility Rights Idaho  
Pocatello Office***

1246 Yellowstone Ave  
Suite A-3

Pocatello, ID 83201-4374

Phone: (208) 232-0922

Toll-free: (866) 309-1589

Fax: (208) 232-0938

Web: [disabilityrightsidaho.org](http://disabilityrightsidaho.org)

***Idaho Parents Unlimited, Inc.  
(IPUL)***

4619 Emerald, Ste. E  
Boise, ID 83702

Phone: (208) 342-5884

Toll-free: (800) 242-IPUL (4785)

V/TT: (208) 342-5884

Fax: (208) 342-1408

Web: [ipulidaho.org](http://ipulidaho.org)

***Idaho Legal Aid Services***

1447 Tyrell Lane

Boise, ID 83706

Phone: (208) 336-8980

Fax: (208) 342-2561

Web [idaholegalaid.org](http://idaholegalaid.org)

***Idaho State Bar Association***

P.O. Box 895

Boise, ID 83701

Phone (208) 334-4500

Fax: (208) 334-4515

Web: [isb.idaho.gov](http://isb.idaho.gov)

***Wrightslaw Idaho Yellow Pages for  
Kids***

Web:

[yellowpagesforkids.com/help/id.htm](http://yellowpagesforkids.com/help/id.htm)

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## GENERAL INFORMATION

### PRIOR WRITTEN NOTICE

#### 34 CFR §300.503

##### Notice

Your school district must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
2. Refuses to initiate or to change the identification, evaluation, educational placement of your child, or the provision of FAPE to your child.

##### Content of notice

The written notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of IDEA;
7. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; **and**
8. Provide a description of other reasons why your school district proposed or refused the action.

##### Notice in understandable language

The notice must be:



1. Written in language understandable to the general public; **and**
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your school district must ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that the requirements in paragraphs 1 and 2 have been met.

## **NATIVE LANGUAGE**

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### **34 CFR §300.29**

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

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

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

## **ELECTRONIC MAIL**

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### **34 CFR §300.505**

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

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

## **PARENTAL CONSENT - DEFINITION**

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### **34 CFR §300.9**

## Consent

*Consent* means:

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

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

## PARENTAL CONSENT

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### 34 CFR §300.300

#### Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings ***Prior Written Notice*** and ***Parental Consent***.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

Your school district may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

**Special rules for initial evaluation of wards of the State**

If a child is a ward of the State and is not living with his or her parent —

The school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school district cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; **or**
3. A judge has assigned the right to make educational decisions to an individual other than the parent and that individual has provided consent for an initial evaluation.

*Ward of the State*, as used in IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; **or**
3. In the custody of a public child welfare agency.

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a *parent* as used in IDEA.

**Parental consent for services**

Your school district must obtain your informed consent before providing special education and related services to your child for the first time.

The school district must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, your school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district may not continue to provide such services, but must provide you with prior written notice, as described under the heading ***Prior Written Notice***, before discontinuing those services.

### **Parent's Right to Object**

Once you consent to the initial start of services, the school district is not required to obtain your consent to make changes to the IEP. However, if you do not want the school district to implement the changes to the IEP, you must submit your objections in writing. Your written objections must either be postmarked or hand-delivered to the school district within 10 days of receiving the written notice of the changes.

IDAPA 8.02.03.109.05a

### **Parental consent for reevaluations**

Your school district must obtain your informed consent before it reevaluates your child, unless your school district can demonstrate that:

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

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

### **Documentation of reasonable efforts to obtain parental consent**

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

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

### **Other consent requirements**

Your consent is not required before your school district may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**

2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children.

The school district must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE). Also, your school district may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

## INDEPENDENT EDUCATIONAL EVALUATIONS

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### 34 CFR §300.502

#### General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district's criteria that apply to independent educational evaluations.

#### Definitions

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

*Public expense* means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of the Act.

#### Right to evaluation at public expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your school district, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

#### **Parent-initiated evaluations**

If you obtain an independent educational evaluation of your child at public expense or you share with the school district an evaluation of your child that you obtained at private expense:

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

#### **Requests for evaluations by hearing officers**

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

#### **School district criteria**

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

## CONFIDENTIALITY OF INFORMATION

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### 34 CFR §300.611

As used under the heading Confidentiality of Information:

*Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education records* means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

*Participating agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

## PERSONALLY IDENTIFIABLE

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### 34 CFR §300.32

*Personally identifiable* means information that includes:

- (a) Your child's name, your name as the parent, or the name of another family member;
- (b) Your child's address;
- (c) A personal identifier, such as your child’s social security number or student number; **or**
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## NOTICE TO PARENTS

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### 34 CFR §300.612

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**

4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of these activities.

## ACCESS RIGHTS

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### 34 CFR §300.613

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

Your right to inspect and review education records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

## RECORD OF ACCESS

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### 34 CFR §300.614

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

## RECORDS ON MORE THAN ONE CHILD

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### 34 CFR §300.615



If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## LIST OF TYPES AND LOCATIONS OF INFORMATION

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### 34 CFR §300.616

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

## FEES

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### 34 CFR §300.617

Each participating agency may charge a fee for copies of records that are made for you under Part B of IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

## AMENDMENT OF RECORDS AT PARENT'S REQUEST

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### 34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

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

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading *Opportunity For a Hearing*.

## OPPORTUNITY FOR A HEARING

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### 34 CFR §300.619

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## HEARING PROCEDURES

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### 34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

## RESULT OF HEARING

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### 34 CFR §300.620

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

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

Such an explanation placed in the records of your child must:

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

## CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

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### 34 CFR §300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## **SAFEGUARDS**

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### **34 CFR §300.623**

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding your State's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

## **DESTRUCTION OF INFORMATION**

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### **34 CFR §300.624**

Your school district must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## STATE COMPLAINT PROCEDURES

### DIFFERENCES BETWEEN THE PROCEDURES FOR DUE PROCESS COMPLAINTS AND HEARINGS AND FOR STATE COMPLAINTS

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the State Educational Agency, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The State Educational Agency must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading **Model Forms**.

### ADOPTION OF STATE COMPLAINT PROCEDURES

#### 34 CFR §300.151

##### General

Each State Educational Agency must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the State Educational Agency;
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

##### Remedies for denial of appropriate services

In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

The failure to provide appropriate services, including corrective action appropriate to address

the needs of the child (such as compensatory services or monetary reimbursement); **and**  
Appropriate future provision of services for all children with disabilities.

## MINIMUM STATE COMPLAINT PROCEDURES

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### 34 CFR §300.152

#### Time limit; minimum procedures

Each State Educational Agency must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;

4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for the State Educational Agency's final decision.

#### Time extension; final decision; implementation

The State Educational Agency's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) you and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
2. Include procedures for effective implementation of the State Educational Agency's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

#### State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described under the heading *Filing a Due Process Complaint*, or the State complaint contains

multiple issues of which one or more are part of such a hearing, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the school district), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

## FILING A STATE COMPLAINT

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### 34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

A statement that a school district or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;

The facts on which the statement is based;

The signature and contact information for the party filing the complaint; and

If alleging violations regarding a specific child:

- (a) The name of the child and address of the residence of the child;
- (b) The name of the school the child is attending;
- (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
- (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
- (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

## DUE PROCESS COMPLAINT PROCEDURES

### FILING A DUE PROCESS COMPLAINT

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#### 34 CFR §300.507

##### General

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The school district withheld information from you that it was required to provide you under Part B of IDEA.

##### Information for parents

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district file a due process complaint.

### DUE PROCESS COMPLAINT

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#### 34 CFR §300.508

##### General

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the State Educational Agency with a copy of the complaint.

##### Content of the complaint

The due process complaint must include:

1. The name of the child;

2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the school district) at the time.

### **Notice required before a hearing on a due process complaint**

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney) files a due process complaint that includes the information listed above.

### **Sufficiency of complaint**

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

### **Complaint amendment**

You or the school district may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading ***Resolution Process***; **or**
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

### **Local educational agency (LEA) or school district response to a due process complaint**

If the school district has not sent a prior written notice to you, as described under the heading



**Prior Written Notice**, regarding the subject matter contained in your due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the school district proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

#### **Other party response to a due process complaint**

Except as stated under the sub-heading immediately above, **Local educational agency (LEA) or school district response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## **MODEL FORMS**

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### **34 CFR §300.509**

The State Educational Agency must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, your State or the school district may not require the use of these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint.

## **MEDIATION**

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### **34 CFR §300.506**

#### **General**

The school district must develop procedures that make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading **Filing a Due Process Complaint**.

## Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

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

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

The State must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the costs of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); **and**
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

## Impartiality of mediator

The mediator:

1. May not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

## RESOLUTION PROCESS

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### 34 CFR §300.510

#### Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the school district who has decision-making authority on behalf of the school district; **and**
2. May not include an attorney of the school district unless you are accompanied by an attorney.

You and the school district determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the school district agree in writing to waive the meeting; or
2. You and the school district agree to use the mediation process, as described under the heading *Mediation*.

#### Resolution period

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, **Hearing Decisions**, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

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

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

#### **Adjustments to the 30-calendar-day resolution period**

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

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the school district agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

#### **Written settlement agreement**

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

1. Signed by you and a representative of the school district who has the authority to bind the school district; and
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the State Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

#### **Agreement review period**

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

## HEARINGS ON DUE PROCESS COMPLAINTS

### IMPARTIAL DUE PROCESS HEARING

#### 34 CFR §300.511

##### General

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the *Due Process Complaint* and *Resolution Process* sections.

Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the State Educational Agency or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each school district must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

##### Subject matter of due process hearing

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

##### Timeline for requesting a hearing

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.

### Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

1. The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
2. The school district withheld information from you that it was required to provide to you under Part B of IDEA.

## HEARING RIGHTS

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### 34 CFR §300.512

#### General

You have the right to represent yourself at a due process hearing (including a hearing relating to disciplinary procedures) or an appeal with a hearing to receive additional evidence, as described under the subheading, *Appeal of decisions; impartial review*. In addition, any party to a hearing has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the hearing by an attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
6. Obtain written, or, at your option, electronic findings of fact and decisions.

#### Additional disclosure of information

At least five business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

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

#### Parental rights at hearings

You must be given the right to:

1. Have your child present at the hearing;
2. Open the hearing to the public; and

3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

## HEARING DECISIONS

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### 34 CFR §300.513

#### Decision of the hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; or
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536).

#### Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

#### Findings and decision provided to the advisory panel and general public

The State Educational Agency or the school district, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; and
2. Make those findings and decisions available to the public.

## APPEALS

## FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

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### 34 CFR §300.514

### Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions.***

## TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

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### 34 CFR §300.515

The State Educational Agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the school district).

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

## CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

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### 34 CFR §300.516

#### General

Any party (you or the school district) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

#### Time limitation

The party (you or the school district) bringing the action shall have 42 calendar days from the date of the decision of the hearing officer to file a civil action.

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#### Additional procedures



In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school district's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

### **Jurisdiction of district courts**

The district courts of the United States have authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

### **Rule of construction**

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of IDEA. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

## **THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING**

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### **34 CFR §300.518**

Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES***, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or school district agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is

no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

If a hearing officer in a due process hearing conducted by the State Educational Agency agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

## **ATTORNEYS' FEES**

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### **34 CFR §300.517**

#### **General**

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you, if you prevail (win).

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

#### **Award of fees**

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;

- b. The offer is not accepted within 10 calendar days; **and**
- c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

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

1. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

Fees also may not be awarded for a mediation as described under the heading **Mediation**.

A resolution meeting, as described under the heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

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

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. The attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.

## PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

### AUTHORITY OF SCHOOL PERSONNEL

#### 34 CFR §300.530

##### Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when

determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

### General

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

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

### Additional authority

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

### Services

The school district does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, ***Manifestation determination***) or who is removed under special circumstances (see the subheading, ***Special circumstances***) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior

violation so that it does not happen again.

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

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

### **Manifestation determination**

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Team (as determined by you and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. If the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If the school district, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school district, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

### **Determination that behavior was a manifestation of the child's disability**

If the school district, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special circumstances***, the school district

must return your child to the placement from which your child was removed, unless you and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

### Special circumstances

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district; or
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district.

### Definitions

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

*Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### Notification

On the date it makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with a procedural safeguards notice.

## CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

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### 34 CFR §300.536

A removal of your child with a disability from your child's current educational placement is a

change of placement if:

1. The removal is for more than 10 school days in a row; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. Your child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

## DETERMINATION OF SETTING

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### 34 CFR §300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional authority*** and ***Special circumstances***.

## APPEAL

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### 34 CFR §300.532

#### General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

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

#### Authority of hearing officer

A hearing officer that meets the requirements described under the subheading ***Impartial hearing officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements

described under the heading ***Authority of School Personnel***, or that your child's behavior was a manifestation of your child's disability; **or**

2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

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

Whenever you or a school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints***, except as follows:

1. The State Educational Agency or school district must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.
3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the school district may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading ***Appeal***).

## **PLACEMENT DURING APPEALS**

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### **34 CFR §300.533**

When, as described above, you or the school district file a due process complaint related to disciplinary matters, your child must (unless you and the State Educational Agency or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

## **PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES**

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### **34 CFR §300.534**



## General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

### Basis of knowledge for disciplinary matters

A school district will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
3. Your child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district's director of special education or to other supervisory personnel of the school district.

### Exception

A school district would not be deemed to have such knowledge if:

1. You have not allowed an evaluation of your child or have refused special education services; or
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

### Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

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

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by you, the

school district must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

## **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES**

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### **34 CFR §300.535**

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

### **Transmittal of records**

If a school district reports a crime committed by a child with a disability, the school district:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

## **REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE**

### **GENERAL**

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#### **34 CFR §300.148**

Part B of IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

#### **Reimbursement for private school placement**

If your child previously received special education and related services under the authority of a

school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the State Educational Agency and school districts.

#### **Limitation on reimbursement**

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

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

However, the cost of reimbursement:

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

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## CHAPTER 12: DISCIPLINE

Schools are encouraged to address student misconduct through appropriate school-wide discipline policies, instructional services, and/or related services. If a student with a disability has behavior problems that interfere with his or her learning or the learning of others, an individualized education program (IEP) team shall consider the use of strategies, including positive behavioral supports (PBS) and interventions, to address the behavior. If the IEP team determines that such services are needed, they must be included in the IEP and must be implemented.

Students with disabilities who are subject to disciplinary actions by a district are entitled to all of the due process rights afforded students without disabilities under Section 33-205, Idaho Code and state and local policies. In addition to these rights, the IDEA provides special education rights and additional discipline procedures to a student with a disability whom the district is removing from his or her current educational placement. These procedures come into play when the district is unable to work out an appropriate placement for the student with the parent/adult student. Further, these procedures do not prevent district personnel from maintaining a safe environment conducive to learning that is critical for all students.

Even though Idaho Code allows district personnel to “temporarily suspend” students for up to twenty (20) school days, all students with disabilities who have been suspended or expelled for more than ten (10) consecutive or cumulative school days in a school year retain the right to a free appropriate public education. (FAPE).

### Section 1. General Discipline Provisions

The general requirements pertaining to the discipline procedures of special education students are as follows:

1. District personnel may remove a student from his or her current placement to an appropriate Interim Alternative Education Setting (IAES) or another setting for not more than ten (10) consecutive days to the extent those alternatives are applied to students without disabilities.
2. District personnel may suspend any student, including a special education student, for up to ten (10) cumulative school days in a school year if he or she violates the code of student conduct, and services may cease during this period. In accordance with Idaho Code (unless services are provided to students who are nondisabled who are also suspended):
  - a. A school principal has the authority to order a temporary disciplinary suspension for up to five (5) school days.

- b. The superintendent can extend the disciplinary suspension for an additional ten (10) school days.
  - c. Provided, that on a finding by the Board of Trustees that the student's immediate return to school would be detrimental to other students' health, welfare or safety, the Board of Trustees may extend the temporary suspension for an additional five (5) school days.
  - d. Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any student who has been suspended may be readmitted to the school by the superintendent or principal who suspended him or her upon such reasonable conditions as said superintendent or principal may prescribe.
3. A series of suspensions exceeding ten (10) days in a school year shall not constitute a pattern of removals resulting in a change of placement, without following the procedures discussed in this chapter.
4. Students who have not been determined eligible for special education may be entitled to an evaluation and other IDEA rights—including the right to FAPE during periods of disciplinary suspension that extend beyond ten (10) cumulative school days in a school year if:
  - a. The district had basis of knowledge that the student met the IDEA eligibility prior to the behavior that precipitated the disciplinary suspension; and
  - b. The parent/adult student asserts the right to FAPE.

## Section 2. Actions Involving a Change of Placement for Disciplinary Reasons

A change of placement is a removal from the student's current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) cumulative school days in a school year. Factors such as the student's behavior is substantially similar to behavior in previous incidents that resulted in series of removals, the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern. Whether a pattern of removals constitutes a change of placement will be determined on a case-by-case basis by the district; the district's determination is subject to review through an expedited due process hearing and judicial proceedings. The district may consider any unique circumstances in determining whether to pursue a disciplinary change of placement.

The parent shall be provided with written notice on the date on which the decision is made to

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remove the student if it constitutes a change of placement. A copy of the IDEA's procedural safeguards shall be provided with the notice.

Even if the disciplinary action is to suspend or expel a student, FAPE [educational services] cannot cease for more than ten (10) cumulative school days in a school year.

A manifestation determination is required if the district is considering removing a student with a disability from his or her educational placement for disciplinary reasons which constitute a change of placement or placing a student in an IAES. A manifestation determination is defined as a review of the relationship between the student's disability and the behavior subject to disciplinary action. See Section 4 of this chapter for more information.

### **A. District Actions Resulting in a Change of Placement**

District administrators change a student's placement by

1. Unilaterally removing a special education student from his or her current placement for:
    - a. more than ten (10) consecutive school days in a school year; or
    - b. subjecting a special education student to a series of removals that constitute a pattern:
      - 1) because the series of removals total more than ten (10) school days in a school year;
      - 2) because the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
      - 3) because of such additional factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
  2. District personnel may remove a student to an IAES for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:
    - a. carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State Education Agency (SEA) or a Local Education Agency (LEA); or
    - b. knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
-



- c. has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

### **B. Hearing Officer Actions Resulting in a Change of Placement**

Through an expedited due process hearing, district administrators may ask a hearing officer to place a student with a disability in an appropriate IAES.

