

Section: INSTRUCTION

Procedure Title: Special Education and Related Services for Eligible Students

Special Education and Related Services for Eligible Students

The purpose of the district’s special education program procedures is to address program areas where State and federal regulations require specific local procedures or permit local exercise of discretion.

The state regulations governing implementation of special education services pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) are addressed in Chapter 392-172A WAC. These procedures do not address all of the requirements contained in the regulations. District personnel who are not familiar with the regulations need to contact The Director of Special Education if there are questions regarding special education.

As required under WAC 392-172A-06000(1)(b) through (p) and 392-172A-06005, these procedures address the following areas, at the pages indicated below:

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1. Free Appropriate Public Education (FAPE)

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

1.1. Services from Birth to Age Three

The district participates in the provision of early intervention services to eligible children with a disability, birth to three, consistent with the State lead educational agency's policies and procedures and the regulations implementing Part C of the IDEA 2004.

1.2. Eligibility

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

Eligibility will be determined pursuant to WAC 392-172A-03040(2), which provides:

(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

In interpreting evaluation data for the purpose of determining eligibility for special education services, the district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered. *See* WAC 392-172A-03040(3).

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

The parent will be provided with a copy of the evaluation report (*see* below) and a notice of the determination of eligibility. The student's case manager is responsible for sending the evaluation report and notice.

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

- The student is determined through a reevaluation to no longer be eligible for special education;
- The student has met the district's high school graduation requirements; or
- The student has reached age 21. A special education student, whose 21st birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year.

1.3. Graduation

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

Graduation policies and procedures are contained in Kelso School District policy 2410 and 2410P.

2. Identification, Referral (Child Find), and Evaluation

2.1. Identification

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

The district reaches students who may be eligible for special education services through: Child Find Activities described in Kelso School District's current Local Education Agency (LEA) application.

2.1.1. Children Enrolled by Their Parents in Private Schools

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

The district will consult with parents and representatives of private school students to ensure its child find activities are comparable in private schools located within district boundaries. These consultations will occur three times a year during the regularly scheduled meetings of Kelso School District staff with private school administrators.

2.1.2. Infants and Toddlers

The district will conduct child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of IDEA 2004. The district's Special Education department conducts early childhood screenings for ages three to five. These occur monthly, throughout the school year, and are provided by the Special Education department. When par-

ents or others inquire about screenings, the caller will be referred to the Special Education department.

2.2. Referral

A student, whether or not enrolled in school, may be referred for a special education evaluation by parents, district staff, or other persons knowledgeable about the student. When district staff have concerns that a student may have a suspected disability which could result in eligibility for special education services, they will notify the psychologist responsible for coordinating building assessment activities.

Referrals are required to be in writing unless the person referring is unable to write. All referrals must be documented.

The district's building-level Group of Qualified Professionals (GQP) teams will process referrals in compliance with WAC 392-172A-03005, which provides:

(1) A parent of a child, a school district, a public agency, other persons knowledgeable about the child may initiate a request for an initial evaluation to determine if the student is eligible for special education. The request will be in writing, unless the person is unable to write.

(2) The school district must document the referral and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within twenty-five school days after receipt of the referral, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or

(b) Thirty-five school days after the date the refusal of the parent is obtained by agreement through mediation, or overridden by due process procedures; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation;
or

(ii) A student enrolls in another school after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

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

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

2.3. Initial Evaluation

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

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

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or

(b) Thirty-five school days after the date the refusal of the parent is obtained by agreement through mediation, or overridden by due process procedures; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation;
or

(ii) A student enrolls in another school after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

2.4. Initial Evaluation – Part C Students

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

2.5. Consent

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

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

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

Pursuant to WAC 392-172A-03000(1)(d), the district is not required to obtain consent from the parent for an initial evaluation if the student is a ward of the state and is not residing with the student’s parent, and

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

2.6. Evaluation Requirements

The evaluation must be an individual assessment designed to determine:

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

2.6.1. Evaluation Team

The district’s building-level GQP team shall select the members of the evaluation team. Members selected must be knowledgeable about the student and the areas of suspected disabilities. Qualifications of a team member include having the appropriate professional license or certification. The team may include outside practitioners when necessary. When assessing for specific learning disabilities, the parent and a group of qualified professionals must be part of the group. If the student requires a medical evaluation in order to determine eligibility, the district will coordinate with the parents to arrange for the evaluation at district expense or through the use of public or private insurance, if the parent consents to the use of the insurance. Professional members of the evaluation team need to be familiar with qualifying disability definitions and criteria in federal and State rules.

2.6.2. Evaluation Procedure

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

WAC 392-172A-03020 provides:

(1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

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

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (1) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

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

a. Specific Learning Disability (SLD)

The district may use the severe discrepancy model, the response to intervention (RTI) model, which is a process based on a student's response to scientific, research-based intervention (response to intervention), or a combination of severe discrepancy and RTI models in determining the identification of students with a specific learning disability (SLD), consistent with the District's RTI policy and procedures, numbers 2162 and 2162P . The Superintendent determines whether or not RTI will be used and if so, the classes, schools, grade levels, or content areas in which RTI will be applied, as described in the district's RTI procedures. The district may also authorize the use of RTI on an individual basis, as determined by a student's evaluation team or other appropriate professionals.

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

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

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

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

(1) In addition to the requirements for evaluation reports under WAC 392-172A-03035, for a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

- (a) Whether the student has a specific learning disability;
- (b) The basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040;
- (c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;
- (d) Any educationally relevant medical findings;
- (e) Whether:
 - (i) The student does not achieve adequately for the student's age or meet state grade level standards in one or more of the areas described in WAC 392-172A-03055(1); and
 - (ii)(A) The student does not make sufficient progress to meet age or state grade level standards when using a process based on the student's response to scientific research-based interventions consistent with WAC 392-172A-03060; or
 - (B) The student meets eligibility through a severe discrepancy model consistent with WAC 392-172A-03070; and
 - (C) If used as part of the eligibility determination under (A) or (B) of this subsection, a discussion of the student's pattern of strengths and weaknesses in performance, achievement or both, relative to age, state grade level standards, or intellectual development.
- (f) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and
- (g) If the student has participated in a process that assesses the student's response to scientific, research-based intervention:
 - (i) The instructional strategies used and the student-centered data collected in accordance with the district's response to intervention procedures; and
 - (ii) The documentation that the student's parents were notified about:
 - (A) State and school district policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (B) Strategies for increasing the student's rate of learning; and
 - (C) The parents' right to request an evaluation.
- (2) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

b. Evaluation of Transfer Students

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

2.6.3. Evaluation Report

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

- (a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;
- (b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;
- (c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;
- (d) The recommended special education and related services needed by the student;
- (e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;
- (f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

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

The building-level GQP team is responsible for notifying parents of the date, time, and location of evaluation meetings by following the procedures in the parent participation section of these procedures (*see below*).

2.7. Reevaluations

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

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

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

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

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

- (a) Thirty-five school days after the date written consent for an evaluation has been provided to the district by the parent;

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the district, within the time frames in WAC 392-172A-03015(2).

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

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

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

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

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

- If the parents do not respond to the request for consent, the district can proceed with the reevaluation;
- If the parents refuse to consent to the reevaluation, the evaluation team will notify the Director of Special Education so that the district can determine whether it will seek mediation in order to obtain consent or request a due process hearing to ask an administrative judge to override the parents’ refusal to consent.

2.8. Reevaluation and Graduation

No reevaluation is required when special education eligibility terminates due to graduation from high school with a regular diploma or due to reaching the end of the school year during which the student turned 21. Instead, the district will provide prior written notice and the IEP team will provide the student with a summary of academic achievement and functional performance including recommendations on how to assist the student in meeting post-secondary goals. The summary will be provided to the student in the last quarter of their graduating/exiting year.