1. In requesting a hearing officer to place a student in an IAES, the district must:
  - a. demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
  - b. indicate whether the request is for an *initial* period of not more than forty-five (45) school days or an *additional* period of not more than forty-five (45) school days.
2. In determining whether to grant a district's request to place a student in an IAES, the hearing officer must determine that the IAES proposed by the IEP team is appropriate.

### **C. Court Actions Resulting in a Change of Placement**

District administrators may seek a court order (called a "Honig Injunction") to remove a special education student from school or the current placement at any time. Educational services [FAPE] shall not cease during an injunction.

## **Section 3. FAPE Considerations**

Services shall not cease and the district shall always provide FAPE to the student with a disability:

1. after a student with a disability is removed for ten (10) school days in the same school year and subsequent days of removal; and
2. there is a disciplinary change of placement.

### **A. District Actions When There is Not a Change in Placement**

1. Notify the parent/adult student of the disciplinary action to be taken on the date of the decision.
2. School personnel, in consultation with at least one of the child's teachers, determine

the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals.

3. Conduct as appropriate a functional behavioral assessment (FBA) and provide behavioral intervention services and accommodations or adaptations designed to address the behavior violation so that it does not recur.

#### **B. District Actions When There is a Change of Placement**

Whenever disciplinary action results in a change in placement, the district must:

1. notify the parent/adult student of the disciplinary action to be taken on the date of the decision and provide a copy of the *Procedural Safeguards Notice*;
2. hold an IEP team meeting to determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals; and
3. conduct a manifestation determination immediately, if possible, but not later than ten (10) school days after the date on which the decision to take the disciplinary action is made.

#### **C. FAPE Requirements in an IAES**

If the student's placement will change to an IAES, the IEP team shall select an IAES that enables the student to:

1. continue to participate in the general education curriculum;
2. progress toward meeting the goals set out in his or her IEP; and
3. receive, as appropriate, an FBA and behavioral intervention services to address the behavior violation so that it does not recur.

#### **D. Transportation**

If the IEP team determines that special transportation is required as a related service it must be included in the IEP, all procedural safeguards under the IDEA shall be afforded to the student in matters concerning transportation. Whether a suspension from the bus counts as a suspension from school depends on whether bus transportation is identified on the IEP:

1. If bus transportation is on the IEP, a suspension from the bus would be treated as a suspension from school (unless the district provides transportation services in some other way, such as "transportation in lieu of") because transportation is necessary for

the student to obtain access to the location where all other services will be delivered.

2. If bus transportation is not on the IEP, a suspension from the bus would not be counted as suspension from school. In these cases, the student and the parent would have the same obligation to get to and from school as a student without a disability who had been suspended from the bus.

If the student's behavior on the bus results in a suspension from the bus, the IEP team shall consider whether the behavior should be addressed in a Behavioral Intervention Plan (BIP).

#### Section 4. Procedures for a Manifestation Determination

A manifestation determination by the parent/adult student and relevant IEP team members (as determined by the district and parents/adult students) involves a review of the relationship between the student's disability and the behavior subject to disciplinary action.

##### **A. Actions Involving a Manifestation Determination**

When a disciplinary action results in a change of placement or placement in an IAES, the district will take the following actions:

1. The parent/adult student will be notified of the disciplinary action and provided with a copy of the *Procedural Safeguards Notice* not later than the date on which the decision to take disciplinary action is made.
2. A meeting will be held no later than ten (10) school days after the date on which the decision to take disciplinary action is made. This meeting will include the district, the parent/adult student, and other relevant members of the IEP team (as determined by the parent and the district). The purpose of the meeting is to review all relevant information in the student's file including:
  - a. the student's IEP;
  - b. any teacher observations; and
  - c. any relevant information provided by the parent/adult student.
3. Based on a review of the information, the district, parent, and relevant members IEP team as determined by the parent and the district, will determine if the conduct in question was:
  - a. caused by or had a direct and substantial relationship to the student's disability;  
or

- b. the direct result of the district's failure to implement the IEP (if so, the deficiencies must be immediately remedied).

If the district, parent, and relevant members IEP team find that either a or b above is true, the student's behavior will be determined to be a manifestation of his or her disability.

### **B. When Behavior Is a Manifestation of the Disability**

If a student's behavior is determined to be a manifestation of his or her disability, relevant members of the IEP team, as determined by the parent and district, will:

1. conduct an FBA and implement a BIP for the student if the district had not conducted such an assessment prior to the behavior that resulted in a change in placement;
2. review the BIP if one had previously been developed and modify it as necessary to address the behavior;
3. return the student to the placement from which he or she was removed, unless the parent and district agree in writing to a change of placement as part of the modification of the BIP.

If there were grounds to place a student in an IAES, the student may remain in the IAES even if there was a manifestation.

### **C. When Behavior Is Not a Manifestation of the Disability**

If the IEP team, (relevant members determined by the parent and the district), determines that the student's behavior was not a manifestation of his or her disability, the same disciplinary procedures applicable to students without disabilities, including long-term suspension or expulsion, may be applied to the student with a disability. The district will forward special education and disciplinary records for consideration to the board of trustees, which makes the final decision regarding the disciplinary action.

Even if the disciplinary action is to suspend or expel, the following provisions shall be met:

1. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability to continue to participate in the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. An IEP team shall convene to develop an IEP that specifies what special education and related services will be provided during the period of suspension or expulsion.

## Section 5. Other Considerations

### A. Request for an Expedited Hearing

An expedited hearing is a hearing that occurs within twenty (20) school days of the request with a decision rendered within ten (10) school days of the hearing.

1. The parent/adult student may request an expedited due process hearing if he or she:
  - a. disagrees with the determination that the behavior was not a manifestation of the student's disability;
  - b. disagrees with any decision of the IEP team regarding a change of placement during a disciplinary proceeding; or
  - c. disagrees with the decision regarding the student's placement in an IAES.
2. The district may request an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.
3. When an appeal of a disciplinary action is requested (by the parent/adult student to challenge the action or by the district to seek removal to an interim setting), the student remains in the IAES pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first unless the parent/adult student and district agree otherwise.
4. Resolution meeting requirements apply but are shortened to fifteen (15) and seven (7) days. No challenge for sufficiency of request is available.
5. A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

See Chapter 13, Sections 4 and 5, for an explanation of regular and expedited due process hearing rights and procedures.

### B. Protections for Students Not Yet Eligible for Special Education

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the district may assert the protections of the IDEA *if* the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.

1. Basis of knowledge

With limited exceptions, which are described in item 2 below, the district will be deemed to have knowledge that an individual is a student with a disability if before the behavior that precipitated the disciplinary action occurred one or more of the following is true:

- a. The parent/adult student has expressed concern to supervisory or administrative district personnel or a teacher of the child that the student is in need of special education and related services.
  - b. The parent/adult student has requested that the student be evaluated for special education.
  - c. The student's teacher or other district personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other district supervisory personnel in accordance with the district's established Child Find system or special education referral system.
2. No basis of knowledge

The district will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

- a. An evaluation was conducted and a determination was made that the student did not have a disability.
- b. The parent/adult student did not give written consent for an evaluation.
- c. The parent/adult student refused special education services.

If the district did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

### **C. Parent/Adult Student Request for Evaluation of a Disciplined Student**

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation will be conducted in an expedited manner. Pending the results of the evaluation, the student will remain in the educational placement determined by district officials, which can include suspension or expulsion without educational services.

1. If the student is subsequently determined eligible for special education, the district will:
  - a. Convene an IEP team meeting to develop an IEP.

- b. Conduct a manifestation determination.
  - 1) If the behavior is caused by or had a substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the least restrictive environment (LRE).
  - 2) If the behavior is not caused by nor had a substantial relationship to the student's disability, the student is subject to the disciplinary placement that had been determined, but he or she is still entitled to receive FAPE, which is determined by the IEP team. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. If the evaluation team determines that the student is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students.

#### **D. Referrals to and Action by Law Enforcement and Judicial Authorities**

1. The district may report a crime committed by a student with a disability to appropriate authorities. The IDEA does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.
2. If a student brings a firearm to school, law enforcement shall be contacted pursuant to the Gun-Free Schools Act.
3. If the district reports a crime, it will ensure that copies of the special education and disciplinary records of the student are given to the appropriate law enforcement authorities for their consideration, to the extent the release of records is permitted by the Family Educational Rights and Privacy Act (FERPA). Generally, the release of records requires consent, but exceptions are listed in Chapter 11, Section 5.

#### **E. Transfer of Discipline Records**

Section 33-209, Idaho Code, requires that whenever a student transfers to a new school and a school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information will be included in the transfer of records to the new school. The transmission of the student's record shall include both the student's current IEP, including the FBA, BIP, and any current or previous disciplinary action taken. This information will be contained in a sealed envelope marked to indicate the confidential nature

of the contents and addressed to the principal or other administrative officer of the school.

When the district initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities shall be given to authorized district personnel for their consideration in making the final determination regarding the disciplinary action.



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## CHAPTER 13 DISPUTE RESOLUTION

On occasion, conflicts arise between school districts and families. Several mechanisms are available through the State Department of Education (SDE) to assist in resolving a dispute. The processes are facilitation, informal conflict resolution, mediation, state complaints, due process hearings, and expedited due process hearings. This chapter contains information on each of these processes. The information contained within this chapter is not intended to limit in any manner the procedural due process/dispute resolution rights provided by federal or state law.

### Contact Information

In addition to providing general information and support concerning IDEA related issues, the SDE accepts requests for facilitation, informal conflict resolution, and mediation by telephone and e-mail. State complaints and due process hearings are accepted via fax, mail, personal delivery, or may be scanned and attached to an email. All state complaints and due process hearing requests must include a signature of the filing party.

Requests for dispute resolution should be directed to the Dispute Resolution Coordinator (DRC) at:

Special Education Dispute Resolution  
Idaho State Dept. of Education  
P.O. Box 83720  
Boise, ID 83720-0027

(208) 332-6914  
(800) 432-4601  
TT: (800) 377-3529  
Fax: (208) 334-2228

For further assistance in matters relating to dispute resolution, you may contact:

### [DisAbility Rights Idaho](#)

Boise Office:  
4477 Emerald St., Ste B-100  
Boise, ID 83706-2066  
(208) 336-5353  
(208) 336-5396 (fax)  
(800) 632-5125 (toll-free)

DisAbility Rights Idaho

Pocatello Office:

1246 Yellowstone Avenue, Suite A-3

Pocatello, ID 83201-4374

(208) 232-0922

(208) 232-0938 (fax)

(866) 309-1589 (toll-free)

Idaho Parents Unlimited (IPUL)

4619 Emerald, Ste. E

Boise, ID 83702

(208) 342-5884

(208) 342-1408 (fax)

(800) 242-IPUL (4785) (toll-free)

V/TT: 208-342-5884

## Section 1. Facilitation

### A. Definition of Facilitation

Facilitation is a voluntary process during which dispute resolution contracted individual or individuals facilitate an IEP team meeting or other IDEA-related meeting. The role of the facilitator is to help the IEP team members, including the parents/adult student and the student (when appropriate), communicate more effectively and efficiently. Facilitation supports early dispute resolution by providing assistance to the IEP team before a conflict develops into a formal dispute. A facilitator is trained to help IEP teams collaboratively plan for the IEP team meeting, focus on key issues and move toward productive outcomes. Because the facilitator is not a member of the IEP team, he or she can act as a neutral and impartial third-party providing balance, offer an outsider's perspective on the process, and help parties to be heard and understood by the rest of the IEP team. Note: A facilitator will not be responsible for creating or documenting decisions made by the IEP team or in any other IDEA related meeting.

Facilitation is offered at no charge to the district or the parent/adult student.

### B. Facilitation Requests

A request for facilitation may be made by either a parent/adult student or a designated district representative, such as the director of special education. Facilitation may be requested for any IDEA-related meeting including: eligibility meetings; annual or amended IEP team meetings; due process hearing meetings such as resolution sessions or settlement meetings; as well as manifestation determination meetings.

Requests for facilitation should be made at least two weeks in advance to the meeting. Upon the request for facilitation, the Dispute Resolution Coordinator (DRC) will immediately contact the other party for approval. As facilitation is voluntary, both parties must agree to facilitation for the process to go forward. The DRC will contact both the parent/adult student and the district representative, notifying each who the facilitator will be. The facilitator will contact the parties to conduct pre-facilitation interviews to help build an agenda for the facilitation. Generally meetings are scheduled by the district who is responsible for sending out the *Invitation to Meeting*.

### C. Facilitator Role

The role of the facilitator is to lead the IEP team meeting and guide parties through the process. The facilitator may work with parties to establish the agenda and identify issues important for parties to cover in the meeting. Facilitators may ask pertinent questions of parties providing occasional clarification or perspective, and work to ensure that participants are able to participate in a productive and balanced meeting. Facilitators are not to make decisions for teams, serve as definitive experts on IDEA processes or matters of law, record minutes for meetings, or finalize documents, although they may facilitate the crafting of language parties

will include in a student's IEP.

Facilitators shall not be called to testify in due process hearings or civil proceedings regarding facilitated meetings they have conducted as dispute resolution contractors.

#### **D. Dispute Resolution Facilitators**

Facilitators are trained in effective conflict resolution processes, communication, negotiation, problem-solving, and in laws and regulations relating to the provision of special education and related services. While a facilitator in this context will not offer advice on a particular course of action, he or she is required to help parties explore the soundness of any assumptions or agreements. The DRC may appoint one or two individuals to serve as facilitator(s) of a meeting.

1. In all cases a facilitator shall not:
  - a. be an employee of the district involved in the dispute;
  - b. have children enrolled in the district involved in the dispute;
  - c. have a personal or professional interest that may affect the ability to remain impartial or neutral; or
  - d. be used if either party rejects the facilitator(s) based on a perceived inability to be neutral or impartial.

#### **E. Facilitation Timelines**

The DRC will appoint a facilitator within five (5) business days of an acceptance of a request. Every effort will be made to complete the process within twenty-one (21) calendar days.

### **Section 2. Informal Conflict Resolution**

#### **A. Definition of Informal Conflict Resolution**

Informal conflict resolution is offered in an effort to improve relationships between parties and foster healthy communication. This informal conflict resolution may include topics outside of those set forth as appropriate for IDEA mediation, extending beyond the identification, evaluation, educational placement or the provision of FAPE. As with mediation, the process of informal conflict resolution is confidential and voluntary, and the third-party is a trained neutral and impartial third-party. Informal conflict resolution may be appropriate when parties face difficulties communicating productively or need to reach understanding on differing perspectives. Any agreements reached between parties are self-enforced.

## **B. Informal Conflict Resolution Requests**

A request for informal conflict resolution may be made in person, writing or via telephone by either a parent/adult student or a district representative. The DRC will screen requests to determine the appropriateness of the process for each individual case. Informal conflict resolution can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state complaint involving an individual student, however cannot be used to delay the state complaint process or a due process hearing timelines.

Upon request for informal conflict resolution, the DRC or the assigned facilitator will contact all parties to schedule the meeting. Because informal conflict resolution is voluntary, both parties must verbally state their agreement to participate for the process to go forward. Informal conflict resolution can be conducted by dispute resolution contractors or dispute resolution staff as assigned by the DRC. Informal conflict resolution is offered at no charge to the district or to the parent/adult student.

## **C. Informal Conflict Resolution Procedures**

1. No video or audio recording of the meeting proceedings will be made.
2. Because informal conflict resolution is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during the meeting is discouraged, and a school district may not have legal representation present if a parent/adult student does not.
3. The DR office will not retain any documentation or informal agreements created by the parties. No other records of the content of the meeting will be kept by the SDE.
4. Either party has the option to end the informal conflict resolution meeting at any time.

## **D. Informal Conflict Resolution Timelines**

The DRC will appoint a facilitator within five (5) business days of an acceptance of a request. The meeting will be held in a location convenient to the parties involved, and every effort will be made to complete the process within twenty-one (21) calendar days.

## **E. Confidentiality**

Discussions that occur during the informal conflict resolution process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding in any state or federal court. Facilitators shall not be called to testify in due process hearings or civil proceedings regarding facilitated meetings they have conducted as dispute resolution contractors.

The facilitator may require a confidentiality agreement be signed by participants.

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## **F. Nature of Agreements**

An agreement reached by the parties through informal conflict resolution, whether memorialized in writing or agreed to verbally, are self-enforced and not enforceable by the SDE.

## **Section 3. Mediation**

### **A. Definition of Mediation**

Mediation is a confidential and voluntary process where a trained neutral and impartial third-party provides a structure for parents/adult students and district personnel to identify areas of agreement and work to resolve points of disagreement concerning the identification, evaluation, educational placement, or provision of FAPE. Mediation aims to build positive working relationships, encourage mutual understanding, and help the parties focus on their common interest—the student.

Discussions in mediation are not discoverable in pending or subsequent due process hearing or civil proceeding. Parties are provided an Acknowledgment and Notification of Confidentiality. Written agreements produced in mediation are legally-binding and enforceable in state or federal court. With the agreement of all parties in the mediation, an IEP may be amended as part of a written agreement.

Mediation may be appropriate when parties are in disagreement and seem unable to move forward without outside assistance, or they, after making a good-faith effort, face an impasse in an attempt to resolve the disagreement. Mediation can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state complaint.

### **B. Mediation Requests**

1. A request for mediation may be made in person, writing or via telephone by either a parent/adult student or a district representative at any point when a disagreement occurs about the circumstances of the education of a student by the district. The DRC will screen all mediation requests to determine the appropriateness of the mediation process for each individual case.
2. Mediation is automatically offered when a state complaint involving an individual student or a request for a due process hearing has been filed. Mediation cannot be used to delay the state complaint process or a due process hearing timelines unless the parent/adult child and the district agree in writing to extend the 60 day timeline. The complaint timeline cannot be extended beyond 90 days.
3. Upon request for mediation, the Dispute Resolution office will contact all parties to schedule the mediation. Because mediation is voluntary, both parties must verbally

agree to mediate for the process to go forward. Mediators are selected by the DRC from a list of trained professionals.

4. Mediation is provided at no charge to the district or to the parent/adult student.

### **C. Mediation Procedures**

1. The mediation will be conducted in compliance with the IDEA.
  2. No video or audio recording of the mediation proceedings will be made.
  3. Each party is limited to no more than three participants who have the authority to make final resolution decisions. The mediator may increase this number at his or her discretion and with agreement of all parties.
  4. The district shall have at least one representative present who has the authority to commit resources.
  5. Because mediation is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during a mediation session is discouraged. A district may not have legal representation present if a parent/adult student does not.
  6. The Dispute Resolution office will retain copies of the signed agreement, if an agreement is reached. No other records of the mediation will be kept by the SDE.
  7. The mediator will provide signed copies of the agreement, if an agreement is reached, to each party and the Dispute Resolution office.
  8. The mediator, afforded mediator privilege under Idaho law, will be excluded from participation in subsequent actions specific to the case mediated including complaint investigations, due process hearings, and legal proceedings. The mediator may mediate again for the parties if assigned and parties approve or if the mediated agreement calls for the mediator's potential future participation with the parties.
  9. A due process hearing requested prior to mediation may be canceled by the requesting party as a result of the mediation agreement. The requesting party will immediately provide the hearing officer with documentation of the voluntary withdrawal of the due process hearing request. The mediator will immediately inform the Dispute Resolution office of the decision to withdraw the due process hearing request.
  10. If for any reason the mediation does not end in a written agreement, the mediator will provide each party and the Dispute Resolution Coordinator with a statement certifying that mediation occurred but no agreement was reached.
  11. Either party has the option to end the mediation at any time.
-

**D. Dispute Resolution Mediators**

Dispute resolution mediators are trained in effective conflict resolution processes, communication, negotiation, problem-solving skills, and in laws and regulations relating to the provision of special education and related services. While a mediator will not offer advice on a particular course of action, a mediator is required to help parties explore the soundness of any agreement. Mediators are assigned on a rotational basis with consideration for geographical location.

1. In all cases a mediator shall not:
  - a. be an employee of the SDE or district involved in the dispute;
  - b. have children enrolled in the district involved in the dispute;
  - c. have a personal or professional interest that may affect the ability to remain impartial or neutral; or
  - d. be used if either party rejects the mediator based on a perceived inability to be neutral or impartial.
2. Additionally, if the parties have agreed to mediation following a due process hearing request, co-mediators may not be used.

**E. Mediator Role**

The mediator has the responsibility to contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation. The mediator also: establishes the ground rules for all parties to follow; guides the process; encourages open and honest communication; ensures that each party is heard; phrases information and summarizes issues; and facilitates the writing of the agreement.

**F. Mediation Timelines**

The DRC will appoint a mediator within three (3) business days of all parties agreeing to mediate. The mediation will be held in a location convenient to the parties involved, and every effort will be made to complete the process within twenty-one (21) calendar days.

**G. Confidentiality**

Discussions that occur during the mediation process cannot be used as evidence in any subsequent due process hearing or civil proceeding. Parties in the mediation process will be provided a copy of the *Notification and Acknowledgment of Confidentiality* form.

## H. Mediation Agreement

An agreement reached by the parties through mediation shall be set forth in writing and is enforceable in state and federal courts.

An effective mediation agreement should identify:

- What action(s) will be taken and when the action(s) will begin.
- When the action(s) will be completed.
- Who is responsible for taking the action(s)
- Who is responsible for making sure the action(s) is taken.
- The time period of the agreement.
- A process for review when the actions are completed.
- A plan for making changes to the agreement, if needed.
- What to do if a participant thinks the terms of the agreement are not being completed.
- Statement of confidentiality.
- The date of the agreement and the signatures of the participants.

## Section 4. State Complaints

### A. Definition of State Complaint

State complaints can be filed by any individual or organization alleging any violation of the IDEA, including an alleged failure to comply with a previous due process hearing decision. State complaint procedures are outlined in IDEA regulations requiring, in part, a complaint must allege a violation that occurred no more than one year (365 days) prior to the date the complaint has been received. (See IDEA regulations 34 CFR§300.150 through 300.153).

The filing party must provide a written complaint that includes the name and contact information of the complainant, the name, address, and attending school of child (if applicable), description and facts of the alleged problem to the extent known and available to the complainant at the time, and a proposed resolution.

The party filing the complaint must forward a copy of the complaint to the district at the same time the party files the complaint with the Dispute Resolution office.

IDEA allows sixty (60) days to resolve the complaint with mediation, investigation and final report, or a pre-investigation corrective action plan (CAP).

**B. Filing a State Complaint**

The state complaint will be accepted if received by mail, fax, hand delivery, or scanned and attached to an email with the complainant's signature included. Reasonable accommodations will be provided to individuals who need assistance in filing complaints. A state complaint filed by a parent/adult student or public agency must be signed and must include all of the information indicated on the *Form for Filing a State Complaint*. The DRC will develop allegations of violation of IDEA for investigation from the submitted complaint.

**C. Methods of Resolving State Complaints**

1. Mediation will be offered by the DRC to the complainant and the district when the complaint involves an individual student.
2. The complainant and the district may resolve all, part or none of the allegations in mediation.

If an agreement is reached, the complainant must notify the DRC in writing of the parties agreement. When the DRC receives this notification, any resolved allegations will be dismissed from the state complaint. If all of the state complaint allegations are not resolved, the SDE will investigate the remaining allegations.

3. If mediation is not accepted by the parties or fails to resolve the allegation(s) that gave rise to the complaint, then resolution of a state complaint may be achieved through one or more of the following processes:
    - a. **Verification of resolution:** Upon receipt of the allegations determined by the complaint investigator and the DRC, the district may submit information to document that one or more of the allegations of the complaint have been resolved. The Dispute Resolution office may also receive similar information from other sources.
    - b. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The DRC may accept, reject, or negotiate the proposed CAP, or require other corrective actions or timelines to ensure the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, an investigation will be conducted on unresolved allegations.
    - c. **Investigation:** The SDE will appoint a complaint investigator to the case who will conduct a fact finding investigation which may include interviews and reviews of files, correspondence, and other information. An onsite investigation may occur as part of the investigation. The complaint investigator will submit his or her findings of fact, conclusions, and, in coordination with the SDE, identify appropriate corrective actions, if required.
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#### **D. State Complaint Procedures**

Upon receipt of a written state administration complaint, the DRC will ensure the following procedures are followed:

1. Verify proper filing procedures were followed and determine if the complaint meets established criteria, including sufficient allegations of violation of IDEA (as developed by the DRC from the submitted complaint) and facts within five (5) business days.
2. The complainant will be notified if a submission is insufficient to process as a complaint. The complainant will be given the opportunity to submit additional information about the allegations, whereas upon receipt of the additional information, the sixty (60) day timeline for completion will start.
3. The district (specifically the superintendent, the special education director, and the school board chair) will be notified by the DRC that the complaint has been received and what, if any, allegations have been accepted for investigation within ten (10) business days of receiving the complaint. The school district is given an opportunity to respond to the complaint and may initiate within fourteen (14) days of receipt of the complaint a corrective action proposal (CAP) to resolve all or some of the allegations in the complaint, subject to DRC approval. At the complaint investigator's discretion, the timeline for a CAP may be extended, or the complaint investigation may progress until a CAP has been accepted by the Dispute Resolution office. The complaint investigator is responsible for managing the timelines of the investigation and may submit a final report at any point within the 60-day timeline.
4. Mediation can be requested by either party at any time and must be offered for complaints regarding an individual student. While parties are generally encouraged to resolve complaints collaboratively, choosing not to participate in mediation will not be considered relevant in an investigation. If parties opt for mediation, it will not delay the timelines required for resolving a complaint unless all parties agree.
5. Provide the parent/adult student a copy of the Procedural Safeguards Notice.
6. Complainants will be given an opportunity to provide additional information about the allegations, either orally or in writing.
7. All or any part of the written complaint will be set aside by the hearing officer, if the allegation is being addressed in a pending due process hearing or a hearing decision which has already been rendered. Any issue not a part of a due process action will be resolved following the state complaint procedures and timelines.
8. The Dispute Resolution office will investigate a complaint alleging that a final hearing officer decision is not being implemented by a public agency.

9. A final report of the investigation will be issued to the district superintendent, board chairperson, special education director, and complainant, that shall include but is not limited to the findings of fact, conclusions, and corrective action(s) for each allegation within sixty (60) calendar days of receipt of a sufficient complaint (see D.1). This time period may be extended, but only under exceptional circumstances, which shall be documented by the DRC, or if the complainant and public agency agree to extend the time to engage in mediation or other alternative dispute resolution procedures.
10. If a violation of the IDEA is verified by the complaint investigator, the report shall include corrective actions addressing, as appropriate:
  - a. how to remedy any denial of FAPE, which may include the award of compensatory services, monetary reimbursement or other corrective action as appropriate to the needs of the student;
  - b. the future provision of services to be considered by an IEP team for the student with a disability, when appropriate; and
  - c. the provisions of technical assistance, documentation of compliance, or written assurances, if needed.
11. The SDE will ensure the district takes corrective action if it is determined that the district was out of compliance through technical assistance activities, negotiations, and/or corrective actions no later than one year after the identification of non-compliance. A complaint investigation final report cannot amend a student's IEP.
12. The Dispute Resolution office ensures noncompliance has been corrected and verifies through review of documentation or interviews, or both, the corrective actions were implemented no later than one year (365 days) after the determination of noncompliance. If necessary, the SDE must use appropriate enforcement mechanisms such as the provision of technical assistance, conditions on funding, a corrective action, an improvement plan, and/or withholding funds, in whole or in part.

## Section 5. Due Process Hearings

### A. Definition

A due process hearing request involves an allegation or a series of allegations by either a parent/adult student or the district on issues relating to the identification, evaluation, educational placement, and the provision of FAPE.

The due process hearing is presided over by a hearing officer appointed by the DRC. At the due process hearing, the parent/adult student and the district may present evidence, cross examines witnesses, and present the case to the hearing officer. The hearing officer renders a

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written decision on the merits of the issues relating to the due process hearing.

The due process hearing request must allege a violation occurred not more than two (2) years before the date the parent/adult student or public agency knew or should have known about the alleged action that forms the basis of the due process hearing request, subject to the exceptions described later in this section.

Mediation is available in an effort to resolve issues and parties may request mediation at any time. If mediation is rejected by either party, the due process hearing timelines will remain in effect.

### **B. Due Process Hearings and Expedited Due Process Hearings**

Idaho's due process system has two settings for due process hearings: a regular due process hearing and an expedited due process hearing.

1. A regular due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of FAPE.
2. An expedited due process hearing is only available to resolve disputes concerning discipline and/or placement related to discipline.

### **C. Filing a Due Process Hearing**

Due process hearing requests must include a complete and signed copy of the *Due Process Hearing Request Form* or a signed document providing all of the general information, issue(s), and resolution(s) information required in the *Due Process Hearing Request Form*. Reasonable accommodations will be provided to individuals who need assistance in filing a written request.

A parent/adult student or public agency (or their attorney authorized to practice law in the state of Idaho) filing a due process hearing request must provide the due process hearing complaint to the other party and to the Dispute Resolution office. The request shall be mailed, faxed, hand delivered, or scanned and attached to an email with a signature of the filing party. All applicable timelines will start when the request has been received by the non-requesting party and the SDE.

1. Due Process Hearing Request from Parent/Adult Student: A due process hearing may be requested on behalf of a student by a parent, adult student, or by an attorney, properly licensed in Idaho, representing the student.
  - a. A due process hearing shall be initiated within two (2) years of the date the parent/adult student knew or should have known of the issues giving rise to the allegation(s). The two-year timeline will not apply if the parent/adult student was prevented from requesting a hearing due to specific misrepresentations or



- the withholding of information by the public agency required to be provided by the IDEA.
- b. A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of FAPE if the district proposes to initiate or change any of these matters, or if the district refuses the parent's/adult student's request to initiate or change any of these matters.
  - c. If a parent/adult student disagrees with an IEP or placement change by the district and have filed a written objection to all or parts of the proposed IEP or change in placement in writing within ten (10) calendar days of receiving written notice of the proposed change, the district may not implement the amended IEP for 15 days, unless a request for a due process hearing is filed by the parent/student during which time the student shall remain in the current placement unless otherwise agreed by the district and parent/student. The written objection cannot be used to delay the district from placing a student in an Interim Alternative Educational Setting (IAES) or the implementation of an initial IEP.
2. Due Process Hearing Request by a District: If the district initiates a hearing request, the district must inform the parent/adult student and the SDE. A district may initiate a due process hearing within two years of the dispute in an attempt to accomplish one or more of the following:
- a. override a parent's/adult student's refusal of consent for an initial evaluation or re-evaluation, or release of information;
  - b. override a parent's/adult student's written objection to an IEP program change, an educational placement change, or disciplinary actions when there is an imminent threat to safety;
  - c. the placement of a student in an Interim Alternate Education Setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others;
  - d. a determination whether an evaluation conducted by the district was appropriate or whether an evaluation obtained by a parent/adult student meets the criteria for a publicly funded Independent Educational Evaluation (IEE);
  - e. a determination if a proposed IEP is appropriate even if the parent/adult student has not filed a formal objection, for example following a state complaint investigation.
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#### **D. Hearing Officer Appointment**

1. The hearing officer shall be appointed within ten (10) calendar days of the SDE receiving the due process hearing request or within five (5) business days of an expedited hearing. Hearing officers are selected from a list of specially trained and impartial professionals. A list of qualifications for each hearing officer is kept by the DRC.
2. The hearing officer must not be a member of the district school board, an employee of the school district, or an employee of the SDE.
3. The hearing officer must not have a personal or professional interest that conflicts with the objectivity required of a hearing officer.
4. The hearing officer must be specially trained in conducting due process hearings, possess knowledge and understanding of the provisions of Idaho law, the IDEA, and judicial interpretations, and ability to conduct hearing and render and write decisions with appropriate, standard legal practice.
5. The district will pay for all actual expenses incurred by the hearing officer and for the cost of a verbatim transcript of the hearing, if requested by the parent. The hearing officer will be compensated at rates set by the SDE.

#### **E. Due Process Hearing Policies**

After a due process request is filed by the parent/adult student or the district, the following procedures will be followed.

1. The Dispute Resolution office offers mediation as a voluntary option to both parties. Parties may request mediation at any time. Choosing mediation shall not alter or delay the timeline of the due process hearing.
2. The receiving party may challenge the sufficiency of the due process hearing request within fifteen (15) days of the receipt of the hearing request by filing a written sufficiency objection with the hearing officer. Challenges to the sufficiency of the due process hearing complaint must be in writing and provided to all parties. The hearing officer shall render a decision regarding the sufficiency of the allegation(s) within five (5) calendar days and immediately notify the parties of the decision in writing.
  - a. If the complaint is found not to be sufficient, the party may amend its due process complaint if the other party consents in writing to the amendment and has the opportunity to resolve the complaint through a resolution meeting, or the hearing officer grants permission to amend no later than five (5) days before the due process hearing begins.
  - b. Timelines for amended due process hearings begin again on the filing date of the

amended request.

3. If the district has not previously sent written notice (as outlined in IDEA) regarding the subject matter in the parent's/adult student's complaint, the district must, within ten (10) calendar days of receiving the request, send the response to the parent/adult student a letter explaining the reasons behind their actions, options considered, evaluations conducted, and other factors relevant to the district's response, in accordance with IDEA prior written notice requirements.
4. The district shall inform a parent/adult student of any free or low-cost legal or other relevant services available to him or her and provide a copy of the Procedural Safeguards if a due process hearing is requested or if the parent/adult student requests such information.
5. Within fifteen (15) days of receiving the parent's/adult student's due process hearing request, the district convenes a pre-hearing resolution session, unless both parties agree in writing to waive the resolution meeting, both parties agree to go to mediation, or the district initiates the hearing.
  - a. A resolution meeting includes parent/adult student, a representative of the district who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties.
  - b. The district's attorney shall not attend the resolution session unless the parent/adult student will be accompanied by an attorney.
  - c. The DRC will provide a contractor specially trained in facilitating a resolution session or a contracted mediator, if requested. Either process requires approval by both parties.
  - d. The purpose of the meeting is for the parent/adult student to discuss the due process hearing request, and the facts that form the basis of the request, so that the district has the opportunity to resolve the dispute.
    - 1) If a resolution is reached regarding the issues raised in the request for a due process hearing, the district representative and the parent/adult student will sign a settlement agreement, a legally binding document enforceable in state and federal court. The parties will immediately forward to the hearing officer signed documentation of the voluntary withdrawal of the due process hearing complaint by the requesting party.
    - 2) Either party may void this agreement within three (3) business days of signing the agreement.

- e. A due process hearing will be scheduled if no resolution is reached within thirty (30) calendar days of receiving the request for a due process hearing.
  - f. If the district is unable to obtain the participation of the parent/adult student after reasonable efforts have been made and documented, at the conclusion of the thirty (30) calendar day resolution period the district may request that the hearing officer dismiss the parent's/adult student's due process hearing request.
  - g. A parent/adult student may request an immediate due process hearing from the hearing officer if the district has not scheduled or participated in a resolution session within fifteen (15) days of the request.
  - h. The district must report to the DRC and to the hearing officer when the resolution meeting is to be held, or provide documentation indicating it was waived by both parties, or provided documentation of attempts to reach the other party, within fifteen (15) days of SDE receiving the due process hearing request.
6. The forty-five (45) day timeline for the due process hearing request starts the day after one of the following events:
- a. both parties agree in writing to waive the resolution meeting;
  - b. after either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible;
  - c. both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later, the parent/adult student or public agency withdraws from the mediation process; or
  - d. the district files a hearing request.

All of the above events must be documented, with dates of determination, and provided to the DRC and the assigned hearing officer immediately.

## **F. The Due Process Hearing**

### **1. Hearing Preparation**

- a. A parent/adult student will be allowed to inspect and review reports, files, and records pertaining to the student prior to a resolution session or due process hearing. A district may charge a fee for copies of records if the fee does not effectively prevent a parent/adult student from exercising his or her right to inspect and review those records. The district may not charge a fee to search for or retrieve records.

- b. Not less than five (5) business days prior to a due process hearing, each party will disclose to all other parties: evaluations completed by that date; recommendations based on those evaluations intended to be used at the hearings; copies of exhibits to be introduced; and a list of witnesses each party intends to call at the hearing.
- c. The hearing officer will provide notification as to the time and place of the due process hearing to the parent/adult student, district officials, and the SDE. The hearing shall be conducted at a time and place reasonably convenient to the parent/adult student.
- d. Parties shall cooperate with the hearing officer in any business or communication and the planning for a location, date and time for the hearing.