2.9. Independent Educational Evaluations (IEE)

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

(1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be ob-

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

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) 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 the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Any parent request for an IEE at public expense should be immediately referred to the Director of Special Education. The Director shall review the request and determine whether the district will pay for the requested evaluation or file a request for a due process hearing.

3. Individualized Education Programs (IEP)

The district will develop, maintain, implement, and revise IEPs in compliance with the requirements of WAC 392-172A-03090 through 03115, which are set forth below.

Parent consent is required before the initial provision of special education services. If a parent refuses to consent to the provision of special education services, the district may not use mediation or due process to override a parent's refusal. When a parent refuses to provide consent the Director of Special Education will notify that parent that the district does not have a FAPE obligation to the student. The notification will be documented in the student's file.

The district will make a copy of the current IEP accessible to all staff members responsible for providing education, other services, or implementation of the IEP. All staff members will be informed of their responsibilities for its implementation. This includes not only teachers and other service providers, but also bus drivers, playground and lunchroom supervisors, nursing staff, and others who may be responsible for the proper implementation. The student's IEP manager is responsible for ensuring that staff members are knowledgeable about their responsibilities.

3.1. Definition and Content of IEP

The district will develop IEPs that comply with WAC 392-172A-03090, which provides:

(1) The term IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

(i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b)(i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) Aversive interventions, if any, required for the student.

(i) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

(j) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services including courses of study needed to assist the student in reaching those goals.

(k) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been in-

formed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

3.2. Composition of IEP Team

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

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

(a) The parents of the student;

(b) Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment;

(c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(d) A representative of the public agency who:

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the school district.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(g) Whenever appropriate, the student.

(2)(a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

(b) If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.

(4) A school district may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the district representative, if the criteria in subsection (1)(d) of this section are satisfied.

(5)(a) A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

- (i) The parent, in writing, and the public agency consent to the excusal; and
- (ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

(6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives as specified by the state lead agency for Part C to assist with the smooth transition of services.

3.3. Parent Participation

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

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

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA 2004.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

(b) Identify any other agency that will be invited to send a representative.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

The student's IEP manager will be responsible for the notification, scheduling, and copying activities outlined above.

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

3.4. When IEPs Must Be in Effect

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

(1) At the beginning of each school year, each school district must have an IEP in effect, for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

3.5. When IEPs Must Be in Effect for Transfer Students

Pursuant to WAC 392-172A-03105(4), if a student eligible for special education transfers to the district from another school district within the state and has an IEP that was in effect for the current school year from the previous school district, this district, in consultation with the parents,

must provide FAPE to the student including services comparable to those described in the student's IEP, until this district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

Pursuant to WAC 392-172A-03105 (5), if a student eligible for special education transfers from a school district located in another state to this district and has an IEP that is in effect for the current school year from the previous school district, this district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until this district either:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

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

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

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

3.6. Development, Review, and Revision of IEPs

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

(1) In developing each student's IEP, the IEP team must consider:

(a) The strengths of the student;

(b) The concerns of the parents for enhancing the education of their student;

(c) The results of the initial or most recent evaluation of the student; and

(d) The academic, developmental, and functional needs of the student.

(2)(a) When considering special factors unique to a student, the IEP team must:

(i) Consider the use of positive behavioral interventions and supports, and other strategies, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and

(ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;

(iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's

reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

(iv) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(v) Consider whether the student needs assistive technology devices and services.

(b) A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:

(i) Appropriate positive behavioral interventions and supports and other strategies for the student; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.

(c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).

(d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of re-evaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section. In the case of a student whose behavior continues to impede the progress of the student or others despite the use of positive behavioral support strategies: Consider the need for aversive interventions only as a last resort, if positive behavior supports have been used in accordance with the student's IEP, the use of positive behavior supports has been documented to be ineffective, and the IEP team, consistent with WAC 392-172A-03120 through 392-172A-03135 determines that an aversive intervention plan is necessary for the student.