## 2. The Due Process Hearing

- a. The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions. Due process hearings shall be conducted pursuant to the *Idaho Rules of Administrative Procedure of the Attorney General (IDAPA)*, IDEA requirements, and this Manual. In case of any conflict between IDAPA and the IDEA, the IDEA shall supersede. IDAPA rules shall supersede this Manual.
- b. A parent/adult student and district personnel may be accompanied and advised by legal counsel properly licensed in Idaho.
- c. A parent/adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
- d. Each party has the right to present evidence, to compel the attendance of witnesses and the production of documents, and to confront and cross examine witnesses.
- e. New issues (issues not in the original due process request) may not be raised at the hearing unless agreed to by the other party.
- f. Any party may prohibit the introduction of any evidence at the hearing that was disclosed less than five (5) business days before the hearing.
- g. During the hearing the district will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the DRC for resolution.
- h. An audio recording of the hearing will be made. The parent/adult student may formally request a written verbatim transcript. The parent/adult student may

choose an electronic verbatim record instead. If transcribed, the district will pay the transcription costs, and a copy of the transcript will remain with the SDE.

3. Decision of the Hearing Officer

- a. The decision of the hearing officer will be based solely on presentations made at the due process hearing.
- b. The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received FAPE.
  - 1) In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if there is evidence that the procedural inadequacies:
    - i. impeded the student's right to FAPE;
    - ii. significantly impeded a parent's/adult student's opportunity to participate in the decision-making process; or
    - iii. caused a deprivation of educational benefit.
  - 2) If a hearing officer finds that there is a procedural deficiency that did not deny FAPE, he or she may order the district to comply with the procedural requirements.
- c. The hearing officer's decision will include findings of fact and conclusions of law. In addition, the decision shall include an order of relief, if appropriate.
- d. The hearing officer's written decision shall be mailed within forty-five (45) calendar days from the date both parties agreed in writing to waive the resolution meeting, or both parties agreed to go to mediation, or the date the district initiated the hearing. The hearing officer may grant an extension of the forty-five (45) day period upon the request of a party. The hearing officer shall issue a written decision in response to each request.
- e. The findings of fact and decision shall be sent to the parent/adult student at no cost. Copies will also be mailed to the district superintendent, the DRC, and representatives of the district.
- f. A hearing officer's decision will be enforceable in state and federal court. It will be implemented not later than fourteen (14) calendar days from the date of issuance unless:
  - 1) the decision specifies a different implementation date; or

- 2) either party appeals the decision by initiating civil action in state or federal district court within applicable appeal periods.
- g. Nothing in this section can be interpreted to prevent a parent/adult student from filing a separate due process hearing request on an issue separate from the request already filed. The SDE may consolidate multiple hearing requests involving the same IEP.
- h. Stay Put
- 1) During the pendency of any due process hearing, the student shall remain, or “stay put,” in his or her current educational placement unless the district and parent/adult student agree otherwise.
  - 2) The stay put placement continues during any subsequent appeals unless a hearing officer agrees with a parent/adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer’s decision becomes the stay-put placement.
  - 3) If the dispute involves an application for initial admission to public school in Idaho, the student, with the written consent of his or her parent, shall be placed in the public school program until the proceedings are completed.
  - 4) “Stay put” does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B services in Idaho. Following the development of an IEP or an individual family service plan (IFSP), if an educational placement dispute arises involving a student transitioning from Part C to Part B, the student cannot “stay put” in Part C.
    - i. With written consent of the parent, the student shall be placed in the public school until completion of all the hearing proceedings.
    - ii. If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.
    - iii. If the student is eligible for special education and related services, and the parent consents, then the district shall provide those special education and related services which are not in dispute.

## Section 6. Expedited Due Process Hearings

### A. Definition

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline occurring within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing.

### B. Filing an Expedited Hearing Request

Parties filing expedited due process hearing requests must include a complete and signed copy of the *Expedited Due Process Hearing Request Form* or a signed document providing, in the same order, all of the general information, issue(s), and resolution(s) information required in the *Expedited Due Process Hearing Request Form*. Reasonable accommodations will be provided to individuals who need assistance in filing a written request.

1. A district may request an expedited hearing if the district believes maintaining the current placement or returning the student to the prior placement is substantially likely to result in injury to the student or others.
2. A parent/adult student may request an expedited hearing if:
  - a. he or she disagrees with a determination that the student's behavior was not a manifestation of the disability; or
  - b. he or she disagrees with the district's discipline decision, which resulted in a change of placement.

A parent/adult student or district filing an expedited due process hearing request must provide, in a confidential manner, the due process complaint and request for hearing to the other party. The request shall be mailed, faxed, or hand delivered (electronic copies are not accepted). The party filing an expedited due process hearing must be able to show proof of receipt of the expedited due process hearing request by the other party. Additionally, when the request is provided to the non-requesting party, the party filing the request shall simultaneously send a written copy to the DRC by mail, fax, hand delivery, or scanned and attached to an email with a signature of the filing party. All applicable timelines for expedited due process hearing will start when the request has been received by the non-requesting party.

### C. The Expedited Hearing Process and Decision

An expedited hearing will be conducted in a fair and impartial manner. Guidelines and proceedings will be the same as those in a regular due process hearing, except for the following changes:

1. The DRC will appoint a hearing officer within five (5) business days of a request.



2. A resolution session shall occur within seven (7) days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation.
3. A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the expedited due process hearing request.
4. There is no process for challenging the sufficiency of the due process hearing request in an expedited case.
5. Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least five (5) business days before the hearing.
6. The hearing shall occur within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing and no extensions may be granted by the hearing officer.
7. A written decision will be mailed to both parties by the Dispute Resolution office.
8. A party may appeal the decision in an expedited due process hearing in the same way as allowed for decisions in other original due process hearings.

#### **D. Placement During an Expedited Hearing**

When a hearing has been requested by either the parent/adult student or the district regarding placement decisions, the student shall “stay put” during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

1. the student will remain in the IAES until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first; and/or
2. upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if district personnel maintain that it is dangerous for the student to return to that placement, the district may request an expedited hearing to continue the IAES for up to an additional forty-five (45) school days. This procedure may be repeated as necessary.

If the hearing officer findings are in favor of the parent/adult student, the change of placement cannot occur. The IEP team will need to determine the extent of services appropriate to meet the student’s individual needs, as well as address the student’s behavior. If the hearing officer finds for the district, the district may use the same disciplinary procedures, including expulsion, available for any other student, except that FAPE must be provided according to the requirements in Chapter 12, Section 3.

If an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot remain in Part C services when he or she is over the age of three (3). If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the school district shall provide those special education and related services that are not in dispute between the parent and district until completion of all the hearing proceedings. If the parent does not give written consent for the special education or related services, the student will not receive services until completion of the hearing proceedings.

### Section 7. Appeals and Civil Action

An action for state court review shall be filed within twenty-eight (28) days from the date of issuance of the hearing officer's decision; any action in federal district court shall be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision.

A party must exhaust administrative remedies before initiating a civil action under IDEA unless otherwise determined by the court. However, nothing in the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other federal laws protecting the rights of children with disabilities.

### Section 8. Attorney Fees

An IDEA hearing officer appointed by the DRC does not have the authority to consider or award attorney fees. Only a state or federal district court will have jurisdiction in to consider an award the awarding, determination, or prohibition of attorney fees in and IDEA matter.

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
NOVEMBER 21, 2024**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
1	<b>PENDING RULE – DOCKET NO. 08-0203-2401, RULES GOVERNING THOROUGHNESS</b>	Action Item

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**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS**  
**NOVEMBER 21, 2024**

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**SUBJECT**

Pending Rule – Docket No. 08-0203-2401, Rules Governing Thoroughness

**REFERENCE**

August 2021	Board approved proposed rules Dockets 08-0201-2101, 08-0202-2102, and 08-0203-2101.
October 2021	Board approved proposed Omnibus rule, Docket 08-0000-2100, incorporating proposed rules approved in August 2021.
November 2021	Board approved pending Omnibus rule, Docket 08-0000-2100.
June 2022	Board approved temporary rule, Docket 08-0203-2202, amending the assessment section to account for administering assessments at the high school level using a modified cohort model.
August 2022	Board approved Proposed rule, Docket 08-0203-2201, incorporating amendments required through zero-based rulemaking.
November 2022	Board approved Pending rule, Docket 08-0203-2201, incorporating amendments required through zero-based rulemaking.
August 2023	Board Approved Proposed rule, Docket 08-0203-2301, removing duplicative language.
June 2024	Board approved temporary rule, Docket 08-0203-2402, updating content standard approval dates.
August 2024	Board approved temporary rule, Docket 08-0203-2403, updating Special Education Manual and approval dates.
August 2024	Board Approved Proposed rule, Docket 08-0203-2401, updating incorporated by reference, graduation requirements, and removal of special education sections.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Administrative Code, IDAPA 08.02.03, Rules Governing Thoroughness  
Idaho Code Title 67, Chapter 52, Idaho Administrative Procedures Act  
Sections 33-105 and 33-107, Idaho Code  
Sections 33 -118, 33-133, 33-1602, 33-1612, 33-1616, 33-203, 33-1002, 33-1212,  
and 33-1280, Idaho Code

**BACKGROUND/DISCUSSION**

The State Board of Education is granted authority to promulgate rules regarding thoroughness. Guidance for the rulemaking process is provided by the Office of Administrative Rules Coordinator, Division of Financial Management through the Idaho Rule Writer's Manual.

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS**  
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IDAPA 08.02.03, Rules Governing Thoroughness, sets out provisions to help ensure a thorough system of public education. These minimum requirements include, but are not limited to, content standards, high school graduation requirements, comprehensive statewide assessment system, and Idaho's state and federal accountability framework.

The negotiated rulemaking process requires multiple opportunities for stakeholders and members of the public to provide feedback on the proposed rule. A notice of intent to begin negotiated rulemaking was published in the June 5, 2024, Administrative Bulletin of Negotiated Rulemaking, Vol. 24-6. Board staff met with key stakeholders on several occasions to begin drafting the revisions.

The Board approved the proposed rule in August 2024. Subsequently, the rule was published in the October 2, 2024, Administrative Bulletin of Negotiated Rulemaking, Vol. 24-10. This publication marks the opening of a formal 21-day public comment period. The public comment period closed on October 23, 2024.

Board staff received nine (9) comments related to the proposed amendments to graduation requirements and one (1) comment related to the recently adopted special education manual. In addition to the formal commentary, IDE solicited extensive feedback throughout the spring and summer at regional meetings and through webinars to gather feedback regarding the proposed graduation requirements. All feedback received is summarized in Attachment 3.

Based on the feedback received, the following edits were made:

1. At section 004.04 the date of adoption of the Special Education Manual is updated.
2. At section 007.02 the term "microcredentials" is edited from two words to one word to reflect consistent usage.
3. At section 007.14 the definition of Dual Credit is updated to be consistent with Section 33-5102, Idaho Code.
4. At section 007.17, the definition of Laboratory is stricken as the only use of the term in the rule is also proposed to be stricken.
5. Previous section 007.23 regarding the definition of Technical Competency Credit is proposed stricken, as these credits are no longer in effect.
6. The description of physical education has been relocated to subsection 105.07 to more clearly reflect that it is an optional credit that can be fulfilled through participation in a recognized extracurricular sport.
7. Section 105.01.d regarding Secondary Language Arts requirements has been updated to clarify that instruction addressing oral communication in speaking and listening will be delivered within Language Arts courses or as a stand-alone course in alignment with Idaho Content Standards.
8. Section 105.01.f regarding Science requirements was updated to clarify the intended categories of the six (6) required credits.
9. Technical corrections were made in section 105.07 to ensure accurate references.

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
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The final proposed rule language is presented as Attachment 2 – Pending Rule. Changes made after the Board approved the proposed text in August are highlighted in yellow for easy identification.

**IMPACT**

If the Board approves the pending rule, it will move forward for review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idah Code.

All approved pending rules become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date. A corresponding temporary rule will expire at sine die. Therefore, it is requested that this rule be effective at sine die of the 2025 legislative session.

**ATTACHMENTS**

- Attachment 1 – Notice of Pending Rule Docket No. 08-0203-2401
- Attachment 2 – Pending Rule Docket No. 08-0203-2401
- Attachment 3 – Public Comment Summary

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

Comments were received regarding the special education manual and the graduation requirements sections of the proposed rule. Edits made as a result of feedback are highlighted in yellow in Attachment 2.

Staff recommends approval.

**BOARD ACTION**

I move to approve pending rule – Docket 08-0203-2401, as submitted in Attachment 2.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.02.03 – RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-2401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under sections 33-105, 33-116, 33-118, and 33-1612, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Amendments between the proposed and pending rule stages include updates to the graduation requirements section 105. The amendments from the proposed rule include updates to definitions to align with current rule and policy language and updates to the formatting of sections due to removal of definitions and sections no longer applicable. Additional updates clarify the intended effective date of the changes. Amendments between the proposed and pending rules stages were made based on the public comments received.

Additional amendments update The Special Education Manual approval date and incorporated by reference document to reflect a November 21, 2024 final approval date. During the Public comment window, the State Department of Education recognized that some of the amendments made to the Special Education Manual in August, while desirable, were required and need further vetting. Subsequently, the board re-adopted the manual to reflect only the amendments required for compliance with the Individuals with Disabilities Act, outlined by the U.S. Department of Education, Office of Special Education Programs, OSEP. The changes are limited to Chapter 4, Section 8 Specific Learning Disability.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 2, 2024 Idaho Administrative Bulletin, Vol. 24-10 pages 126-137

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nicholas Wagner at [rules@edu.idaho.gov](mailto:rules@edu.idaho.gov) or (208)-488-7586).

DATED this 21 day of November 2024.

*Nicholas Wagner / Administrative Rules Coordinator / Idaho State Board of Education / 650 W State St. / PO Box 83720 / Boise, Idaho and 83720-0037 / Phone: (208)488-7586, fax: (208)334-2632*

08.02.03 RULES GOVERNING THOROUGHNESS

(BREAK IN CONTINUITY OF SECTIONS)

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated into this rule: (3-15-22)

**01. The Idaho Content Standards.** The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-15-22)

a. Arts and Humanities Categories: (3-15-22)

i. Dance, as revised and adopted on ~~August 11, 2016~~ June 12, 2024; (3-15-22)( )

ii. Interdisciplinary Humanities, as revised and adopted on ~~August 11, 2016~~ June 12, 2024; (3-15-22)( )

iii. Media Arts, as adopted on ~~August 11, 2016~~ June 12, 2024. (3-15-22)( )

iv. Music, as revised and adopted on ~~August 11, 2016~~ June 12, 2024; (3-15-22)( )

v. Theater, as revised and adopted on ~~August 11, 2016~~ June 12, 2024; (3-15-22)( )

vi. Visual Arts, as revised and adopted on ~~August 11, 2016~~ June 12, 2024; (3-15-22)( )

vii. World languages, as revised and adopted on ~~August 11, 2016~~ June 12, 2024. (3-15-22)( )

b. Computer Science, adopted on ~~November 28, 2016~~ June 12, 2024. (3-15-22)( )

c. Driver Education, as revised and adopted on ~~August 10, 2017~~ June 12, 2024. (3-15-22)( )

d. Health, as revised and adopted on August 24, 2022. (4-6-23)

e. Information and Communication Technology, as revised and adopted on ~~August 10, 2017~~ June 12, 2024. (3-15-22)( )

f. Physical Education, as revised and adopted on August 24, 2022. (4-6-23)

g. Social Studies, as revised and adopted on ~~November 28, 2016~~ June 12, 2024. (3-15-22)( )

h. College and Career Readiness Competencies adopted on June 15, 2017. (3-15-22)

**02. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-15-22)

**03. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-15-22)

**04. The Idaho Special Education Manual.** The Idaho Special Education Manual as adopted by the State Board of Education on ~~October 17, 2018~~ August 21, 2024; November 21, 2024. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-15-22)( )



005. -- 006. (RESERVED)

007. DEFINITIONS.

**01. Achievement Standards.** Define “below basic,” “basic,” “proficient,” and “advanced” achievement levels on the Idaho Standards Achievement Tests (ISAT) and level one (1) through level six (6) on Idaho’s English language assessment by setting scale score cut points. These cut scores are set by the state board of education and paired with descriptions of how well students are mastering the material in the content standards. These descriptions are called achievement level descriptors and are provided by achievement level, by content area, and by grade. (4-6-23)

**02. Advanced Opportunities.** Advanced placement courses, Dual Credit courses, ~~Technical Competency Credit~~ **microcredentials**, or International Baccalaureate programs. (4-6-23)( )

**03. Advanced Placement® (AP) - College Board.** The Advanced Placement Program is administered by the College Board at <http://www.collegeboard.com>. AP students may take one (1) or more college level courses in a variety of subjects. AP courses are not tied to a specific college curriculum, but rather follow national College Board curricula. While taking the AP exam is optional, students can earn college credit by scoring well on the national exams. It is up to the discretion of the receiving college to accept the scores from the AP exams to award college credit or advanced standing. (3-15-22)

**04. All Students.** All public school students, grades K-12. (3-15-22)

**05. Applied Science. Applying scientific knowledge to practical problems or situations.** ( )

**056. Assessment.** The process of quantifying, describing, or gathering information about skills, knowledge or performance. (3-15-22)

**067. Assessment Standards.** Statements setting forth guidelines for evaluating student work, as in the “Standards for the Assessment of Reading and Writing.” (3-15-22)

**078. Career Pathway Plan.** The plan that outlines a student’s program of study, which should include a rigorous academic core and a related sequence of electives in academic, career technical education (CTE), or humanities aligned with the student’s post-graduation goals. (3-15-22)

**089. Career Technical Education.** Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the baccalaureate level. (3-15-22)

**0910. College and Career Readiness.** College and career readiness is the attainment and demonstration of state board adopted competencies that broadly prepare high school graduates for a successful transition into some form of postsecondary education and/or the workplace. (3-15-22)

**101. Content Standards.** Describe the knowledge, concepts, and skills that students are expected to acquire at each grade level in each content area. (3-15-22)

**142. Criteria.** Guidelines, rules or principles by which student responses, products, or performances, are judged. What is valued and expected in the student performance, when written down and used in assessment, become rubrics or scoring guides. (3-15-22)

**123. Diploma.** A document awarded to a student by a secondary school to show the student has successfully completed the state and local education agency graduation requirements. Diplomas may be awarded to individuals who attended a secondary school prior to the year in which the student is requesting issuance of a diploma based on the graduation requirements in existence at the time the student attended. Determination of meeting past graduation requirements may be determined based on proficiency as determined by the local education agency. Each local education agency may determine the format of the diploma, including the recognition of emphasis areas based on a student’s completion of courses or courses or studies in an emphasis area or educational pathways, including but not limited to science, technology, engineering and math (STEM), career technical education, or arts and music.