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education participate in district or state-wide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

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

4.1. Least Restrictive Environment (LRE)

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

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

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

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

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

(a) The student's IEP;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including WAC 392-172A-02060;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

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

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

4.2. Access to Extracurricular and Nonacademic Services

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

Examples of non-academic opportunities in Kelso School District may include, but not be limited to: counseling services, intramural and interscholastic athletics, transportation, health services, clubs, referrals to outside agencies for both assistance and/or employment, and/or employment by Kelso School District itself.

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

4.3. Continuum of Alternative Placements

The district provides a continuum of alternative placements for students, pursuant to WAC 392-172A-02055, which provides:

(1) Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.

(2) The continuum required in this section must:

(a) Include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and

(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

5. Procedural Safeguards and Discipline Procedures

5.1. Notice of Procedural Safeguards

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

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;

(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and

(d) Upon request by a parent.

The procedural safeguards notice used by the district must include a full explanation of all the procedural safeguards relating to independent educational evaluation, prior written notice, parental consent, access to educational records, discipline procedures for students who are subject to placement in an interim alternative educational setting, requirements for unilateral placement by parents of children in private schools at public expense, State complaint procedures, mediation, the child's placement during pendency of due process proceedings, including requirements for disclosure of evidence, due process hearings, civil actions, and attorney's fees.

Copies of the district's special education procedural safeguards notice are available at the Kelso School District administration offices as well as at each school. Each student's IEP manager will be responsible for ensuring that the procedural safeguards outlined above are followed.

5.2. Prior Written Notice

The district will provide prior written notice as required by WAC 392-172A-05010, which provides:

(1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

(2) The notice required under this section must include:

- (a) A description of the action proposed or refused by the agency;
 - (b) An explanation of why the agency proposes or refuses to take the action;
 - (c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - (d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
 - (e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;
 - (f) A description of other options that the IEP team considered and the reasons why those options were rejected; and
 - (g) A description of other factors that are relevant to the agency's proposal or refusal.
- (3)(a) The notice required under subsections (1) and (2) of this section must be:
- (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:
- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in (b) of this subsection have been met.

5.3. Mediation

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

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

Mediation services are provided by the Office of the Superintendent of Public Instruction (OSPI) at no cost to either party, including the costs of meetings described in WAC 392-172A-05075. To access the state-wide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case. The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. *See* WAC 392-172A-05060.

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

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the district who has the authority to bind the district.

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

5.4. Due Process Hearing

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

5.4.1. Due Process Hearing Request

IDEA 2004 requires that specific information be provided as part of a due process hearing request. The requirements are identified in the procedural safeguards notice and on the due process hearing request form. Due process hearing request forms are available at the Kelso School District administrative offices and on the OSPI Special Education and Administrative Resources Web site.

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

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

5.4.2. Resolution Session

When parents file a request for a due process hearing, the District Special Education Director will immediately schedule a resolution meeting. The meeting must occur within 15 days after a parent request for hearing or seven days if the hearing request involves an expedited hearing regarding discipline. The District Special Education Director will determine the appropriate district staff that will attend the resolution meeting. The district will ensure that one of the district representatives attending the resolution meeting has authority to bind the district in any resolution agreement. The district will not bring an attorney to a resolution meeting unless the parent is bringing an attorney to the meeting.

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

5.5. Discipline

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

5.5.1. Purpose

Under WAC 392-172A-05140 the purpose of the disciplinary procedures set forth in WAC 392-172A-05140 through 392-172A-05155 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145. The district shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in Chapter 392-400 WAC governing discipline for all students.

5.5.2. Authority of School Personnel

Under WAC 392-172A-05145(1), school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of WAC 392-172A-05145(1), is appropriate for a student eligible for special education services, who violates a code of student conduct.

5.5.3. Disciplinary Removals

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

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

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

5.5.4. Services for Students During Disciplinary Removals

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

(4) A student who is removed from the student's current placement pursuant to subsection (3) or (5) of [WAC 392-172A-05145] must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(c) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.

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

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

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

5.5.5. Manifestation Determination

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

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.

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

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

5.5.6. Functional Behavioral Assessment and Behavior Intervention Plan

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

(a) Conduct a functional behavioral assessment, unless the 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 student; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(c) Except as provided in WAC 392-172A-05145(7), set forth below, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

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

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

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the district;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the district; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the district.

See WAC 392-172A-05145(9) for definitions of "controlled substance," "illegal drug," "serious bodily injury," and "weapon."

5.5.8. Notification

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

5.5.9. Interim Alternative Setting

Pursuant to WAC 392-172A-05150, the student's IEP team will determine the interim alternative educational setting for services under WAC 392-172A-07105(3), (4)(e) and (7).

5.5.10. Change of Placement Because of Disciplinary Removals

WAC 392-172A-05155 provides:

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

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

5.5.11. Appeal of Placement Decisions and Manifestation Determinations

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

(1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05145(5), or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b)(i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process hearing request.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

5.5.12. Placement During an Appeal Through a Due Process Hearing

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

5.5.13. Protections for Students Not Determined Eligible for Special Education

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

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

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

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

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

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

(b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the requirements of Section 612 (a)(1)(A) of the act.

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

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

6. Confidentiality and Records Management

The Director of Special Education and building principals are is responsible for maintaining the confidentiality of personally identifiable information pertaining to special education students, consistent with WAC 392-172A-05180 through 05245.

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

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

Pursuant to WAC 392-172A-05230(3), the district will provide instruction to employees collecting or using personally identifiable information on the procedures to protect the confidentiality of personally identifiable information. The training will address the protections outlined in Chapter 392-172A WAC, State law, and federal regulations implementing the Family Educational Rights and Privacy Act, FERPA, (34 C.F.R. Part 99).

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

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

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

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

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

School personnel receiving requests for educational records will immediately forward the request to the Director of Special Education

If parents believe that information in an educational record is inaccurate or misleading, or violates the privacy or rights of the student, they may request that the district amend the information. The district's procedure and policy 3231 and 3231P describe the process and timelines for challenges and hearings regarding student records.

The district follows the guidelines for records retention outlined in the Secretary of State's, *General Records Retention Schedule and Records Management Manual*. The district shall inform parents or adult students when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student. The information shall be de-

stroyed at the request of the parent(s) or adult student, or will be provided to the parent or adult student upon their request. However, a permanent record of the student's name, address and phone number, his or her grades, attendance, record, classes attended, grade level completed and year completed will be maintained without time limitation. *See* WAC 392-172A-05235.

Records management is also governed by the district's Policy 4040, Public Access to District Records.

7. Transitions of Birth-to-Three Students to Preschool

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

(2) Each school district will participate in transition planning conferences arranged by the designee of the lead agency for Part C in the state. A transition planning conference will be convened for each student who may be eligible for preschool services at least ninety days prior to the student's third birthday.

(3) By the third birthday of a student described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172A-02000(1).

The student's IEP manager or case manager will be responsible for coordinating with the Part C agency staff for timely execution of transition planning conferences.

8. Students Enrolled by Their Parents in Private Schools

Prior to December 1 of each year, the district shall conduct an annual count of the number of private elementary and secondary school students eligible for special education who are enrolled by their parents in a private school located within district boundaries and who do not wish to enroll in a public school to receive special education and related services.

8.1. Proportional Share of Funds

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

8.2. Consultation Regarding Private School Students

Kelso School District administrative staff, including the special Education Director, shall have timely and meaningful consultation with appropriate representatives and parents of private school students and make determinations pursuant to this section.

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

- (1) The child find process, including:

(a) How parentally placed private school students suspected of having a disability can participate equitably; and

(b) How parents, teachers, and private school officials will be informed of the process.

(2) The determination of the proportionate share of federal funds available to serve parentally placed private school students eligible for special education including the determination of how the district calculated the proportionate share of those funds.