(3-15-22)

**134. Dual Credit.** Means credit awarded to a student on his or her secondary and postsecondary transcript for the completion of a single course. ~~Dual credit allows high school students to simultaneously earn credit toward a high school diploma and a postsecondary degree or certificate. Postsecondary institutions work closely with high schools to deliver college courses that are identical to those offered on the college campus. Credits earned in a dual credit class become part of the student's permanent college record. Students may enroll in dual credit programs taught at the high school or on the college campus.~~  
(3-15-22)( )

**145. Idaho Standards Achievement Tests.** Statewide assessments aligned to the state content standards and used to measure a student's knowledge of the applicable content standards. (3-15-22)

**156. International Baccalaureate (IB).** Administered by the International Baccalaureate Organization, the IB program provides a comprehensive liberal arts course of study for students in their junior and senior years of high school. IB students take end-of-course exams that may qualify for college credit. Successful completion of the full course of study leads to an IB diploma. (3-15-22)

~~**167. Laboratory.** A laboratory course is defined as one in which at least one (1) class period each week is devoted to providing students with the opportunity to manipulate equipment, materials, specimens or develop skills in observation and analysis and discover, demonstrate, illustrate or test scientific principles or concepts. (3-15-22)~~

~~**187. Localized Pathway.** A framework of locally provided offerings that identifies core and elective credits, assessments, and other opportunities aligned to post-secondary goals. Local Education Agencies determine their own framework and students may select offerings aligned with localized pathways. ( )~~

~~**1798. Portfolio.** A digital or physical collection of materials that documents and demonstrates a student's academic and work-based learning. A portfolio typically includes many forms of information that exhibit the student's knowledge, skills, and interests. By building a portfolio, students can recognize their own growth and learn to take increased responsibility for their education. Teachers, mentors, and employers can use portfolios for assessment purposes and to record educational outcomes. (3-15-22)( )~~

~~**182019. Project Based Learning.** A hands-on approach to learning that encourages students to create/interpret/communicate an original work or project and assesses quality and success of learning through performance/presentation/production of that work or project. (3-15-22)~~

~~**19210. Proficiency.** Having or demonstrating a high degree of knowledge or skill in a particular area. (3-15-22)~~

~~**2021. Standards.** Statements about what is valued in a given field, such as English language arts, and/or descriptions of what is considered quality work. See content standards, assessment standards, and achievement standards. (3-15-22)~~

~~**213. Technical Competency Credit.** Technical competency credit is a sequenced program of study that allows secondary students to document proficiency in the skills and abilities they develop in approved high school career technical programs to be evaluated for postsecondary transcription at a later date. Technical Competency Credits are awarded for skills and competencies identified as eligible through an agreement with at least one Idaho postsecondary institution. Eligible skills and competencies are included as part of a high school career technical program and approved by the postsecondary institution through the agreement in advance to student participation. Credits are granted by the postsecondary institution for which the agreement is with and are transcribed at the time the student enrolls at the postsecondary institution. (3-15-22)~~

~~**2242. Technology Education.** A curriculum for elementary, middle, and senior high schools that integrates learning about technology (e.g., transportation, materials, communication, manufacturing, power and energy, and biotechnology) with problem-solving projects that require students to work in teams. Many technology education classrooms and laboratories are well equipped with computers, basic hand tools, simple robots, electronic devices, and other resources found in most communities today. (3-15-22)~~

~~**2353. Unique Student Identifier.** A number issued and assigned by the Board or designee to each student currently enrolled or who will be enrolled in an Idaho local education agency to obtain data. (3-15-22)~~

264. **Work-Based Learning.** Structured learning experiences that connect classroom learning to the workplace. Work-based learning can include technical, academic and employability skills gained in a simulated or real work environment. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. HIGH SCHOOL GRADUATION REQUIREMENTS.**

A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (3-15-22)

**01. Credit Requirements.** The State minimum graduation requirement for all Idaho public high schools is forty-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.h. (3-15-22)

**a. Credits.** One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (3-15-22)

**b. Mastery.** Students must demonstrate mastery of Idaho Content Standards in a format provided by the LEA. Notwithstanding the credit definition of Subsection 105.01.a., a student may also achieve credits by demonstrating mastery of a subject's content standards as defined and approved by the ~~local education agency (LEA.)~~ (3-15-22)( )

**c. Credit Flexibility.** The State Department of Education will support LEAs in the development of crosswalks and templates to assist in awarding credit for prior learning opportunities in ways that meet course requirements for high school graduation. ( )

**ed. Secondary Language Arts and Communication.** ~~Nine (9) credits are required.~~ Eight (8) credits ~~are required of instruction in Language Arts.~~ Each year of Language Arts shall consist of language study, composition, ~~and literature,~~ and speaking and listening and be aligned to the Idaho English Language Arts Content Standards for the appropriate grade level. ~~One (1) credit of instruction in communications will apply for any~~ Students graduating before after January 1, 2028 and will consist of shall receive instruction addressing oral communication in speaking and listening delivered within Language Arts courses or a stand-alone elective in alignment with Idaho Content Standards, and technological applications. Students graduating prior to January 1, 2028 require one (1) additional credit of instruction in communications, which will consist of oral communication in speaking and listening that may include a course in speech, a course in debate, or a sequence of instructional activities that meet the Idaho Speech-English Language Arts Content Standards requirements. ~~Instruction in communications consisting of oral communication and technological applications through a sequence of instructional activities that meet the Idaho Speech and Content standards shall be required for any student graduating after January 1, 2028.~~ (3-15-22)( )

**de. Mathematics.** Six (6) credits are required. Secondary mathematics includes Integrated Mathematics, Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and quantitative reasoning including mathematics taken through career technical education programs. ~~Dual credit~~ **eEngineering** courses and computer science courses aligned to the state standards for grades nine (9) through (12), ~~including AP Computer Science and dual credit computer Science courses~~ may also be counted as a mathematics credit. Students who choose to take computer science ~~and dual credit~~ or engineering courses may not concurrently count such courses as both a mathematics and science credit for the same course. (4-6-23)( )

i. Students must complete secondary mathematics in the following areas: (3-15-22)

(1) Two (2) credits of Algebra I, Algebra I level equivalent Integrated Mathematics or courses that meet the High School Algebra Content Standards; (3-15-22)

(2) Two (2) credits of Geometry, Geometry level equivalent Integrated Mathematics, or courses that meet the Idaho High School Geometry Content Standards; and (3-15-22)

(3) Two (2) credits of mathematics of the student’s choice. (3-15-22)

**ef. Science.** Six (6) credits are required, ~~two (2) of which will be laboratory based.~~ **Four (4) credits are required from at least two (2) of the four (4) content areas: physics, chemistry, earth and space, or life science.** **An additional Two (2) credits in Ssecondary sciences may include instruction in applied sciences, physics, chemistry, earth and space sciences, physical sciences, life sciences, engineering and or computer science. Students who choose to take computer science or engineering courses may not concurrently count such courses as both a mathematics and science credit for the same course. Engineering courses and computer science courses aligned to**  
 (3-15-22)( )

~~i. Secondary sciences include instruction in the following areas: biology, computer science, physical science or chemistry, and earth, space, environment, or approved applied science. (3-15-22)~~

**fg. Social Studies.** Five (5) credits are required, including government (two (2) credits), United States history (two (2) credits), and economics and financial literacy (one (1) credit). Courses such as geography, sociology, psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (4-6-23)

**gh. HumanitiesFine Arts or World Languages.** Two (2) credits are required. ~~Humanities e~~ Courses include instruction in visual arts, music, theatre, dance, or world languages aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course is aligned to the Interdisciplinary Humanities Content Standards. (3-15-22)( )

**hi. Health/Wellness.** One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. ~~Effective for all public school students who enter grade nine (9) in Fall 2015 or later, e~~ Each student shall receive a minimum of one (1) ~~class period~~ training on psychomotor cardiopulmonary resuscitation (CPR) training as outlined in the American Heart Association (AHA) Guidelines for CPR to include the proper utilization of an automatic external defibrillator (AED) as part of the Health/Wellness course. (3-15-22)( )

~~ij. Physical Education. Students participating in one (1) season in any sport recognized by the Idaho High School Activities Association or club sport recognized by the local school district, or eighteen (18) weeks of a sport~~

~~recognized by the local school district may choose to substitute participation up to one (1) credit of physical education. Students must show mastery of the Physical Education Content Standards in a format provided by the school district LEA. (3-15-22)( )~~

**ki. Digital Literacy.** One (1) credit is required. The course must include instruction that aligns with Idaho Content Standards associated with leveraging technology, digital citizenship, and computational thinking which are imbedded in the Information and Communication Technology Content Standards, and with leveraging the impacts of computing, algorithms, and programming, which are embedded in the Computer Science Standards. This requirement will apply to any student graduating after January 1, 2028. ( )

**02. Content Standards.** Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-15-22)

**03. Senior Project.** The senior project is a culminating project to show a student’s ability to analyze, synthesize, and evaluate information and communicate that knowledge and understanding. A student must complete a senior project by the end of grade twelve (12). Senior projects may be multi-year projects, group or individual projects, or approved pre-internship or school to work internship programs, at the discretion of the school district or charter school. The project must include elements of research, development of a thesis using experiential learning or integrated project based learning experiences and presentation of the project outcome. Additional requirements for a senior project are at the discretion of the local school district or LEA. Completion of a postsecondary certificate or degree at the time of high school graduation or an approved pre-internship or internship program may be used to meet this requirement. The senior project will last apply for the class of 2027, unless an LEA opts to early implement the future readiness project. (3-15-22)( )

**04. Future Readiness Project.** The future readiness project is a culminating project that demonstrates a student's application of college and career competencies and exploration of potential post high school options. All students beginning with the class of 2028 must complete a future readiness project by the end of grade twelve (12). The project must include an experiential component, such as a work-based, service-based, research-based, or portfolio-based component in which a student demonstrates the acquisition of Idaho college and career competencies. Experiences including, but not limited to apprenticeships, internships, volunteer work and extracurricular activities related to real-world skills acquisition will count toward this requirement. LEAs must determine how students will demonstrate the acquisition of college and career competencies and may require additional components. The State Department of Education will provide templates for LEAs and oversee the implementation of this provision. ( )

**05. Localized Pathways.** In order to assist students in structuring their secondary course selection electives, assessment, and supplemental activities, all LEAs shall develop and post publicly two or more localized pathways. Localized pathways are designed to inform students and parents/guardians of local opportunities aligned with post-secondary goals as identified in the student’s career pathway plan. The State Department of Education shall support the implementation of this provision. This provision must be implemented by all LEAs no later than June 30, 2026. ( )

**046. Civics and Government Proficiency.** Pursuant to Section 33-1602, Idaho Code, each LEA may establish an alternate path for determining if a student has met the state civics and government content standards. Alternate paths are open to all students in grades seven (7) through twelve (12.) Any student who has been determined proficient in the state civics and government content standards either through the completion of the civics test or an alternate path shall have it noted on the student’s high school transcript. (3-15-22)

**07. Physical Education.** Students participating in one (1) season in any sport recognized by the Idaho High School Activities Association or club sport recognized by the local school district, or eighteen (18) weeks of a sport recognized by the local school district may choose to substitute participation up to one (1) credit of physical education. Students must show mastery of the Physical Education Content Standards in a format provided by the LEA. (3-15-22)

**058. Middle School.** A student will have met the high school content and credit area requirement for any high school course if the requirements outlined in Subsections **105.076.a. through 105.076.c.** of this rule are met. (3-15-22)( )

a. The student completes such course with a grade of C or higher before entering grade nine (9); (3-15-22)

b. The course meets the same content standards that are required in high school for the same course; and (3-15-22)

c. The course is taught by a teacher properly certified to teach high school content and who meets the federal definition of highly qualified for the course being taught. (3-15-22)

d. The student shall be given a grade for the successful completion of that course and such grade and the number of credit hours assigned to the course will be transferred to the student's high school transcript. Notwithstanding this requirement, the student's parent or guardian shall be notified in advance when credits are going to be transcribed and may elect to not have the credits and grade transferred to the student's high school transcript. Courses taken in middle school appearing in the student's high school transcript, pursuant to this subsection, shall count for the purpose of high school graduation. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.ed. through 105.01.hj. except as provided in 105.01.de.ii. The transcribing high school is required to verify the course meets the requirements specified in Subsections 105.057.a. through 105.057.c. of this rule. (3-15-22)

**069. Special Education Students.** A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act may, with the assistance of the student's Individualized Education Program (IEP) team, meet the graduation requirements through to the current Idaho Special Education Manual specifications. (3-15-22)

**0710. Foreign Exchange Students.** A foreign exchange student may be eligible for graduation by completing a comparable program as approved by the LEA. (3-15-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~109. SPECIAL EDUCATION.~~

~~01. Definitions. The following definitions apply only to Section 109 of these rules. (3-15-22) a.~~

~~Adult Student. A student who is eligible for special education, is eighteen (18) years of age or older and to whom special education rights have transferred. (3-15-22) b. Due Process Hearing. An administrative hearing that is conducted to resolve disputes. (3-15-22)~~

~~i. Regular due process hearing regarding issues on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education. (3-15-22) ii. For disputes concerning discipline for which shortened time lines are in effect, an expedited due process hearing may be requested in accordance with the Individuals with Disabilities Education Act. (3-15-22) c. Education Agency. Each school district and other public agency that is responsible for providing~~

~~special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (3-15-22) d. Idaho Special Education Manual. Policies and procedures, as approved by the State Board of Education, that the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C, Section 1412 and are consistent with state and federal laws, rules, regulations, and legal requirements.~~

~~special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (3-15-22) d. Idaho Special Education Manual. Policies and procedures, as approved by the State Board of Education, that the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C, Section 1412 and are consistent with state and federal laws, rules, regulations, and legal requirements.~~

(3-15-22)

~~e. Special Education. Specially designed instruction as defined by the Individuals with Disabilities Education Act or speech language pathology services to meet the unique needs of a special education student.~~

(3-15-22)

~~**02. Legal Compliance.** The State Department of Education and education agencies shall comply with all laws governing special education requirements. (3-15-22) a. The Board of Trustees or other comparable governing body of each education agency shall adopt policies and procedures for providing special education services and obtain approval from the State Department of Education for the same. Department approval shall be based on current governing special education requirements. Each education agency shall revise its policies and procedures as necessary to conform with changes in governing special education requirements. (3-15-22) b. The State Department of Education shall provide education agencies with a sample set of policies and procedures that is consistent with governing special education requirements. The Department shall monitor all education agencies and private agencies who provide special education services to students with disabilities for compliance with governing special education requirements and adopted policies and procedures. (3-15-22) c. Each education agency shall ensure that charter schools and alternative schools located in its jurisdiction have nondiscriminatory enrollment practices. Each education agency shall ensure the provision of special education and related services to eligible students enrolled in charter and alternative schools in accordance with governing special education requirements. (3-15-22) d. Each education agency contracting with a private school or facility shall ensure that the private school or facility is approved by the State Department of Education to provide special education services. The Department may approve a private school or facility to provide special education services upon application to the Department if it: (3-15-22) i. Is an accredited school or a licensed rehabilitation center; and (3-15-22) ii. Meets minimum health, fire and safety standards; and (3-15-22) iii. Is nonsectarian; and (3-15-22) iv. Provides special education services consistent with governing special education requirements.~~

(3-15-22)

~~v. Any private school or facility aggrieved by the Department's final decision may appeal that decision to the State Board of Education. (3-15-22) e. Education agencies shall employ special education and related services professional personnel using certification standards approved by the State Board of Education or licensing standards adopted by the appropriate Idaho state licensing board. Education agencies shall employ individuals who meet the highest entry level standard that applies to a specific discipline unless there is a shortage of fully qualified candidates for a specific position. If there is a shortage of fully qualified candidates, the education agency shall hire the most qualified individual available who is making satisfactory progress toward meeting the highest entry level standard within three (3) years. (3-15-22) f. Education agencies may employ paraprofessional personnel to assist in the provision of special~~

~~education and related services to students with disabilities if they meet standards established by the State Department of Education. (3-15-22) g. Education agencies shall collect and report data as necessary to meet state and federal requirements concerning special education services, staff or students. Education agencies shall develop, implement and revise district improvement plans as necessary to improve results as measured by data on goals and indicators for the performance of special education students that are established by the State Department of Education in accordance with the Individuals with Disabilities Education Act. (3-15-22) h. Education agencies shall establish a team process to problem solve and plan general education interventions to ensure that referrals to special education are appropriate. (3-15-22)~~

~~**03. Eligibility for Special Education.** The State Department of Education shall provide state eligibility criteria for special education services for categorical eligibility consistent with the Individuals with Disabilities Education Act. Education agencies shall consider eligibility under all disability categories set forth in the Idaho Special Education Manual with the exception of developmental delay, which is an optional category. If an education agency elects to use the developmental delay category, it shall consider developmental delay for students ages three (3) through nine (9) using the eligibility criteria adopted by the Department and set forth in the Idaho Special Education Manual. The total timeline from the date of receipt of written parental consent for an initial evaluation to the date of determination of eligibility for special education and related services must not exceed sixty (60) calendar days,~~

~~excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension. (3-15-22)~~

~~**04. Individualized Education Programs.** Each education agency shall develop an individualized education program (IEP) for each student who is eligible for special education. The IEP shall be implemented as soon as possible after it is developed. The total timeline from the determination that the student needs special education and related services to the date of implementation of the initial IEP shall not exceed thirty (30) calendar days. A new~~

~~IEP shall be developed at least annually, on or before the date the previous IEP was developed. (3-15-22) a.~~

~~IEP team meetings shall be convened upon reasonable request of any IEP team member at times other than the annual review. If the education agency refuses to convene an IEP team meeting requested by a parent or adult student, the agency shall provide written notice of the refusal. (3-15-22) b. Education agencies shall document the attendance of all participants at each IEP team meeting. Any participant who does not agree with an IEP team decision regarding a student's educational program may place a minority report in that student's file. A minority report shall not prevent implementation of an IEP team decision. (3-15-22)~~

~~e. The IEP team shall determine the student's placement in the least restrictive environment.~~

~~(3-15-22) d. At the discretion of the~~

~~education agency, an individualized family service plan (IFSP) may be used in place of an IEP if: (3-15-22) i.~~

~~The child is ages three (3) through five (5), and (3-15-22) ii. The child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP, and (3-15-22) iii. The child's parents provide written consent to use the IFSP, and (3-15-22) iv. The IFSP is developed in accordance with IDEA Part B policies and procedures. (3-15-22) v. Nothing in this part requires education agencies to develop IFSPs rather than IEPs for three (3) through five (5) year old nor to implement more than the educational components of the IFSP. (3-15-22) e.~~

~~When a student who has been determined eligible for special education, as indicated by a current IEP, transfers from one (1) Idaho education agency to another, the student is entitled to continue to receive special education services. The receiving education agency may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within five (5) school days, or if the education agency wishes to re-evaluate the child, an interim (short term) IEP shall be implemented pending development of the standard IEP. (3-15-22) f. If a student who is eligible for special education in another state transfers to an Idaho education agency, the Idaho education agency shall request a copy of the student's most recent eligibility documentation and IEP within two (2) school days. Within five (5) school days of receipt of the eligibility documentation and IEP, the Idaho education agency shall determine if it will adopt the existing eligibility documentation and IEP. If the education agency disagrees with the existing eligibility documentation, or if the documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the education agency may implement an interim IEP if the parent or adult student agrees. If the parent or adult student does not agree to an interim IEP, the student shall be placed in general education. (3-15-22)~~

~~**05. Procedural Safeguards.** Education agencies will use appropriate procedural safeguards consistent with the Individuals with Disabilities Education Act. (3-15-22) a. If a parent or adult student disagrees with an individualized education program (IEP) team's proposed IEP for the student, the parent or adult student may file a written objection to all or parts of the proposed IEP. If the written objection is emailed, postmarked or hand delivered within ten (10) calendar days of the date the parent or adult student receives written notice of the proposed IEP, the proposed change cannot be implemented for fifteen (15) calendar days, or as extended through mutual agreement by the district and the parent or adult student while the parties work to resolve the dispute. Parties may choose to hold additional IEP team meetings which may be facilitated by the State Department of Education (SDE) or request voluntary mediation through the SDE. If these methods fail or are refused, the proposed IEP shall be implemented after fifteen (15) calendar days unless a due process hearing is filed by the parents or adult student, during which time the student shall remain in the current educational placement during the pendency of any administrative or judicial proceeding, unless the district/adult student agree otherwise. The written objection cannot be used to prevent the~~



~~education agency from placing a student in an interim alternative educational setting in accordance with IDEA discipline procedures, or to challenge an eligibility/identification determination. (3-15-22) b. Mediation may be requested by an education agency, parent, or adult student, or offered by the State Department of Education at any time. The Department shall screen all such requests to determine appropriateness. Any time a hearing is requested, the Department shall offer mediation using policies and requirements set forth in the Individuals with Disabilities Education Act regulations. If the Department appoints a mediator, the Department shall be responsible for compensating the mediator. All mediation participants will receive a copy of the Notification of Mediation Confidentiality form. Attorney fees may not be awarded for a mediation that is conducted prior to a request for a due process hearing. (3-15-22) c. The State Department of Education shall administer a single tiered due process hearing system to resolve disputes between education agencies and parents or adult students. When a due process hearing is requested, the superintendent, special education director, or other agency administrator shall inform the agency's board of trustees or other governing body of the request. The education agency shall immediately notify the Department's Director of Special Education of any request for a due process hearing. Within ten (10) calendar days of a written request for a regular hearing, or within five (5) business days of a written request for an expedited hearing, an impartial hearing officer shall be assigned by the Department. The Department shall maintain a list of trained hearing officers and their qualifications. (3-15-22) d. The education agency that is a party to the hearing shall be responsible for compensating the hearing officer and paying for the cost of a verbatim transcript of the hearing. (3-15-22) e. Due process hearings shall be conducted pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Individuals with Disabilities Education Act requirements, and the Idaho Special Education Manual, incorporated by reference in Section 004 of this rule. In case of any conflict between the IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General" and the IDEA, the IDEA shall supersede the IDAPA 04.11.01, and IDAPA 04.11.01 shall supersede the Idaho Special Education Manual. (3-15-22) f. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within forty five (45) calendar days of the date a regular hearing is requested, unless a specific extension of this time line is requested by one (1) of the parties and granted by the hearing officer. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within twenty (20) calendar days of a written request for an expedited hearing, unless a specific extension of this time line has been granted. An extension of the time line for an expedited hearing shall not exceed an additional twenty five (25) calendar days, and may be granted only if requested by one (1) of the parties and agreed to by both parties. The decision shall be sent to the parent or adult student, the education agency administrator, their respective representatives, and the State Department of Education. (3-15-22)~~

~~g. The hearing officer's decision shall be binding unless either party appeals the decision by initiating a civil action. The hearing officer's decision shall be implemented not later than fourteen (14) calendar days from the date of issuance unless an appeal is filed by a parent or adult student or the decision specifies a different implementation date. An appeal to civil court must be filed within forty two (42) calendar days from the date of issuance of the hearing officer's decision. (3-15-22) h. During the hearing the education agency shall provide reasonable accommodations as required by federal and state regulations. Disputes concerning reasonable accommodations shall be referred to the U.S. Department of Education's Americans with Disabilities Act (ADA) Committee for resolution. (3-15-22) i. During the pendency of any due process hearing or civil appeal the child's educational placement shall be determined by the Individuals with Disabilities Education Act "stay put" requirements. (3-15-22) j. A parent or adult student has the right to an independent educational evaluation (IEE) at public expense if the parent or adult student disagrees with an evaluation obtained by the education agency. Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria the education agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent or adult student's right to an IEE. If an education agency has cost as one (1) of the criteria the education agency uses when it initiates an evaluation, the education agency may apply that criteria to independent educational evaluations. However, the parent or adult student has the right to demonstrate that unique circumstances justify an IEE that falls outside the education agency's cost criteria, and if so demonstrated, that IEE shall be publicly funded. A due process hearing may be initiated by the education agency to determine if the evaluation conducted by the education agency is appropriate. If the final decision of a hearing officer, or civil court, if the hearing officer's decision is appealed, is that the evaluation conducted by the education agency is appropriate, the parent or adult student still has the right to an independent educational evaluation, but not at the education agency's expense. (3-15-22) k. Student records shall be managed in accordance with IDEA and Family and Educational Rights and Privacy Act regulations governing security, confidentiality, access, maintenance, destruction, inspection and amendment. (3-15-22)~~

~~06. — **Assistive Technology Devices.** Education agencies may hold a parent liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the education agency if it is lost, stolen, or damaged due to negligence or misuse at home or in another setting outside of school time. (3-15-22)~~

~~07. — **Diplomas and Graduation.** School districts shall use a regular diploma for students who are eligible for special education at the completion of their secondary program. The transcript serves as a record of individual accomplishments, achievements, and courses completed. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities. If a student is not granted a regular high school diploma or if a regular high school diploma is granted for completing requirements that are not comparable to regular graduation requirements, a student who is eligible for special education is entitled to receive a free appropriate public education through the semester in which the student turns twenty one (21) years of age or until the student completes requirements that are comparable to regular graduation requirements, whichever comes first. (3-15-22)~~

~~08. — **Special Education Advisory Panel.** The State Superintendent of Public Instruction shall appoint members to serve on the Special Education Advisory Panel. Panel members shall elect annually an individual to serve a one (1) year term as vice chair followed by a one (1) year term as chair. (3-15-22)~~

109. (RESERVED)

## Public Comments Summary

A 21-day public comment Period was noticed in the October 2, 2024, Administrative Bulletin of Negotiated Rulemaking, Vol. 24-10. During the public comment period, ten (10) comments were submitted to OSBE's Rules Coordinator via email. No stakeholder requested an additional meeting. Comments received during the feedback window and up to the completion of these materials are included in this summary.

The Idaho Department of Education solicited extensive feedback on the proposed amendments to graduation requirements throughout the summer and fall of 2024. A summary of that work is included.

All comments submitted addressed Docket No. 08.0203.2401 Rules Governing Thoroughness. All comments addressed the proposed amendments to the graduation requirements except for one comment from the IDE which addressed the Special Education Manual.

A summary of comments is included below. Comments in their entirety are included in subsequent pages.

### Summary of Comments:

1. Alison Duman, Idaho Department of Education K-12 Workforce Program Manager, 10/23/24 – provided a summary of the department's efforts to solicit feedback, including no less than twelve (12) in-person meetings with a total of 316 registered attendees. Feedback included concerns about the alignment of teacher credentials, concerns about implementation of the new requirements by 2028, and requests for localized pathways templates. The largest area of concern appears to be from a small but vocal group of speech and communications teachers who are concerned that instruction in communications would be diminished statewide if not provided through a stand-alone one-credit course. Several edits were made to the proposed rule based on this feedback, specifically related to clarifying that communication standards remain required.
2. Tracie Bent, Chief Administrative Officer, Division of Career Technical Education, 10/21/24 – provided feedback on several specific sections, including proposed alternate wording, identifying areas that may be confusing, and noting technical corrections. Several final edits were made based on this feedback.
3. College Board, 10/23/24 – expressing support for the graduation requirement amendments in general and specifically supporting localized pathways, the future readiness project, and digital literacy, noting AP courses offered by the College Board that appear to align with these amendments. No edits were made based on this feedback.
4. Jared Jenks, Superintendent, Sugar-Salem School District No. 322, 10/24/24 – expressed support of the proposed amendments to the graduation requirements, noting his appreciation for the increased flexibility without an increased number of overall credits. No edits were made based on this feedback.
5. Yazmin Carney, Citizen, 10/26/24 – expressed concern that the proposed amendments to graduation requirements would effectively eliminate the speech course. Carney expressed that communication skills are essential and should not be eliminated. The content standards for communication skills are not proposed to be eliminated, and edits were made to provide greater clarity in the Secondary Language Arts description, Section 105.01.d.
6. Paul Wardwell, Idaho resident and registered voter, 10/26/24 – expressed concern about replacing the speech communication course with a digital literacy course and noted the value of

teaching public speaking in helping students gain confidence and skills. He particularly stressed that moving a speech class from required to optional would result in fewer students receiving this important instruction. The content standards for communication skills remain required standards in the Secondary Language Arts Curriculum. No additional edits were made based on this feedback.

7. Pamela Clark, Idaho resident, registered voter, and retired teacher, 10/28/24 – expressed concern about replacing the speech communication course with a digital literacy course and noted the value of conflict management, teamwork, and listening skills for successful adults. She stressed that moving a speech class from required to optional would result in not every student receiving this important instruction. The content standards for communication skills remain required standards in the Secondary Language Arts Curriculum. No additional edits were made based on this feedback.
8. Kathy Hilton, Idaho resident and registered voter, 10/29/24 – expressed concern about replacing the speech communication course with a digital literacy course and noted the value of live face to face communication skills. She stressed that moving a speech class from required to optional would result in fewer students receiving this important instruction. The content standards for communication skills remain required standards in the Secondary Language Arts Curriculum. No additional edits were made based on this feedback.
9. Darin Gonzales, Principal for Kimberly High School, 11/1/24 – stated that removing the speech course from high school graduation requirements is not in the best interest of students. He stressed the importance of developing communication skills and overcoming a fear of public speaking.
10. Chynna Hirasaki, Director of Special Education, Idaho Department of Education, 10/23/24 – submitted a letter stating the reasons for requesting that the Board reconsider the proposed amendments to the Special Education Manual and re-adopt a version that reflects only the amendments required by the Office of Special Education Programs at this time. This feedback was considered as part of a separate agenda item and the corresponding section of rule has been adopted to reflect a November 21, 2024 adoption of the manual as a document incorporated by reference.

To: Nicholas Wagner, Office of the State Board of Education, Administrative Rules Coordinator  
From: Allison Duman, K-12 Workforce Program Manager  
Date: October 23, 2024  
RE: Docket 08-0203-2401

This memo provides the Idaho Department of Education's (IDE) comments to Docket 08-0203-2401.

Starting in October 2023, IDE staff facilitated a series of agency and K-12 workgroup meetings to develop a framework for updates to the high school graduation requirements. The framework consists of four (4) main recommendations.

In June and October of 2024, IDE staff conducted a series of outreach meetings in Idaho's six educational regions to receive feedback on the proposed rule pertaining to high school graduation requirements.

A summary of the recommendations and feedback received by the IDE is provided below.

#### **1. FLEXIBILITY IN AWARDING CORE ACADEMIC REQUIREMENTS**

Provide clear flexibility in IDAPA for local school districts or local education agencies (LEAs) to award academic credit for applied concepts that meet Idaho Content Standards requirements.

##### **Summary of Feedback:**

Overall, this recommendation was well received. The comments focused on teacher credentials and alignment with the relative content standards.

105. High School Graduation Requirements

01. Credit Requirements

c. Credit Flexibility (page 130)

The IDE proposes adding language to clarify teacher credentials related to this update and the required alignment between the relevant content standards and the student's work that would be awarded academic credit.

**2. DIGITAL LITERACY AS A CORE ACADEMIC REQUIREMENT**

One (1) Digital Literacy credit requirement would replace the existing one (1) Communications credit requirement as a minimum core academic requirement.

**Summary of Feedback:**

Of the four recommendations, the IDE received the most feedback on the recommendation to replace the existing one (1) Communications credit with one (1) Digital Literacy credit. The opposition to this requirement has primarily come from a small but vocal group of speech and communications teachers who are concerned that instruction in communications would be diminished statewide if not provided through a stand-alone one-credit course.

Supporters of this recommendation applaud the addition of Digital Literacy while maintaining the existing 29 minimum core academic requirements.

There was consistent feedback that the implementation for the class of 2028 could be challenging for some districts, especially those who require speech as a class for their freshmen students.

105. High School Graduation Requirements

01. Credit Requirements

d. Secondary Language Arts and Communication (page 132)

The IDE proposes adding clarifying language requiring oral communication in speaking and listening be delivered within Language Arts courses or as a stand-alone elective in alignment with Idaho Content Standards for any student graduating after January 1, 2028.

105. High School Graduation Requirements

01. Credit Requirements

k. Digital Literacy (page 131)

The IDE proposes implementing this requirement for any student graduating after January 1, 2029, OR providing a waiver for LEAs who are unable to implement the requirement for its students graduating prior to January 1, 2029.

### 3. LOCALIZED PATHWAYS

LEAs will develop and publicly share two or more localized pathways aligned with regional workforce and education opportunities.

#### Summary of Feedback:

Overall, this recommendation was well received. The comments focused on the IDE-provided templates accompanying this requirement and when these would be made available to LEAs and public charter schools.

### 4. FUTURE READINESS PROJECT

Update the existing senior project to the new Future Readiness Project, demonstrating a student's application of college and career competencies and exploring potential post-high school options.

#### Summary of Feedback:

Overall, this recommendation was well received. Some of the larger LEAs shared that this requirement would require an additional level of facilitation than is needed for the existing senior project. However, most LEAs and public charter schools indicated this would be manageable.

### MEETING SCHEDULE

#### Region 1:

- June 20, 2024  
Sandpoint High School, Hybrid Meeting – 20 registrations
- October 16, 2024  
Lake Pend Oreille School District Office – 12 registrations

#### Region 2:

- June 19, 2024  
A.Neal DeAtley Center, Hybrid Meeting – 30 registrations
- October 16 & 17, 2024  
A.Neal DeAtley Center – 0 registrations  
Moscow School District Office – 10 registrations

**Region 3:**

- June 26, 2024  
Columbia High School – 12 registrations
- October 10, 2024  
Middleton High School – 10 registrations  
West Ada School District Office – 5 registrations

**Region 4:**

- June 11, 2024  
College of Southern Idaho, Hybrid Meeting – 65 registrations
- October 8, 2024  
Blaine County School District Office, Hybrid Meeting – 10 registrations  
College of Southern Idaho – 3 registrations

**Region 5:**

- June 12, 2024  
Pocatello Chubbuck School District Office, Hybrid Meeting – 71 registrations
- October 23, 2024  
Idaho State University, Hybrid Meeting – 40 registrations

**Region 6:**

- June 12, 2024 – combined with Region 5
- October 22, 2024  
Idaho Falls School District 91, District Office – 15 registrations  
College of Eastern Idaho, Hybrid Meeting – 8 registrations



To: Nicholas Wagner, Office of the State Board of Education, Administrative Rules Coordinator  
From: Tracie Bent, Chief Administrative Officer  
Date: October 21, 2024  
RE: Docket 08-0203-2401

This memo provides the Division's formal comments to Docket 08-0203-2401. Prior to the commencement of the negotiated rulemaking for this docket, Division staff provided input to the State Department of Education regarding the broad concepts the Department was considering for this rulemaking and requested some additional language be included providing further clarification around the ability for career technical education courses to count towards the non-elective graduation requirements. Currently administrative code calls out the ability for career technical education courses to count toward mathematics credits and references credits for applied science courses counting toward the science credit requirement. Under the current language in Administrative Code 08.02.03 career technical education courses taught by a properly certificated career technical education teacher and cross walked to applicable core content standards could be awarded graduation credits; however, this is not clearly stated and some LEA's in the past have believed that only teachers with an instructional certificate and endorsement in the applicable academic area (e.g. mathematics, English language arts, humanities, social studies, etc.) may teach classes that result in credits toward graduation. Amendments to the minimum graduation requirements in IDAPA 08.02.03 is an opportunity to clearly identify the ability for courses with a properly endorsed CTE instructor for the career technical education pathway they are teaching in, at the LEA's discretion, may count toward the graduation requirements for any aligned core course content standards as well as work-based learning.

Division staff are available to discuss specific language if there is interest in adding language to address this comment prior to the pending rules approval.

In addition to the request to add clarifying language above, the following is a list of specific comments to the text in docket 08-0203-2401. The section and/or subsection for each comment is noted below, along with the page of in the bulletin where the language started.

Docket 08-0203-2401 – Comments

007. Definitions

02. Advanced Opportunities. (page 128)

Microcredential is two words in the rule, "micro credential," and is only one work in Board policy, the word should be consistent with how the Board defines and use it.

05. Applied Science, (page 128)

The definition of applied science is unnecessary and could cause confusion. Historically (prior to 2023) the applied content areas identified in IDAPA 08.02.03 referred to career technical education courses. Applied science referred to career technical education courses or pathways that used scientific knowledge and concepts to solve real world problems, such as CTE engineering and technology courses. Terms only need to be defined in administrative rules when there is not a common usage for the term. "Applied science" is a commonly defined term in English usage and is unnecessary to defined unless using it more narrowly. The term commonly means the application or usage of scientific methods or knowledge for practical or functional applications. Applied sciences include a variety of engineering courses, medical/health care courses, computer technology courses, etc. The rudimentary definition proposed in the rule does not add any more context to the reference to applied science in 105.01.f.