(3) The consultation process among the district, private school officials, and representatives of parents of parentally placed private school students eligible for special education, including how the process will operate throughout the school year to ensure that parentally placed students eligible for special education identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom special education and related services will be provided for parentally placed private school students eligible for special education, including a discussion about:

(a) The types of services, including direct services and alternate service delivery mechanisms; and

(b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and

(c) How and when those decisions will be made.

(5) How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, the district will provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

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

In providing services to students eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the district boundaries, and who are not part-time enrolled for special education services under Chapter 392-134 WAC, the district will comply with WAC 392-172A-04010, which provides in relevant part:

(2) To the extent consistent with the number and location of students eligible for special education who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district boundaries, and who are not part-time enrolled for special education services under chapter 392-134 WAC, districts must allow for the participation of those students by providing them with special education and related services, including direct services determined in accordance with WAC 392-172A-04035.

(3) In accordance with WAC 392-172A-04010 and WAC 392-172A-04035 through 392-172A-04070, a services plan must be developed and implemented for each private school student eligible for special education who has been designated by the school district to receive special education and related services.

(4) Each school district must maintain in its records, and provide to the OSPI, the following information related to parentally placed private school students:

- (a) The number of students evaluated;
- (b) The number of students determined eligible for special education; and
- (c) The number of students served through a services plan.

9. Funding and Use of Funds

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

9.1. Early Intervening Services (EIS)

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

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

9.2. Students Covered by Public or Private Insurance

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

9.3. Use of Funds

The district will use special education funds in accordance with WAC 392-172A-06010, which provides:

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

(4) If two or more school districts jointly establish eligibility in accordance with WAC 392-172A-06075 and 392-172A-06080, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those school districts for elementary or secondary school students, as the case may be.

Under WAC 392-172A-06035:

(1) Funds provided to a school district under Part B of the act may be used for the following activities:

(a) For the costs of special education and related services, and supplementary aids and services, provided in a general education class or other education-related setting to a special education student in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.

(b) To develop and implement coordinated, early intervening educational services in accordance with WAC 392-172A-06085.

(c) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

(2) A school district may use funds received under Part B of the act to purchase appropriate technology for record keeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students eligible for special education, that are needed for the implementation of those case management activities.

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

10. Staff Qualifications and Development

10.1. Qualifications

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

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

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

10.1.1. Special Education Teachers

Pursuant to WAC 392-172-A-02090(1)(b), all special education teachers providing, designing, supervising, evaluating or monitoring the provision of special education shall possess “substan-

tial professional training.” “Substantial professional training” shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI.

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

(a) Teachers who meet state board criteria pursuant to WAC 181-81-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the Office of the Superintendent of Public Instruction.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district must keep written documentation on the following:

(i) The district must make one or more of the following factual determinations:

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

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

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

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

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

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

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

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

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

10.1.2. Other Certificated Service Providers

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

10.1.3. Early Childhood Service Providers

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

10.1.4. Braille Instruction

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

10.1.5. Paraprofessionals and Aides

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

10.2. Personnel Development

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

- Training must be provided annually to all personnel who may be providing aversive interventions under a student's IEP;
- In-service training schedules will be developed based upon the results of the district assessment and in support of needs identified;
- Training activities will be conducted for regular general and special education staff, staff of other agencies and organizations and private school staff providing services for special education student; and
- Training for classified staff in the state recommended core competencies will occur through courses provided by ESD 112.

11. Public Documents Relating to the District's Eligibility

The district's application for special education funding and any required policies, procedures, evaluations, plans, and reports are readily available to parents and other members of the public through the district's Public Information Office, Kelso School District Website, and the OSPI. A notice regarding the availability of such documents will be placed on the district's Web site and in the district's newsletter.

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

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

13. Provision of Instructional Materials to Blind Persons or Persons With Print Disabilities

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

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

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

15. Goal and Detailed Timetable for Providing Full Educational Opportunity to All Special Education Students

The district has adopted the state's goal and detailed time table for providing full educational opportunity to all special education students.

Policy Adopted: March 10, 2008