14. Dual Credit. (page 129)

Section 33-5102, Idaho Code, defines the term dual credit. This definition should match.

17. Laboratory. (page 129)

The term laboratory is redundant if the reference to laboratory sciences is removed from the Science graduation requirements.

18. Localized Pathway. (page 129)

This definition may be confusing, and the language does not align with existing defined terms in the rules such as "Career Pathway Plan," by using the reference to postsecondary goals rather than the plan it could be construed as referencing a different plan. Rewording to be more consistent with the current language in the rule will avoid confusion, the current definition could be construed as creating a separate or different plan the career pathway plan that is already required for secondary students, grades 9 through 12. The definition section of administrative rules defines terms and should not be used to add requirements or usage of the term, therefore the last sentence of the proposed definition should be eliminated or moved to the section of rule where the term is used. Additionally, the word postsecondary is not hyphenated in administrative rules or state code.

Preferred definition: A framework of courses or offerings established by the local education agency that identifies the core and elective credits students may earn to meet the state and local graduation requirements.

24. Technical Competency Credit. (page 130)

Technical competency credits are no longer offered, and this definition may be removed.

105. High School Graduation Requirements

01. Credit Requirements

c. Credit Flexibility. (page 130)

This definition uses the term "prior learning," currently this term is commonly used in higher education to reference learning or skills the student obtained prior to entering the postsecondary institutions. Additionally, the Board policy regarding prior learning is exclusively applied to postsecondary education. Using the term here to reference secondary credits would force the Board to update its policy to align with the additional use or the policy to be amended specifying the policy only applies to prior learning at the postsecondary level.

Without common use of this term at the secondary level, it should be defined or changed to align with secondary experiences.

Proposed new language: The State Department of Education will support LEAs in the development of crosswalks and templates to assist in the awarding of credit for work-based learning or extended learning opportunities, pursuant to Section 33-1630, Idaho code.

d. Secondary Language Arts and Communication. (page 131)

Changes in graduation requirements that add a requirement include an effective date that will not negatively impact current high school students who may not be able to take the new requirement and graduate on time with their current schedules. This is done by identifying the year the student enters 9<sup>th</sup> grade to avoid any issues with students who may not be impacted by the requirement if they had graduated on time. These are often student that met all the graduating requirements if they had graduated on-time except a credit missing in one class, the way this is currently written would require those students who may only need to earn 1 or 2 credits now will be required to take an additional course. Additionally, the January 1 effective date does not align with LEA terms. LEA's may have vastly different term dates around the state. Due to this, effective dates for graduation requirements are also generally referenced to the start of the term, such as, the fall term, spring term or prior to the term's start. This allows flexibility at the LEA level, so students are not negatively impacted.

The new oral communication and technological applications requirement is redundant and confusing. IDAPA 08.02.03.105.02 already requires each student to meet at a minimum the state content standards and IDAPA

08.02.03.200 requires: "The standards set forth in Section 004 are the minimum standards to be used by every school district in the state to establish a level of academic content necessary to graduate from Idaho's public schools. Each school district may set standards more rigorous than these state content standards, but no district shall use any standards less rigorous than those set forth in these Thoroughness rules," therefore this reference without a corresponding credit requirement is redundant.

f. Science. (page 131)

The amendments to this paragraph confuse the science requirements and remove the existing requirement that two of the credits be lab based. The removal of the lab-based credits would allow a student to complete all six of the credits to be earned without application of the knowledge learned. The other changes indicate four credits must be earned from a list of four content areas (physics, chemistry, earth and space, and life science and then requires two credits to be earned from a list six sciences, the four science areas already listed and then two additional areas, applied science and computer science. As written, a student could take six earth and space credits and still meet the graduation requirements. Additionally, a new sentence is added indicating engineering courses and computer science courses aligned to the state standards may also be counted "as a" science credit. Computer science is already explicitly listed as a science content area; therefore, the credits count and engineering falls under the definition of an applied science, which is also listed making this sentence redundant.

j. Physical Education. (page 132)

This section was romanette 1. not the letter "i" and is a subsection of the original letter h. Health/Wellness. It is now identified as subsection j. Physical Education, however, there is no state physical education credit requirement, there is only a one credit health/wellness requirement. The physical education credit is specific to LEA's that also require one or more physical education requirements.

k. Digital Literacy. (page 132)

The information and communication technology content standards are the original digital literacy requirements. It would be clearer for LEA's if the credit requirement were based on just these standards rather than adding a portion of the computer science standards, especially since new versions of these standards went into effect on July 1, 2024.

See earlier comment regarding effective date.

03. Senior Project. (page 132)

See effective date comment.

07. Middle School. (page 132)

Update reference 105.06.a to accommodate new numbering.

College Board Public Comment  
Rules Governing Thoroughness  
October 23, 2024

College Board has been a long-trusted partner in Idaho and shares the goal of preparing all students for post-secondary career and college choices that provide them with opportunities to be successful and productive adults, contributing to Idaho's thriving communities and economic development. We applaud the Idaho Department of Education and Superintendent Critchfield for modernizing the graduation requirements as a first step to meeting the needs of the next generation of Idahoans.

### **Localized Pathways**

#### *Relevant Coursework*

College Board supports Idaho's new localized pathways to assist students in their course selection. Students should have significantly more freedom to design a high school experience that is engaging, relevant, and challenging. College Board is committed to creating courses that are more relevant to a broader range of students and to ensuring that those courses are available to them at the right time to maximize the benefits.

The Department should encourage districts to implement multiple, flexible pathways that allow students to choose from a broader range of courses beginning in grades 9 and 10. This allows students to create a meaningful high school that excites them, maintains their engagement through senior year, and prepare them for postsecondary education or the workforce.

For example, students could start AP early, in 9<sup>th</sup> or 10<sup>th</sup> grade, and positively alter their academic trajectories in a meaningful way. Our research has found that students who take one AP course in grade 10 tend to take other rigorous coursework later in high school, and also prepare for the world of work.

#### *Potential Pathways*

**Students can begin their pathways with AP courses that are designed to prepare all students for future success, such as:**

- **AP Computer Science Principles (CSP):** Students can begin their pathway with AP CSP, an introductory college-level computing course that introduces students to the breadth of the field of computer science. AP CSP engages students in real-world topics that interest them by focusing on the creative and collaborative aspects of computer science.
- **AP Seminar:** AP Seminar allows students to build foundational writing, collaboration, research, and presentation skills for future success in high school, college, and career. When students take AP Seminar in 10<sup>th</sup> grade as an English course, compared to their peers, 10<sup>th</sup>-grade Seminar students have higher exam scores on AP Exams taken in later grades. AP Seminar can help prepare students for future success in their pathway courses

Students can also participate in **Career Kickstart**, AP's new career-oriented program that leads to credentials and college credit for all students who want to prepare for a career, whether they are heading to 2- or 4-year colleges, technical schools, or the workforce.

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Career Kickstart offers a two-course pathway that equips students for in-demand careers in cybersecurity. Additional pathways are currently in development.

- **AP Cybersecurity 1: Networking Fundamentals**, the first course in the Cybersecurity Pathway, is a full-year high school course that covers the fundamentals of networking.
- **AP Cybersecurity 2: Cybersecurity Fundamentals**, the second course in the Cybersecurity Pathway, is a full-year course covering foundational cybersecurity concepts and skills.

#### *Assessment*

While the federal Every Student Succeeds Act requires that all students take the same assessment statewide, any additional assessments students take should provide value for students' pathways towards post-secondary success in careers or college.

These assessments should include college entrance exams like the SAT that provide students a college reportable score and Career Insights Snapshots that highlight the growing fields in Idaho and the skills needed to be successful. Additionally, students' assessments should also lead to college credit, like AP, or towards industry recognized credentials.

#### **Future Readiness Project**

College Board commends Idaho's new Future Readiness project for students to showcase their college and career competencies. Idaho should ensure that students completing AP project-based courses and exams are able to fulfill their Future Readiness requirement through these rigorous experiences.

Project-based AP exams include:

- **AP Seminar:** The AP Exam includes a team project and presentation, and individual research project and presentation - in addition to the end-of-course exam
- **AP Research:** Students are assessed on the academic paper and presentation and oral defense of research
- **AP Computer Science Principles:** Students develop a computer program of their choice and answer questions to demonstrate their understanding of the program they created.

Additionally, the students in the following AP courses complete project-based learning components:

- AP US Government and Politics
- AP Environmental Science
- AP World History: Modern

#### **Digital Citizenship**

Digital citizenship is one of the most important skills students must master today. College Board recommends that students have the flexibility to complete the requirement through a variety of different courses, dependent on their individual pathway.

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Students should be able to earn digital citizenship credit through courses like AP Computer Science Principles, where students learn to apply computer science to solve problems through developing programs and how computing systems impact the world. Other students in a CTE pathway may want to fulfill their digital citizenship requirement through their CTE courses, such as AP Cyber 1: Networking and AP Cyber 2: Security.

### **Advanced Placement Regulations**

College Board would like to thank Idaho for highlighting the Advanced Placement program and its importance in these regulations. Advanced Placement brings relevant and engaging college-level work to high school students from all backgrounds, helping them earn college credit or placement and stand out in admissions.

We would like to make some changes to the language to more accurately reflect the AP program as it exists today. For instance, AP courses do not have set curricula determined by the College Board. AP course frameworks provide clarity about essential course content, while also providing flexibility for teachers to select different authors, scholars, events, and examples to bring the framework to life, and are consistent with state and local requirements.

We recommend changing the language in the Definitions section (007.03) on page 128 of the October 2, 2024 bulletin to say:

**03. Advanced Placement® (AP). College Board’s Advanced Placement Program offers college-level courses and exams that students can take in high school. AP Exams offer the opportunity to earn college credit at two and four-year colleges and universities nationwide.**

We commend Idaho for its work to strengthen the state’s high school graduation requirements and ensure students have access to engaging, relevant coursework and assessments. We are happy to answer additional questions and look forward to our continued collaboration with the Department of Education and policymakers in your efforts.

In partnership,

Penny Kotterman  
Sr. Director - Government Relations  
[pkotterman@collegeboard.org](mailto:pkotterman@collegeboard.org)  
602-284-7611

Lee McIlroy  
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480-620-7038



## Sugar-Salem School District No. 322

105 West Center • P.O. Box 150 • Sugar City, ID 83448  
Phone (208) 356-8802 • Fax (208) 356-7237

To Whom It May Concern,

I am writing in support of the recently discussed proposal regarding changes to Idaho's graduation requirements, specifically the recommendation to replace the communications course with a digital literacy course while maintaining the total number of core courses at 29.

I believe this proposal strikes a necessary balance between adapting to the evolving educational landscape and preserving student choice. Digital literacy is undeniably a critical skill in today's society, and integrating it as a core requirement ensures that students are better prepared for the demands of the modern workforce and higher education environments.

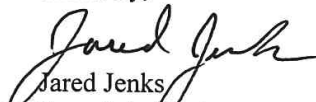
What I particularly appreciate about this proposal is that it does not increase the overall number of core courses required for graduation. It is essential for students to retain access to a wide variety of elective courses, which play a crucial role in their overall educational experience. Electives allow students to explore personal interests, develop specialized skills, and engage in a more well-rounded education.

If additional courses are deemed necessary by individual districts, those districts should have the flexibility to implement those requirements at the local level. For example, at Sugar-Salem School District, we require students to take a reading course in high school as part of their graduation requirements. This course is vital to student success, yet we can maintain this requirement without sacrificing the elective opportunities that are so valuable to our students' development.

I encourage state decision-makers to continue allowing local districts the autonomy to adapt and create requirements that meet the unique needs of their students without increasing the overall number of core courses. This flexibility is essential for ensuring students have access to a broad and enriching educational experience.

Thank you for your consideration.

Sincerely,

  
Jared Jenks  
Superintendent

**From:** [Yazmin Carney](#)  
**To:** [Rules](#)  
**Subject:** Speech requirement in school  
**Date:** Saturday, October 26, 2024 2:05:03 PM

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Hello:

I hope this message finds you well. I am writing to express my strong support for the inclusion of speech classes as a requirement in our high school curriculum. As discussions continue regarding potential changes to our educational programs, I believe it is crucial to highlight the benefits that speech education brings to students.

Effective communication skills are essential for success in today's world, both academically and professionally. Speech classes equip students with the ability to articulate their thoughts clearly, build confidence in public speaking, and enhance their overall interpersonal skills. These abilities are not only vital for personal development but are also highly sought after by employers across various fields.

Furthermore, speech education promotes critical thinking and fosters creativity. Students learn to construct arguments, analyze information, and engage in constructive dialogue, which are skills that extend beyond the classroom and into their future endeavors.

By eliminating speech classes from the curriculum, we risk depriving our students of these essential tools that prepare them for real-world challenges. I urge the Board to reconsider its position and recognize the long-term benefits of a speech education for our students and community.

Thank you for your attention to this important matter.

Sincerely,

Yazmin Carney



**From:** [Pauly W.](#)  
**To:** [Rules](#)  
**Subject:** Rule change for requirements to graduate  
**Date:** Saturday, October 26, 2024 10:02:54 AM

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Hello,

My name is Paul Wardwell. I have learned about the State Dept of Ed.'s plan to change the requirement to graduate by removing Speech Communication as a requirement. I understand the Digital Literacy course would be potentially useful, but NOT at the cost of removing the requirement for Speech Comm. In your final discussions at the State Board of Education, I encourage all the members of the committees and meetings to ask themselves if real, live, face to face communication, should NOT be practiced and taught in schools as a requirement.

For the argument that the districts can still choose to teach it, or make it a district level requirement, this is flawed for many reasons. The most obvious being, PUBLIC SPEAKING IS THE #1 FEAR in America. You *must* know this! And despite this fear, we ALL must do it. The course is teaching more than communication, it is teaching students to conquer their fears, to break out of their shells, to find their voices. For this reason, few people to none will take this course voluntarily, despite its universal benefits. The State needs to continue to require it.

This is an official complaint against this rule change. I would like an email confirmation please of receipt, and I believe you are required to share in the legislature education committee that there was at least this one opposition to this rule change.

Thank you,  
-Paul Wardwell, Idaho resident and registered voter-  
Boise, ID 83705

**From:** [Pamela Clark](#)  
**To:** [Rules](#)  
**Subject:** Speech Communications requirement for high school graduation  
**Date:** Monday, October 28, 2024 2:50:14 PM

**CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.**

My name is Pamela Clark. I am a retired teacher with 30 years experience in classrooms grades 6-12. Recently, I heard that the Idaho State Dept of Education is considering changing Idaho's high school graduation requirements by removing Speech Communication in favor of Digital Literacy. I understand the Digital Literacy course would be potentially useful, but NOT at the cost of removing the requirement for Speech Communications.

When successful adults are asked what class they took in high school benefitted them most in their lives, they frequently claim that class was Speech/Communications. They cite many reasons for this, including the following:

- conflict management and improved interpersonal relationships in their jobs and in their homes
- improved teamwork and problem-solving skills
- improved listening skills
- greater confidence

Individuals with excellent communication skills are assets to every organization. No matter what career students may plan to pursue, competent and professional communication skills will help them succeed. The more skilled people are at communication, the greater their potential for succeeding in all aspects of their lives. Surely, members of our state legislature recognize the importance of communication.

Despite its inherent and universal benefits, few students would take this course voluntarily, for the same reasons they do not choose to take math, science, or language classes voluntarily. The State needs to continue to require Speech/Comm along with other courses deemed crucial to the education and potential success of Idaho high school graduates.

Please consider this message an official complaint against this rule change. I would like an email confirmation please of receipt, and I believe you are required to share in the legislature education committee that there is opposition to this rule change.

Thank you,  
Pamela Clark, Idaho resident and registered voter-  
Boise, ID 83713

**From:** [Kathy Hilton](#)  
**To:** [Rules](#)  
**Subject:** Speech Communication - Rule Change Complaint  
**Date:** Tuesday, October 29, 2024 3:46:23 PM

**CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.**

Hello,

I have learned about the State Dept of Ed.'s plan to change the requirement to graduate by removing Speech Communication as a requirement. I understand the Digital Literacy course would be potentially useful, but NOT at the cost of removing the requirement for Speech Comm. In your final discussions at the State Board of Education, I encourage all the members of the committees and meetings to ask themselves if real, live, face to face communication, should NOT be practiced and taught in schools as a requirement.

For the argument that the districts can still choose to teach it, or make it a district level requirement, this is flawed for many reasons. The most obvious being, PUBLIC SPEAKING IS THE #1 FEAR in America. You *must* know this! And despite this fear, we ALL must do it. The course is teaching more than communication, it is teaching students to conquer their fears, to break out of their shells, to find their voices. For this reason, few people to none will take this course voluntarily, despite its universal benefits. The State needs to continue to require it.

This is an official complaint against this rule change. I would like an email confirmation please of receipt, and I believe you are required to share in the legislature education committee that there was at least this one opposition to this rule change.

Thank you,  
-Kathy Hilton, Idaho resident and registered voter-  
Boise, ID 83709

**From:** [Darin Gonzales](#)  
**To:** [Rules](#)  
**Subject:** Graduation requirements  
**Date:** Wednesday, November 6, 2024 9:03:05 AM

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Good morning,

I believe removing speech as a graduation requirement credit is not what is best for high school students. Many students overcome the fear of speaking in a formal setting by taking a speech course. Communication is essential and far too many students hide behind their cellphones and have poor communication skills.

Thank you,

Darin Gonzales

Principal, Kimberly High School



October 23, 2024

Docket 08-0203-2401

Public Comment

Idaho Department of Education Memorandum

This memorandum serves as the State Department of Education's (SDE) formal comments to Docket 08-0203-2401. The SDE's overarching goal with the negotiated rulemaking process has been to bring the Idaho Special Education Manual into compliance with the Individuals with Disabilities Education Act (IDEA). The Idaho Special Education Manual was adopted by the State Board of Education on October 17, 2018. In October 2023, the United States Department of Education, Office of Special Education Programs (OSEP) notified the SDE that the Idaho Special Education Manual was out of compliance with federal law with respect to the Specific Learning Disability (SLD) criteria. The SDE seeks to bring the Idaho Special Education Manual into compliance with federal law for all areas pertaining to SLD during the 2025 legislative session.

During the process of revising the criteria for SLD as mandated by OSEP, the SDE realized that a comprehensive review of the entire Idaho Special Education Manual was necessary. This review began simultaneously with the revisions for SLD, but it is still ongoing and requires public input as mandated by the IDEA. As of today, the required public input has not been obtained. Additionally, the SDE needs more time to equip Local Education Agencies (LEAs) across the state with the necessary information, resources, and training related to all non-SLD revisions to the Idaho Special Education Manual. Therefore, the SDE intends to pursue updates to all non-SLD revisions in the Idaho Special Education Manual through the negotiated rulemaking process before the 2026 legislative session rather than the 2025 legislative session.

Currently, the proposed rule includes changes to both SLD and non-SLD revisions to the Idaho Special Education Manual. As such, the SDE requests that those non-SLD revisions be removed prior to approval of the pending rule to allow the SDE to meet IDEA regulations for public input, and have adequate time to prepare LEAs for these additional procedural changes. Specifically, the SDE requests that the pending rule include only those changes to SLD as shown in the attached document. All these changes have been previously reviewed by the Board.

SDE staff are available to address any questions or concerns relating to this comment prior to approval of the pending rule.

Sincerely,

A handwritten signature in black ink that reads "Chynna Hirasaki". The signature is written in a cursive, flowing style.

Chynna Hirasaki, Ed.S.  
Director, Special Education  
Idaho Department of Education

**Debbie Critchfield, Superintendent of Public Instruction**  
**(208) 332-6800 | 650 W. State St., Boise, ID 83702 | [sde.idaho.gov](http://sde.idaho.gov)**

**INSTRUCTION, RESEARCH AND STUDENT AFFAIRS  
NOVEMBER 21, 2024**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
1	<b>REVIEW OF DRAFT BOARD RESOLUTIONS ON DIVERSITY, EQUITY, AND INCLUSION; GOVERNANCE; AND FREEDOM OF EXPRESSION IN HIGHER EDUCATION</b>	Information Item

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**INSTRUCTION, RESEARCH AND STUDENT AFFAIRS  
NOVEMBER 21, 2024**

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**SUBJECT**

Review of Draft Board Resolutions on Diversity, Equity, and Inclusion; Governance; and Freedom of Expression in Higher Education

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies and Procedures, Sections I.E., II.L., II.P., and III.B.

Idaho Code §67-5909B

**BACKGROUND/DISCUSSION**

The Idaho State Board of Education has long affirmed its interest in promoting an environment of belonging and success for all students at the public postsecondary institutions it governs. Administrators, faculty, and staff are responsible for creating a welcoming and dynamic learning environment for all students, as an outgrowth of their investment in student success.

In April 2023, the Board adopted a resolution prohibiting the institutions from requiring diversity statements in hiring. This was followed by amendments to Board policy II.P. to codify the resolution language. The following spring, the Legislature adopted legislation prohibiting diversity statements in hiring and admissions at the institutions.

In addition to its newer policy related specifically to diversity statements, the Board has long-standing policies related to governance, presidential power, review of tenured faculty, academic freedom, academic responsibility, and freedom of expression in higher education (Board policies I.E., II.L, II.P. and III.B).

**IMPACT**

The three draft Board Resolutions affirm the Board's existing policies and institutional practices related to governance, tenure, academic freedom and freedom of expression, but also extend these policies through directives that aim to better support all students regardless of their identifying characteristics, establish clear criteria for evaluating presidents, require reporting on post-tenure review actions, ensure institutional neutrality, and provide curricular transparency.

**ATTACHMENTS**

- Attachment 1 – A Summary of the Draft Resolutions
- Attachment 2 – A Resolution on Diversity, Equity and Inclusion in Higher Education
- Attachment 3 – A Resolution on Governance in Higher Education
- Attachment 4 – A Resolution on Freedom of Expression

**BOARD STAFF COMMENTS AND RECOMMENDATIONS**

Some of the language of these Resolutions is drawn from or inspired by recent legislation in Utah, particularly House Bill 261. Portions of the Resolution on



**INSTRUCTION, RESEARCH AND STUDENT AFFAIRS  
NOVEMBER 21, 2024**

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Freedom of Expression borrow verbatim from a recent resolution adopted by the Utah Board of Higher Education on the same topic.

If the Board eventually approves these Resolutions, staff recommends the directives be codified in Board policy as soon as possible thereafter.

**BOARD ACTION**

This item is for informational purposes.

### **A Summary of the Draft Resolutions**

These draft resolutions affirm the Board's existing policies and provide directives to ensure the success of all students.

#### **Resolution on Diversity, Equity, and Inclusion**

This resolution affirms Board policy and Idaho code prohibiting diversity statements in hiring and admissions decisions and confirms that Idaho's institutional accreditor does not require specific structures or activities related to DEI at Idaho's public postsecondary institutions. The resolution makes the following directives:

- Institutions shall establish and maintain equality of opportunity for all students regardless of personal identity characteristics;
- Institutions shall ensure that no central offices, policies, procedures, or initiatives are dedicated to DEI activities;
- Institutions shall ensure student success centers are dedicated to all students;
- Institutions shall ensure that no employee or student is required to declare gender identity or preferred pronouns.

#### **Resolution on Governance**

This resolution affirms Board policy that establishes presidential power at the public postsecondary institutions, including that final decisions at the institutional level rest with the Presidents, and affirms that the Board is responsible to hold the Presidents accountable for their performance. It also affirms that institutions are required by Board policy to conduct regular reviews of tenured faculty and that Presidents may terminate tenured faculty members for "adequate cause." The resolution makes the following directives:

- The Board shall establish clear criteria for evaluating the presidents;
- Institutions shall report to the Board on post-tenure review actions;
- Institutions shall develop faculty codes of conduct.

#### **Resolution on Freedom of Expression**

This resolution affirms Board policies and principles related to academic freedom and academic responsibility for faculty, students, and institutions, including the limits to academic freedom. The resolution makes the following directives:

- Institutions shall maintain institutional neutrality, protect speakers' rights to free expression, protect the safety of those participating in constitutionally protected speech, introduce campus communities to diverse viewpoints, and establish programs designed to educate students and faculty about the institutions' role as the marketplace of ideas;

- Institutions shall provide curricular transparency by making course syllabi available to the public.



650 W. State Street • Suite 307 • Boise, ID • 83702  
P.O. Box 83720 • Boise, ID • 83720-0037

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A RESOLUTION ON DIVERSITY, EQUITY, AND INCLUSION IN HIGHER  
EDUCATION

WHEREAS, the general supervision of the state educational institutions of the state of Idaho is vested in the State Board of Education pursuant to Article IX, §2 of the Idaho Constitution and Idaho Code § 33-101; and

WHEREAS, the State Board of Education serves as the Board of Regents of the University of Idaho (Article IX, §10 of the Idaho Constitution; Idaho Code § 33-2802), and the Board of Trustees of Idaho State University (Idaho Code § 33-3003), Boise State University (Idaho Code § 33-4002), Lewis-Clark State College (Idaho Code § 33-3102); and

WHEREAS, the Board requires the postsecondary institutions to “create a welcoming and dynamic learning environment of belonging by administrators, faculty, and staff who are invested in the success of every student” (Board Policy II.P Human Resources Policies and Procedures); and

WHEREAS, the institutions are prohibited from requiring diversity statements in hiring and admissions (Board Policy II.P and Idaho Code § 67-5909B); and

WHEREAS, the Board has confirmed that Idaho’s institutional accreditor does not require institutions to establish or maintain central offices, policies, procedures or initiatives dedicated to diversity, equity, and inclusion beyond general efforts to address existing achievement gaps; and

WHEREAS, the Board affirms that accreditation agencies provide general standards of quality assurance but the Board maintains authority over the specific actions the institutions shall take to meet these broad accreditation standards.

NOW, THEREFORE, BE IT RESOLVED that the institutions shall establish and maintain equality of opportunity so that all students may succeed regardless of personal identity characteristics such as race, color, sex, sexual orientation, national origin, religion, disability, marital status, age, or gender.

**INSTRUCTION, RESEARCH AND STUDENT AFFAIRS  
NOVEMBER 21, 2024**

**ATTACHMENT 2**

BE IT FURTHER RESOLVED that the institutions shall not use personal identity characteristics in decisions affecting the employment or education of any employee or student.

BE IT FURTHER RESOLVED that institutions shall ensure that no central office, policy, procedure, or initiative is dedicated to diversity, equity, and inclusion, except as required for athletic compliance, academic program-specific accreditation, academic research, academic instruction, eligibility for federal grants and programs, and scholarships.

BE IT FURTHER RESOLVED that institutions shall ensure that all student success centers are dedicated to all students so that all have access to programs that provide student success and support, regardless of personal identity characteristics.

BE IT FURTHER RESOLVED that no institution employee or student shall be required to declare gender identity or preferred pronouns in any form of communication.

ADOPTED and APPROVED by the Idaho State Board of Education, December \_\_, 2024.

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Linda Clark, President



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P.O. Box 83720 • Boise, ID • 83720-0037

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## A RESOLUTION ON GOVERNANCE IN HIGHER EDUCATION

WHEREAS, the general supervision of the state educational institutions of the state of Idaho is vested in the State Board of Education pursuant to Article IX, §2 of the Idaho Constitution and Idaho Code § 33-101; and

WHEREAS, the State Board of Education serves as the Board of Regents of the University of Idaho (Article IX, §10 of the Idaho Constitution; Idaho Code § 33-2802), and the Board of Trustees of Idaho State University (Idaho Code § 33-3003), Boise State University (Idaho Code § 33-4002), Lewis-Clark State College (Idaho Code § 33-3102); and

WHEREAS, the Board affirms through established policy that presidents of the institutions have “full power and responsibility within the framework of the Board’s Governing Policies and Procedures for the organization, management, direction, and supervision of the institutions” (Board Policy I.E.); and

WHEREAS, the Presidents are “held accountable by the Board for the successful functioning of the institution in all of its units, divisions, and services” (Board Policy I.E.); and

WHEREAS, the Board “expects the Presidents to obtain the necessary input from faculty, classified and exempt employees, and students,” often through participatory or shared governance, but “holds the Presidents ultimately responsible for the well-being of the institutions” (Board Policy I.E.); and

WHEREAS, the Board understands the principle of “shared governance” to mean a practice of participatory governance that ensures the voices of faculty, employees, and students are considered in administrative and governance decisions made by the Presidents but not to mean a practice whereby faculty, employees, and students share equal power with the Presidents; and

**INSTRUCTION, RESEARCH AND STUDENT AFFAIRS  
NOVEMBER 21, 2024**

**ATTACHMENT 3**

WHEREAS, the Board affirms that “final decisions at the institutional level rest with the Presidents” (Board Policy I.E); and

WHEREAS, the Board confers to the Presidents authority to terminate the employment of any tenured faculty member for “adequate cause,” which is defined by the Board to mean “performance...judged to have been unsatisfactory or less than adequate during the period under review” (Board Policies I.E. and II.L); and

WHEREAS, the Board affirms its policy related to post-tenure review requiring all faculty who receive tenure to receive both annual performance reviews as required of all employees of the state, as well as distinct “periodic performance review[s]...conducted in terms of the tenured faculty member’s continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department” (Board Policy II.G); and

NOW, THEREFORE, BE IT RESOLVED that the Board shall establish clear criteria for evaluating the performance of the Presidents in their duties to ensure successful outcomes for all students.

BE IT FURTHER RESOLVED that each institution shall submit an annual report related to post-tenure review outcomes, including the number of reviews conducted, performance improvement plans, and justifications for not dismissing faculty who fail to address deficiencies.

BE IT FURTHER RESOLVED that each institution establish a faculty code of conduct that defines the faculty rights, responsibilities, and conduct to foster and sustain an environment conducive to sharing, supporting, and critically examining knowledge and values, and to create an ethical educational climate that strives for effective teaching and learning without prejudice or favor toward any student.

ADOPTED and APPROVED by the Idaho State Board of Education, December \_\_, 2024.

\_\_\_\_\_  
Linda Clark, President



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P.O. Box 83720 • Boise, ID • 83720-0037

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## A RESOLUTION ON FREEDOM OF EXPRESSION IN HIGHER EDUCATION

WHEREAS, the general supervision of the state educational institutions of the state of Idaho is vested in the State Board of Education pursuant to Article IX, §2 of the Idaho Constitution and Idaho Code § 33-101; and

WHEREAS, the State Board of Education serves as the Board of Regents of the University of Idaho (Article IX, §10 of the Idaho Constitution; Idaho Code § 33-2802), and the Board of Trustees of Idaho State University (Idaho Code § 33-3003), Boise State University (Idaho Code § 33-4002), Lewis-Clark State College (Idaho Code § 33-3102); and

WHEREAS, the Board affirms that “in addition to constitutionally protected freedoms of speech, assembly, and religion, students and faculty have the right to engage in free inquiry, intellectual debate, and freedom of scholarship both on and off campus” (Board Policy III.B.); and

WHEREAS, the Board affirms that “students and faculty have the right to express opinions and provide feedback concerning institutional governance and administration without fear of censorship or retaliation” (Board Policy III.B.); and

WHEREAS, the Board affirms that “students have the right to express personal opinions about concepts and theories presented in their courses and to disagree with opinions expressed by faculty and fellow students” (Board Policy III.B.); and

WHEREAS, the Board affirms that “students may not be directed or otherwise compelled to personally affirm, adopt or adhere to any particular political, religious or philosophical tenet or ideology” (Board Policy III.B.); and

WHEREAS, the Board affirms that faculty, students, and the institutions each enjoy certain tenets of academic freedom but are also bound to equally important tenets of academic responsibility (Board Policy III.B.); and

WHEREAS, the Board affirms the rights and responsibilities of faculty to determine what and how to teach in their courses free from administrative or political influence, but



**INSTRUCTION, RESEARCH AND STUDENT AFFAIRS  
NOVEMBER 21, 2024**

**ATTACHMENT 4**

within the bounds of academic freedom and academic responsibility, institutional policies, and relevant state and federal laws; and

WHEREAS, the Board affirms that academic freedom does not protect faculty from student challenges to, or disagreement with, instructional methods and content choices; does not protect faculty or students from penalties for violating the law; does not confer the right to faculty or students to violate institutional policies; does not protect faculty or students from disciplinary action consistent with institutional and Board policies; does not protect faculty or students from sanctions or dismissal for professional misconduct or poor performance; and does not protect faculty or students from investigations into allegations of or discipline for scientific misconduct or other violations of institutional or Board policy (Board Policy III.B); and

WHEREAS, the Board values curricular transparency to ensure students have full self-determination in making academic choices, and affirms that all educational content produced by faculty in the course of their duties as public employees of the state of Idaho, including course syllabi, are public documents; and

WHEREAS, the Board desires to set expectations for how institutions will implement the broad principles of free expression and academic responsibility operationally through specific policies, practices, and procedures;

NOW, THEREFORE, BE IT RESOLVED that the Board establishes the following expectations and directives to further its commitment to promoting and preserving free expression within the postsecondary institutions it governs and cultivating a thriving marketplace of ideas:

Institutions shall establish policies, practices and procedures that will:

- Maintain institutional neutrality. Institutions, as governmental entities, or employees acting in their official capacities as representatives of the institution must refrain from taking public positions on political, social, or unsettled issues that do not directly relate to the institution's mission, role, or pedagogical objectives. This does not mean faculty, staff, or students must remain neutral; indeed, institutions should promote a culture that encourages and celebrates forums in which faculty, students, staff, and community members may express conflicting, controversial, or unpopular viewpoints. A fundamental mission of higher education is to promote the exchange of knowledge and ideas through teaching, research, critical evaluation, civil discourse, and debate. Neutrality as an entity allows the institution to protect this mission by supporting those who engage in open, rigorous debate without disaffecting segments of its faculty, staff, and students whose sincerely held beliefs conflict with others. The institution can thereby fulfill its responsibility to be an impartial steward of the marketplace of ideas in which sincerely held viewpoints are subject to rigorous scrutiny and must withstand the challenge of open debate and critical examination on their own merits, not the institution's endorsement.

- Protect a speaker's right to free expression at approved events or venues on campus. This includes allowing an institution to intervene when individuals or groups substantially disrupt protected expression. Institutions have a solemn responsibility not only to promote the freedom to debate and scrutinize all ideas in appropriate forums but also to protect that freedom when others attempt to restrict it.
- Protect the safety of those participating in constitutionally protected speech on campus by working with security personnel and campus or local law enforcement to establish procedures and criteria for determining when it is appropriate to intervene in a forum for free expression for the sake of public safety.
- Provide a process for an institution to publicly address, condemn, or prohibit expression or actions that violate the law, such as violence, incitement, genuine threats, discrimination, harassment, or expression that is directly incompatible with the institutions' ability to achieve their primary missions or pedagogical objectives.
- Protect and cultivate academic freedom and academic responsibility. Faculty must be free to investigate, research, discuss, publish, and teach within their academic expertise and on topics relevant to course curricula without interference from institutional administrators, elected officials, governing boards, or other entities. Institutional neutrality should not be interpreted to allow for restrictions on curriculum, expression germane to approved curriculum or subject matter, or to otherwise restrain academic exploration within the bounds of traditional academic freedom and academic responsibility.
- Introduce campus communities to diverse viewpoints, including inviting speakers, sponsoring symposiums and lectures, or presenting other opportunities to hear differing perspectives and ideas. These policies shall include criteria to avoid rescinding invitations to speakers or canceling events solely on the basis that groups oppose the viewpoints being expressed, that those viewpoints are controversial, or that the speaker's presence on campus will generate concerns about security and public safety. These policies and procedures should include clear, objective, narrow, and content-neutral criteria for determining security costs charged to sponsoring entities.
- Establish a program designed to educate new students, faculty, and staff about the institution's role as the marketplace of ideas; what constitutes protected speech; when the institution may intervene in speech, such as direct threats, violence, illegal harassment or discrimination; how to appropriately express viewpoints through events, such as protests, parades, or other events, including an explanation of the institution's time, place and manner restrictions; and the

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NOVEMBER 21, 2024**

**ATTACHMENT 4**

institution's policies prohibiting the disruption of another individual's right to free expression, including shouting down speakers or blocking speakers' access to a forum. The scope and medium in which the institution delivers this program may be tailored to the institution's mission and role.

BE IT FURTHER RESOLVED that each institution shall make all course syllabi available to the public digitally in a manner that shall be defined in Board policy.

ADOPTED and APPROVED by the Idaho State Board of Education, December \_\_, 2024.

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Linda Clark, President

DRAFT